

D/23-25/20-21

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

Simpson (2)

V

Unite the Union

Date of Decision

18 February 2021

Contents

Decision..... 3

Reasons 3

Findings of fact..... 4

The Relevant Statutory Provisions..... 6

The Relevant Rules of the Union 6

Considerations and Conclusions 10

 Summary of Evidence 10

 Mr Simpson’s complaint to the Union..... 10

 Investigation by Mr Deans 11

 Referral to a Disciplinary Panel..... 13

Conclusions 19

 Natural Justice..... 19

 Complaint One 21

 Complaint Two..... 24

 Complaint Three..... 28

Annex 32

Decision

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

I refuse to grant Mr Simpson’s application for a declaration that between 7 September 2018 and 7 September 2019 the Union breached rule 27.3.2 and the principles of Natural Justice when it disciplined Mr Simpson for breach of rules 27.1.1 to 27.7.7.

I refuse to grant Mr Simpson’s application for a declaration that between 4 September 2018 and 8 May 2019 the Union breached rule 27.2 and the principles of Natural Justice and procedural unfairness by arranging for John Gillespie, the Chair of the Finance and General Purposes Committee to also act as chair of the disciplinary panel set up to consider disciplinary charges brought by the F&GP Committee against Mr Simpson.

I refuse to grant Mr Simpson’s application for a declaration that between 4 May and 8 May 2019 the union breached rule 27.2 and the Unite Executive Committee guidance for the application of rule 27 by failing to ensure that all “documents relied upon in support of the charge” were sent to him at least 4 weeks before the disciplinary hearing date of 8 May 2019.

Reasons

2. Mr Simpson first contacted my office in November 2018. He told me that Unite the Union (“Unite” or “the Union”) had breached its rules when it took disciplinary action against him following the investigation of complaints made by him about two members of the Union. Following correspondence with my office, Mr Simpson confirmed complaints 1, 2 and 3 as set out in the attached Annex.
3. A hearing took place by Video Conference. Three sessions, each lasting three hours, were timetabled over three days on 26, 27 and 28 January 2021. Mr Simpson represented himself. He submitted a skeleton argument and made oral submissions. He chose not to give written or oral evidence. The Union was represented by Mr Michael Potter of counsel, instructed by Mr Neil Gillam, of the Union’s Legal Department. The Union submitted a skeleton argument and written statements from Mr Rafferty (Scottish Regional Secretary), Ms Dougall (Regional Coordinating Officer, Scotland Region), Mr Gillespie (Regional Chair of Unite the

Union, Scotland), Mr Woodhouse (Chair, Unite the Union) and Mr Deans (Regional Coordinating Officer, Scotland Region). Mr Rafferty, Ms Dougall, Mr Gillespie and Mr Woodhouse gave oral evidence. There was also in evidence a bundle of documents consisting of over 512 pages containing correspondence and a bundle consisting of the rules of the Union, policies and procedures for consideration at the hearing. Mr Simpson and Mr Potter both submitted legal authorities to support the arguments set out in their skeleton arguments.

Findings of fact

4. I agreed a number of facts, as set out below, with both parties at the beginning of the Hearing. I will address any disputed facts, where necessary, elsewhere in my decision.
5. Mr Simpson was a member of the Community Branch of Unite the Union.
6. On 2 March 2018 Mr Simpson made a complaint to the Union about two members of the Union. On 7 March 2018 Mr Pat Rafferty, Scottish Regional Secretary, asked Ms Elaine Dougall, Regional Coordinator in the Scotland region, to investigate Mr Simpson's complaint.
7. Ms Dougall produced a report of her investigation. In her report she explained that she found no evidence to support Mr Simpson's complaint. She took the view, however, that Mr Simpson had acted in an inappropriate and unjustified manner and that his actions, in bringing the complaint may be construed as vexatious. She recommended that a Finance and General Purposes Committee Panel be convened to determine if Mr Simpson had breached Rule 27 (regarding membership discipline and set out in full later in this Decision).
8. Ms McDougall's report was considered by the Finance and General Purposes Committee on 4 September 2018. The Committee took no action on Mr Simpson's complaint.

