

D/18-19/20-21

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

Singh

V

University College Union (UCU)

Date of Decision

12 November 2020

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Decision

1. Upon application by Dr Charanjit Singh (“the claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I refuse to grant Dr Singh’s application for a declaration that on or around 10 February 2020 the Union breached rule 9.5 when it removed Dr Singh from his position as School representative at the Marylebone branch before the end of his 1 year term.

I refuse to grant Dr Singh’s application for a declaration that on or around 10 February 2020 the Union breached rule 12 when it held an EGM at the Marylebone branch to elect two new representatives thereby removing Dr Singh from his position as elected school representative.

Reasons

2. Dr Singh brought this application as a member of the University College Union (“the Union”). He did so by a registration of complaint which was received at the Certification Office on 22 April 2020.

3. Following correspondence with my Office, Dr Singh confirmed his complaints as follows: -

Complaint 1

On or around 10 February 2020 the Union breached rule 9.5 when it removed Dr Singh from his position as School representative at the Marylebone branch before the end of his 1 year term.

Complaint 2

On or around 10 February 2020 the Union breached rule 12 when it held an EGM at the Marylebone branch to elect two new representatives thereby removing Dr Singh from his position as elected school representative

4. At a hearing held by Video Conferencing on 29 October 2020 Dr Singh represented himself. A witness statement and oral evidence was given by Dr Singh. The Union was not present at the hearing. It had submitted a written submission and a witness statement from Barry Jones, UCU Regional Official (Higher Education, London North). There was also in evidence a bundle of documents consisting of over 159 pages containing correspondence and the rules of the Union. On 28 October 2020 Dr Singh sought to submit four documents for consideration at the hearing. After seeking the

Union's views, I agreed to admit two of those documents; an email dated 26 October 2020 from Professor Barry Thapar, Head of the School of Finance and Accounting at Westminster Business Schools, and an email dated 27 October 2020 from Ann Thapar, a Senior Lecturer at the same School. The two additional documents were already included in the bundle for the hearing.

Findings of fact

5. At the beginning of the Hearing I established a set of agreed facts with Dr Singh. I have addressed the disputed facts and summarised the evidence given at paragraphs 14 to 46.

6. Dr Singh was a member of the Marylebone Branch of the UCU. He subsequently left the Union and is no longer a Member. The Branch held an AGM on 16 October 2019. At that meeting the Branch elected a number of Branch Officials.

7. There was a vacancy for the Departmental Representative, often referred to as the School Rep, at the School of Finance and Accounting. Ann Thapar submitted a nomination for Dr Singh to take on this role. The nomination was sent to the Branch Co-Chair, William McClean, who replied congratulating Dr Singh.

8. Dr Singh wrote to his colleagues on 11 November to inform them that he had been elected into the role and invited them to contact him. This led to a query from another Branch Member about the process by which Dr Singh had been elected or appointed into the role. There followed a number of discussions between Dr Singh, Maria Chondrogianni, Chair of the UCU's Westminster Coordinating Committee, and Barry Jones, the UCU's Regional Officer, about whether the Union had followed its Rules when Dr McClean appeared to accept Ms Thapar's nomination and appoint Dr Singh.

9. Dr Singh worked with the Union to find a way forward. It was agreed that two Departmental Representative roles would be created. Dr Singh would hold one of those roles and there would be an election for the second role. This decision was communicated to Branch Members by the Co-Chairs, Dr Maclean and Lara Rettondini, on 6 December 2019.

10. On 12 December 2019 two Branch Members, Kumari Jaddoo and Sobia Razzaq, raised queries with the Union about whether the AGM on 16 October 2019, and the elections held at that meeting, had been conducted in accordance with the UCU Rules.