9. Mr Rafferty wrote to Mr Simpson on 7 September 2018. He explained that the Committee had not upheld Mr Simpson's complaint and that no action would be taken against the two members complained about.
10. Mr Rafferty also explained that the Committee needed to take into account whether there was any malicious intent by Mr Simpson when bringing the complaint. He explained that a Senior Officer would be appointed to investigate this and that Mr Simpson would be suspended, with immediate effect, from any lay elected positions within the Union and from attending any lay committees including his branch committee.
11. Mr Rafferty appointed Mr Stephen Deans, Regional Coordinating Officer within the Scotland Region, to investigate the Committee's concerns. Mr Deans' report recorded that he concurred with Ms Dougall's report and recommended a disciplinary panel be convened to consider whether Mr Simpson's actions were vexatious and malicious.
12. The Finance and General Purposes Committee considered Mr Dean's report on 12 March 2019. They agreed that a disciplinary panel should be formed and agreed that Mr John Gillespie and two other named members should form the panel.
13. On 3 April 2019 Mr Rafferty wrote to Mr Simpson and explained that a disciplinary panel would go ahead on 8 May 2019 to consider charges that Mr Simpson had lodged and pursued complaints which were subsequently found, following investigation, to be without merit. The panel would consider whether those complaints were potentially malicious vexatious and/or defamatory. Mr Rafferty provided, with the letter, the documents which the panel would consider.
14. On 26 April 2019 Mr Rafferty replied to subsequent correspondence from Mr Simpson dated 21 April 2019. This letter was provided to the panel which considered the disciplinary charges against Mr Simpson. The panel met on 8 May 2019. Mr Simpson did not attend the hearing.
15. On 22 May 2019 Mr Rafferty wrote to Mr Simpson with the results of the disciplinary panel. He explained that the panel had concluded that Mr Simpson's conduct

breached the Union's rules. They expelled Mr Simpson from the Union. Mr Simpson appealed the Panel's findings. The appeal panel upheld the disciplinary panel's sanctions.

The Relevant Statutory Provisions

16. 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;

The Relevant Rules of the Union

RULE 8 REGIONS

8.1 For the purpose of regional administration the Union shall constitute Regions for Ireland, Scotland and Wales with England divided into 7 Regions on the basis of Regional Development Agency boundaries (as at 1st January 2006) as follows:

North West;
North East, Yorkshire and Humberside;
West Midlands; East Midlands;
South West;

South East; and
London and Eastern

8.2 Each Region shall have a Regional Committee of lay members elected from the Regional Industrial Sector Committees, Area Activists Committees where established, Regional Equalities Committees and as otherwise provided for by these rules in such proportions, as may be determined by the Executive Council. Should any seat become vacant on the Regional Committee, then the Regional Secretary shall write to the nominating committee seeking a replacement delegate.

8.3 The Regional Committees shall have responsibility for the management of the Union's affairs in their Regions in conformity with decisions of the Executive Council and responsible to it.

8.4 The Regional Committees shall have their own funds not exceeding 1%

of the membership income attributable to members within that Region. Regional Committees shall be responsible for the affiliation of union organisations to Trades Councils and appropriate public bodies within their Region.

8.5 Regions shall constitute Area Activists meetings between activists in different companies, sectors and Branches, across geographical areas within a Region, subject to the approval of the Executive Council. The first of these meetings in an electoral period shall elect Area Activists Committees, the size and composition of which being determined by the respective Regional Committee, subject to the approval of the Executive Council. Thereafter Regions may convene further Area Activists meetings, up to four times a year. All activists shall be eligible to stand for election to Area Activists Committees.

8.6 The Regional Committee shall meet once a quarter or more frequently if, in the opinion of the Regional Secretary, the business renders it necessary. The Regional Secretary is responsible for convening all meetings.

8.7 A special Regional Committee meeting can be called by 50% +1 of the members of the Regional Committee, either by a show of hands at a Regional Committee meeting or by written requisition.

8.8 The Regional Committee shall have power to appoint one or more sub-committees from among its members and, except where otherwise determined by the Executive Council, shall have the power to delegate to any such sub-committee all or any of its powers including therein the conduct of hearings, appeals, inquiries, investigations or any other proceedings or functions whatever which it is authorised by these rules to undertake.