11. The Union decided that the election had not been conducted according to the Rules. A further election for Branch roles, including two Departmental Representatives at the School of Finance and Accounting, was held on 10 February 2020. Mr Singh was nominated as Department Representative. He was unsuccessful in the election

The Relevant Statutory Provisions

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

108A Right to apply to Certification Officer

(1) A person who claims that there has been a breach or threatened breach of the Rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are –

(a) the appointment or election of a person to, or the removal of a person from, any office;

(b) disciplinary proceedings by the union (including expulsion);

(c) the balloting of members on any issue other than industrial action;

(d) the constitution or proceedings of any executive committee or of any decision-making meeting;

108B Declarations and orders.

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 both of the following requirements—

(a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;

(b) to abstain from such acts as may be so specified with a view to securing that a breach or threat 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 UCU Model rules:-

7 COMMITTEE

- 7.1** There will be a committee responsible for conducting the day-to-day business of the Branch/LA. The committee will meet not less than once every four months. Not less than one third of those who are at that time members of the committee must be present to form a quorum at any meeting.
- 7.2** If presented with a written request signed by half of the members of the committee, the chair/president must call a meeting of the committee to take place not later than [5] working days following the day on which that written request is received.
- 7.3** The committee will consist of:
- a) the Officers as specified below,
 - b) up to [insert number] ordinary members elected annually from members of the Branch/LA.
 - c) up to [insert number] members co-opted by the annual general meeting or by the committee who will serve to the end of the term of office of other committee members.
 - d) any member of the Branch/LA who is a member of the National Executive Committee of UCU [and in the case of a Scottish Branch/LA, the Executive Committee of UCU Scotland; and in the case of a Welsh Branch/LA, the Officers of the UCU Wales Council]
- 7.4** Where there is one Branch/LA in the institution, the committee shall elect (from among its own members) a Negotiating Committee to conduct negotiations. Where more than one Branch/LA exists in the institution, the Negotiating Committee shall consist of representatives elected by the Committees of all of the Branches/LAs in proportion to their membership.
- 7.5** The Negotiating Committee is the only body empowered to conduct negotiations with the institution. The negotiators may include the Regional Official, under circumstances determined

by the General Secretary. The Negotiating Committee shall make appropriate arrangements for the appointment of its officers from among its membership.

8. OFFICERS OF THE BRANCH/LA

8.1 Members will be elected to the following officer roles within the Branch/LA:

The chair/president

The vice-chair/vice-president

The treasurer

The secretary

The membership secretary

The equality officer

The anti-casualisation officer

[other officers/representatives may be specified here, and elected in the order in which they are specified¹]

These positions will be declared elected annually at the annual general meeting from members of the Branch/LA in accordance with Rule 9.

8.8 Casual vacancies

If an office is vacant and no ballot is being held for that office, the committee is empowered to fill the vacancy, either from members of the committee itself or from the general membership of the Branch/LA. Officers so appointed will retire at the same time as if they had been duly declared elected at the last Annual General Meeting.

9 ELECTIONS OF ORDINARY MEMBERS OF THE COMMITTEE AND OFFICERS

9.1 Returning Officer

¹ *the list of officers and committee positions in these model rules is not exhaustive. Branches may – and are encouraged to - add further elected officer roles or specific elected committee roles, such as representative for environmental issues, representative of academic-related staff, faculty or department representatives, or representatives for other significant groups of employees who may not otherwise be represented on the committee.*

The local committee will appoint a returning officer for elections who is neither a candidate for any office in the Branch/LA nor a member of the committee.

9.2 Nominations

All nominations will be received in writing by the returning officer no later than the day that is [28] days before the day of the annual general meeting. Nominations must be accompanied by the written consent of the nominee and supported by the identifiable signatures of [2] members of the Branch/LA.

9.3 Eligibility to stand for election

Retiring officers will be eligible for re-election, except that the chair/president and vice chair/vice-president may normally hold office for not more than [5] successive years in any one capacity.

A member may not normally be declared elected to more than one officer or ordinary position of committee membership.

9.4 Elections

Subject to rule 10.4, if there is only one eligible candidate for any officer vacancy that candidate will be declared elected.

If the number of candidates to be ordinary members of the committee does not exceed the number of vacancies those candidates will be declared elected.

If there is either more than one eligible candidate for any officer vacancy or more candidates than there are vacancies of ordinary members of the committee a ballot of the members of the Branch/LA will be conducted in accordance with rule 10.

9.5 Term of Office

The term of office of an officer or ordinary member of the committee elected under this rule 9 will be the academic year following the annual general meeting, or such other period of approximately one year as the AGM determines.

12 REMOVAL FROM OFFICE

Any member of the committee (including the officers and other persons elected to represent the Branch/LA) may be removed from office by resolution at a general meeting (including an extraordinary general meeting) of the Branch/LA provided that (a) the terms of any such proposed resolution are received by the secretary not later than the day that is [fourteen] days before the day of the general meeting and (b) the proposal for such a resolution is supported in writing by not

less than twenty five members or 25% of the membership, whichever is less. Upon receipt of such a proposal the secretary will take all reasonable steps to ensure that that proposal is received by each member of the Branch/LA not later than the day that is [seven] days before the general meeting at which it is to be considered. Any general meeting which will have removed a member or members of the committee in accordance with the above will have power to replace any such member or members until such time as normal election of officers and other members of the committee next occurs.

13.1 Annual General Meeting

The annual general meeting will be held in [month or other specification] each year. The secretary will take all reasonable steps to ensure that notice of the annual general meeting is received by members not later than the day that is [42 days] before the day on which the meeting is to be held. The secretary will take all reasonable steps to ensure that the agenda for the meeting is received by members not later than the day that is [14 days] before the day on which the meeting is to be held.

The annual general meeting will normally receive the results of elections of the officers and committee members. It will appoint an auditor or auditors.

Considerations and Conclusions

Summary of Evidence

14. Dr Singh's complaint is that he was removed from his role as School Representative contrary to the proper procedures set out in the Union's Rules. The Union's position is that Dr Singh did not, in fact, hold the position of School Representative and could not, therefore, be removed from office. They acknowledge that there was no removal process. Consequently, the evidence I considered relates to Dr Singh's election or appointment.

Union Membership

15. Dr Singh told me, in his witness statement, that he had joined the Union on 22 October 2019. Had this been the case, Dr Singh would not have been a Member of the Union on 16 October 2019 when the AGM was held. It would not, therefore, have been possible for him to have been elected or appointed into the role of School Representative on that day. In oral evidence, however, he explained that he joined the Union on 28 September 2019, by completing an online form. He told me that he was issued with a membership number at that time and this was confirmed by post on 22 October 2019. In responding to the complaint, the Union have not questioned whether Dr Singh was, in their view, a Member on the day of the AGM. Nor have I seen the

issue raised in any of the documents which have been provided to me for the purpose of the Hearing. On that basis, I am content that Dr Singh was a Member of the Union at the relevant time.

The AGM

16. Both parties agree that the notice for the AGM was given in the Westminster Branch newsletter. Neither party was able to give a definite date for when the newsletter was issued, although I have seen an email, dated 28 February 2020 from Barry Jones, the Regional Officer for London (Higher North), to Paul Cottrell, Head of Democratic Services, which indicates that it was issued on 25 September 2020. The agenda for the AGM was circulated on 15 October, the day before the AGM. Both the newsletter and the agenda included details of the need for the Marylebone Branch to elect Branch officials.

17. Dr Singh told me that he was present at the AGM but left for a short period, returning towards the end of the meeting. He could not recall what time the meeting ended but said that it was a long meeting.