8.9 Each Regional Committee shall be empowered to fill vacancies arising from the failure of any Regional Committee member, without good reason, to attend three consecutive Regional Committee meetings or following the resignation of any member.

RULE 27. MEMBERSHIP DISCIPLINE

- 27.1 A member may be charged with:
 - 27.1.1 Acting in any way contrary to the rules or any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of a lay office or a representative of the Union.
 - 27.1.2 Being a party to any fraud on the Union or any misappropriation or misuse of its funds or property.
 - 27.1.3 Knowingly, recklessly or in bad faith providing the Union with false or misleading information relating to a member or any other aspect of the Union's activities.
 - 27.1.4 Inciting, espousing or practising discrimination or intolerance amongst members on grounds of race, ethnic origin, religion, age, gender, disability or sexual orientation.
 - 27.1.5 Bringing about injury to or discredit upon the Union or any member of the Union including the undermining of the Union, branch or workplace organisation and individual workplace representatives or branch officers.
 - 27.1.6 Obtaining membership of the Union by false statement material to their admission into the Union or any evasion in that regard.
 - 27.1.7 Breach of the Union's policies on diversity, bullying and harassment in the workplace, which will include cyber bullying and harassment.
- 27.2 Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice.
- 27.3 A charge under this rule may be heard by a Branch, Branch Committee (where so determined by the Branch), Regional Committee or the Executive Council. The Executive Council may delegate to a sub-committee of the Executive Council. It would be usual practice that disciplinary charges would be heard at branch level in the first instance. Disciplinary charges deemed to be of a serious nature may be initiated by the Regional committee or Executive Council.
 - 27.3.1 Serious allegations of breach of Clauses 27.1.1. to 27.1.7 may be referred directly to the General Secretary. The General Secretary will appoint a senior employee of the Union to conduct an

investigation which may lead to disciplinary charges being laid on behalf of the Executive Council.

27.3.2 Allegations of serious breaches of clauses 27.1.1 to 27.1.7 which are subsequently shown to be vexatious, malicious or defamatory may be considered a breach of Rule and liable to be referred to this disciplinary procedure.

27.4 The Executive Council or the relevant Regional Committee may suspend a member charged under this rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given written notice (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable. In cases of a serious nature, as a precautionary measure, a member under investigation prior to disciplinary charges being laid may be suspended from holding office or representing the union in any capacity.

27.4.1 A member under disciplinary investigation or charged with a disciplinary offence, including workplace representatives or branch officers suspended from holding office, may not attend:

- Meetings of his/her own branch;
- Meetings of other branches of the Union; or,
- Constitutional committee meetings of the Union

Other than as part of the disciplinary process as set out in this Rule.

27.4.2 If allegations against a member are proven to be unfounded they will be restored in good standing. If appropriate, their credentials will be restored.

27.5 The range of disciplinary sanctions shall include the following:

27.5.1 censure;

27.5.2 withdrawal of workplace credentials;

27.5.3 removal from office;

27.5.4 barring from holding office and

27.5.5 expulsion.

27.6 The full range of disciplinary sanctions shall be available to the Executive Council and Regional Committees; however the range of disciplinary sanctions for other bodies shall be limited to the following:

- 27.6.1 Branch, shall have the power to censure;
- 27.7 Appeals
- 27.7.1 A member shall have the right to appeal against any disciplinary sanctions.
- 27.7.2 In the case of a sanction imposed by a Branch, or Branch Committee, the appeal shall be to the Regional Committee, whose decision shall be final.
- 27.7.3 In the case of a sanction imposed by a Regional Committee the appeal shall be to the Executive Council, whose decision shall be final.
- 27.7.4 In the case of disciplinary action initiated by the Executive Council the appeal shall be to an Appeals Committee elected from the Policy Conference, whose decision shall be final. Such an Appeals Committee shall be constituted on the basis of at least one delegate from each Region, under a procedure to be agreed by the Executive Council. There shall be an eligibility criterion to serve on the Appeals Committee of at least 5 years continuous membership of the Union.
- 27.8 An employee may not be charged under this rule in respect of any alleged act or omission in connection with the performance of his/her duties as a full time officer and/or employee of the Union. Complaints against employees shall be investigated under the Members' Complaints Procedure agreed by the Executive Council and if disciplinary action is deemed appropriate this shall be executed under the procedures negotiated with employees' representative bodies for that purpose.