18. The election for the Marylebone Branch officials took place whilst Dr Singh was absent from the meeting. Dr Singh told me, in oral evidence, that his colleague, Ann Thapar, emailed him whilst he was absent from the meeting to ask whether he wanted to be the School Rep. Dr Singh confirmed by email that he would, and then received a confirmation from the Branch Co-Chair, Dr Mclean. Dr Singh took this as confirmation of his election and told me that he had been appointed at the meeting along with the other Branch officials. Dr Singh has not provided me with a copy of that email and nor is it referred to in Ms Thapar's evidence. Ms Thapar does, however, say that Dr Singh was present at the AGM and that she had nominated him for the role at the meeting. She does not explain how the nomination was made.

19. The Union told me, in their written submissions, that Dr Singh was not elected at the meeting. Mr Jones explains in his written statement that he was not present at the meeting. He said that the meeting took place between 1pm and 2:30pm. Mr Jones said that the role of School Rep was not filled at the meeting but that Ms Thapar emailed Dr Mclean shortly after the meeting and said that Dr Singh was happy to take on this role. Dr Mclean then replied to Dr Singh congratulating him. I have seen a copy of this email. Ms Thapar's email was sent at 3:16pm on 16 October. Dr Mclean replied at 3:18pm on the same day.

20. Mr Jones, in his written statement, referred me to the minutes of the AGM which record that the meeting ended at 2:30pm. This was before Ms Thapar's email to Dr Mclean and Dr Singh which was sent at 3:16 pm. Additionally, the minutes record that the School Rep post was vacant and had not been filled at the meeting. It is important to note, however, that these are draft minutes and I have not been provided with an

approved set of minutes. Dr Singh, in his oral evidence, questioned the accuracy of the minutes and told me that he had asked to see a set of minutes several times but none were forthcoming. He told me that he saw the draft minutes for the first time when he was preparing for the Hearing. He told me that, in his view, the minutes were not contemporaneous and had been drafted to support the Union's position, once he had made his complaint to me and to the Union's Head Office.

After the AGM

21. In oral evidence, Dr Singh told me that there had been discussion about his role and that colleagues were asking who the new Branch officials were. I was not told when those discussions took place but it must have been after the AGM, on 16 October 2020, and before 11 November 2019 when Dr Singh emailed his colleagues to tell them about his appointment. The Union had not made an announcement and so Dr Singh decided he should tell colleagues about his role. He, therefore, emailed his colleagues on 11 November 2019 to inform them of his election to the role and to ask them to approach him if they needed support from the Union.

22. This prompted one colleague to ask him when the role had been advertised. It appears that this was also raised with the Union because there followed a number of discussions between Dr Singh, Ms Chondrogianni and Mr Jones, by telephone, in person and by email. I have been provided with a number of emails which record these discussions and have identified two key issues. The first is that the emails appear to support the Union's view that Dr Mclean had, albeit without following the procedures within the Rules, attempted to appoint Dr Singh into a casual vacancy after the AGM. I have set out the text of an email dated 11 November 2019 from Dr Maclean below:

My apologies...this is clearly my fault, I wasn't fully aware of the proper procedures. We had had elections for the various positions at the AGM/Marylebone meeting with the election of reps taking place that day. When you subsequently came forward I realise it was not in my gift to appoint you without due process. Can we arrange for a formal vote at the next UCU branch meeting.....this is also a good reason to set a date for the next branch meeting.

23. It is worth noting, however, that this is contradicted, by the email which Dr Mclean and his Co-Chair Lara Rettondini sent to Branch Members on 6 December 2019.

We are happy to confirm that, in accordance with UCU Procedures, Dr Charanjit Singh has been successfully elected as the Representative for the School of Finance and Accounting. Charanjit has extensive background in Labour Relations Law and Dispute Resolution; has served in a Senior Management capacity within HE and is also very well versed with UCU and its work.

We have also opened the process of nominations for an additional Rep for the School of Finance and Accounting.

24. The latter email reflects discussions between Dr Singh, the Branch Co-Chairs and Mr Jones which resulted in an agreement that there would be two School Reps and that Dr Singh would hold one of those posts. I have however, seen no evidence from the Union which explains why, on 11 November 2019 Dr McClean believed that Dr Singh had not been properly elected but, on 6 December 2019, informed colleagues that he had been properly elected.

25. The second issue is whether the AGM had been held within the Rules of the Union. Mr Jones told me, in his witness statement, that the response to the email on 6 December was immediate and hostile. Both Co-Chairs decided to resign their posts. He also stated that, at around the same time, he became concerned that the AGM had not been called properly. He does not say what led him to this view but also records that a query had been raised about whether the meeting was quorate. On 10 December 2019, he emailed Dr Singh and explained that he had considered the point about notification to Members and felt that the best course of action was to hold a second General Meeting to deal with the election of Branch officers and representatives. His email does not, however, say whether all posts would be open for election; nor does it explain to Dr Singh that his post would be open for election.

26. I have been provided with a copy of an email dated 12 December 2020 from two Branch Members, Kumari Juddoo and Sobia Razzaq, who raised a number of queries about the AGM. This included whether sufficient notice had been given, whether the agenda had been circulated within the agreed time period and whether the voting had been conducted within the Rules. I have not been provided with the Union's response to those queries and I have not heard evidence from Dr Jaddoo or Ms Razzaq. However, it is clear from the documents provided to me that the Union decided to call an Extraordinary General Meeting on 10 February 2020. The notice for the meeting was sent out on 20 December 2019 and explained that the sole purpose of the meeting was the election of the Officers. It identified the reasons for the election as the recent communication issues and the resignation of the co-chairs, and sought nominations for the Branch posts. The list of posts to be elected appears to include all of those which were filled at the AGM on 16 October 2019 and all School Rep posts. It does not make any reference to there being an additional School Rep post for the School of Finance and Accounting as had been set out in Dr Mclean's email of 6 December 2019.

27. There is little evidence before me of the Union's decision making around the need for all posts to be filled at the EGM. The draft minutes from the AGM on 16 October 2019 show that, in addition to the Co-Chairs, 6 reps were elected. Each of these posts was included in the request for nominations which was issued on 20 December 2020. On 31 January 2020, the Union issued a second notice for the EGM together with the list of nominees for the posts subject to election. Dr Singh had not been nominated for any posts. He told me, in oral evidence, that this was because he believed that he had already been properly elected into the position and because he had an open complaint to the Union about events after the AGM.

28. There seems to have been some difference of opinion within the Union about whether the approach taken to hold elections for all positions was the correct one. I have seen an email dated 3 February 2020 from Mr Jones to Mr Cottrell, the Union's Head of Services and Catherine Wilkinson (I have no evidence as to her role within the Union) which indicate that, following a conversation between them, Mr Jones understood that the calling of the AGM was probably "on balance, reasonable" and that the initial notices had not been affected by communication issues as had previously been considered to be the case. On that basis, he sought Mr Cottrell and Ms Wilkinson's agreement to those officials who had been elected at the AGM on 16 October 2019 remaining in post. He also sought agreement to Dr Singh being offered the opportunity to submit a late nomination on the basis that Dr Singh had a reasonable belief that he had been subsequently elected into the role. I have not seen the response to that email nor the advice which was given to the Branch about the status of those representatives who were elected at the October AGM.

29. I have, however, seen an email dated 7 February 2020 from Mr Jones to Ms Chondrogianni which explains that, following conversations with her that morning, his advice was now that all positions should be open for election. He records that this is a "further change in my advice to the Branch, which is a reversion to the previous advice."

30. The EGM went ahead on 10 February 2020. At the meeting there was agreement that Dr Singh could submit a late nomination. He submitted a valid nomination at the meeting. There was also agreement that there would be two School Rep positions for the School of Finance and Accounting. Dr Singh told me that this resulted in a further nomination being made from the floor which meant that there were three nominations for two positions. The election went ahead and Dr Singh was unsuccessful.

Summary of Submissions

Dr Singh

31. Dr Singh submitted that he was validly elected at the AGM on 16 October 2020. His position is that, although he had left the room when the elections went ahead, he had been nominated by Ms Thapar and that nomination had been accepted by Dr Mclean. There were no other candidates for the role and he was, like others, elected unopposed.

32. He argued that the Branch followed its usual procedures in the way it managed its AGM and elections. He referred to a written statement from Ms Thapar which supported this view and to his personal experience of one previous Branch meeting when officials were elected. He drew my attention to the fact that UCU had twice confirmed that he had been elected into the role. Dr Mclean's email of 16 October 2019 was the first

instance. The second was Dr Mclean and Ms Rettondini's email of 6 December 2019 which had been agreed with Mr Jones.

33. Dr Singh referred me to ***Henry and others v London General Transport Services Ltd [2002] IRLR 472***. In particular he asked me take into account the finding that:

In order to establish a custom and practice, clear evidence of practice is required and there should be a scrutiny commensurate with the particular circumstances. However, contrary to the view of employment tribunal, there is no requirement of "strict proof". The burden is upon the balance of probabilities and the word "strict" suggests a different and higher standard.

34. He argued that it was clear that, on the balance of probabilities, the Branch had adopted practices which were different to those within the Union Rules. He told me that the Branch had advertised the AGM in the usual way and had elected its officials in the usual way. In his view, the Union had provided no evidence to contradict this; on the contrary, his position was supported by the emails he received from Dr Mclean on 16 October and the email circulated on 6 December 2019 by Dr Mclean and Ms Rettondini. Consequently, he concluded that, on the balance of probabilities the test which had been applied in ***Henry and others v London General Transport Services Ltd [2002] IRLR 472*** had been met because the practice was reasonable, notorious and certain.

35. Dr Singh believed that there had been a concerted campaign, led by some Branch Members, to remove him from office. The Union's National Office had become complicit in this campaign when it took the decision to hold an EGM which effectively removed him from office. It was clear that the Branch AGM had been conducted according to the Branch's usual procedures which he believed were well established and well known to its Members.

36. He also initially made submissions about the quality and nature of the role as he believed the Union was maintaining the position, as set out in Mr Cottrell's letter dated 22 June 2020 to my Office, that the School Rep post was not a Branch Officer and, therefore, not within my jurisdiction. As the Union has accepted that the School Rep post is a Branch Officer there was no need for him to pursue this point.

The Union

37. The Union's position is more straightforward. Their view is that it is clear that the AGM on 16 October 2019 was not called in accordance with the Branch Rules for the following reasons:

- a. Proper notice was not given for the meeting. Rule 13.1 requires 42 days notice to be given. It is not clear when the agenda was sent out but there is no evidence that it was issued on or before 4 September 2019. Rule

13.1 also requires the agenda to be issued 14 days in advance of the meeting, The agenda was issued on 15 October 2020.

- b. Nominations were not sought in advance of the meeting as required by Rule 9.2
- c. No Returning Officer was appointed as required by Rule 9.1 which requires a Returning Officer to be appointed 28 days in advance.

38. On that basis, the Union believe that any elections which were held at the AGM were invalid. Furthermore, the Union argue that Dr Singh was not elected at that meeting; Mr McLean did not have the power under the Rules to appoint Dr Singh to a casual vacancy after the AGM. Dr Mclean did not follow the process for filling a casual vacancy, as set out in Rule 8.8, and, therefore, had no power to fill that vacancy.

Conclusions

39. From the evidence before me, it is clear that the AGM on 16 October 2019 was not conducted within the Union's Model Branch Rules which had been adopted by the Branch. It is not clear whether the Branch gave members the required 42 days' notice of the meeting. Even if it did, the agenda was not issued 14 days in advance, nominations were not sought in advance and no Returning Officer was appointed. Neither party appears to dispute these facts. The core question for me, therefore, is whether the Branch had, as argued by Dr Singh, established a practice which, although contrary to the express rules of the Union, was sufficiently well established and well known to vary those Rules. The Union did not address these points in their submissions; however, I asked for their views ahead of the hearing because Dr Singh had submitted evidence to support his position the day before the Hearing. The Union's submission was brief; they argued that he had provided insufficient evidence to demonstrate that the custom and practice of the Branch was as he suggested.

40. Dr Singh is right that, where a practice is well established, it can form part of the Rules of the Union. He has referred me to ***Henry and others v London General Transport Services Ltd [2002] IRLR 472***. This case refers to issues around collective bargaining rather than the application of Union rules; however, the test is the same in that the practice which has been adopted must be reasonable, notorious and certain. In addition, it is well established that custom and practice may bring clarity to an ambiguous rule or supplement a rule which appears to have gaps. That is not the case here, however, as the Union Rules are, in my view, explicit as to the process which should be followed. It is Dr Singh's position that the custom and practice of the Branch is so well established that it has varied the written Rules to the extent that they are no longer valid.

41. I have two difficulties with Dr Singh's argument. The first is that there is a general rule that terms implied by custom and practice should not be inconsistent or conflict with

the express written Rules. Dr Singh's submissions rely on his election or appointment having been made in a manner which is contrary to what the written Rules require.

42. The second is that he has provided little evidence to support his contention that this is the custom and practice within the Union. He would need to establish that there was a very long-established practice of the Union appointing School Representatives in a way that was different to what the Rules expressly required. He relies on the written statement from Ms Thapar which records only that Dr Singh's election was in accordance with the procedures in which others have been elected in the past. She does not give any details of the number of meetings she has attended nor describe those processes. Nor was she available to give oral evidence at the hearing. Dr Singh also relies on his own experience of one other meeting which he attended when Branch officials were appointed. He told me, in oral evidence, that a similar process had been followed at that meeting.

43. Dr Singh told me that the Union have not provided any evidence which contradicts his position. That is true; however, it is clear that those Members who challenged the election used the written rules to establish that there was a problem with the process that had been followed at the AGM on 16 October 2019. They also attended the EGM which had been properly advertised. This supports the Union's view that there is insufficient evidence to demonstrate that custom and practice had been established within the Branch.

44. Given that there are written rules which set out a clear process for the AGM and for electing officials, and that there is insufficient evidence to support Dr Singh's argument that custom and practice has been established, I agree with the Union that the AGM was not held in accordance with the Rules. Consequently, all of the elections which were held at the AGM on 16 October were outside the Rules of the Union.

45. Having reached that decision, I do not need to need to resolve the question of the timing of Dr Singh's election. If, as Dr Singh argues, he was elected at the AGM then his election was not valid. If, as the Union argues, he was appointed, in error, by Dr Mclean after the meeting then his appointment cannot be valid. Dr Mclean's election as Co-Chair would have been invalid and, even if it were not, there was no evidence before me that he had followed the procedures set out in the Rules for making such an appointment.

46. On that basis, I agree with the Union that Dr Singh had not been elected or appointed to the role of School Rep and therefore could not be removed from that post. I refuse to make the declaration sought by Dr Singh in respect of both complaints.

Observations

47. Although I have not found in his favour, I understand why Dr Singh feels aggrieved by the Union's handling of his apparent election and why he brought the complaint to me. It appears, from the papers I have seen, that he had tried to work with the Union to

find a mutually acceptable resolution but the Union's response was inconsistent. I would encourage the Union to strengthen its support of Branches to ensure that, in future, elections are held within the written rules and that a consistent approach to any challenges is adopted.

48. Finally, it is disappointing that the Union declined to attend the Hearing. If they had, I would have been better able to understand the decisions they took in handling the response to Dr Singh's apparent election and the reasons why certain decisions were taken.

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

Mrs Sarah Bedwell
The Certification Officer