Considerations and Conclusions

Summary of Evidence

Mr Simpson's complaint to the Union

17. Mr Simpson had complained to the Union about the behaviour of two Union Members. He complained of bullying, injurious and sexually harassing behaviour by one Member and that another Member had commissioned and forwarded false, defamatory, harmful and discriminatory statements about Mr Simpson to others. I shall refer to those two members as X and Y throughout this decision.

18. Mr Rafferty appointed Ms Dougall to investigate Mr Simpson's complaint. Ms Dougall interviewed a number of people, including Mr Simpson, X and Y. I have seen notes of the interviews conducted by Ms Dougall which show that X acknowledged that he had jokingly thrown a piece of paper at Mr Simpson on one occasion and that he may have tapped Mr Simpson's leg when he needed to get past to him on another occasion. The notes record that X did not consider this inappropriate. Ms Dougall's report records that she found that there was no evidence to substantiate the allegations, raised by Mr Simpson, that X showed any inappropriate or sexual behaviour on the dates that he highlighted in his letter.
19. Ms Dougall took the view, however, that Mr Simpson had acted in an inappropriate and unjustified manner and that his actions, in bringing the complaints may be construed as vexatious. She recommended that a Finance and General Purposes Committee Panel be convened to determine if Mr Simpson had breached Rule 27.
20. It is clear, from the papers provided to me by Mr Simpson, that he was dissatisfied with the investigation by Ms Dougall and believed it to be flawed. He has made a separate complaint to me about Ms Dougall's investigation; however, I took the view that this complaint was outside my jurisdiction and struck out Mr Simpson's complaint on 20 June 2019 (D/19/19-20).
21. The investigation is relevant to this complaint, however, because it led to the Union's disciplinary action against Mr Simpson.

Investigation by Mr Deans

22. Mr Rafferty told me that he referred Ms Dougall's investigation report to the Finance and General Purposes Committee (the Committee) who were concerned that Ms Dougall's concerns may be justified. They believed that it would have been within their Rules to accept her recommendation that the matter be considered by a disciplinary panel but were mindful that Mr Simpson had not had the opportunity to respond to the allegations. They decided that it would be

appropriate for them to offer him the opportunity to do so, and instructed Mr Rafferty to appoint another investigating officer so that Ms Dougall's conclusions could be put to Mr Simpson. Mr Rafferty explained to me, when giving evidence, that this was to ensure that Mr Simpson had the opportunity to respond before a decision was taken as to whether a disciplinary panel should be convened.

23. The Committee also decided to suspend Mr Simpson for the period of the investigation. The minutes of the meeting record that this was "not to be seen as an implication of guilt merely a measure to conclude the investigation". Mr Simpson complained to me about this suspension. I concluded that the Union had the power to impose a suspension and struck out his complaint on 28 May 2019 (D/5-6/19-20).
24. Mr Rafferty appointed Mr Deans to lead the investigation. It is clear from his witness statement, and from documents provided by Mr Simpson, that Mr Deans sought, several times, to arrange a meeting with Mr Simpson. Mr Deans referred me to letters written by himself and by Mr Gillam, from the Union's legal department, inviting Mr Simpson to an investigatory meeting.
25. Mr Deans first wrote to Mr Simpson on 19 September 2018. Mr Simpson responded to that letter on 21 September 2018. He raised a number of procedural questions as well as expressing concern that Mr Rafferty was continuing to interfere with a proper application of process, and that the investigation should not go ahead until the outcome of his appeal against his original complaint. He also explained that this was the first time he had been told that Ms Dougall's findings were that his complaint was malicious and vexatious and asked for copies of "all or any references to the allegation or allegations" which had been made. Mr Deans replied on 26 September 2018; in his witness statement he explained that he believed that he had dealt with the issues raised in Mr Simpson's letter of 21 September. Mr Simpson wrote again on 7 October 2018 raising, in Mr Deans' view, many of the points he had made previously.
26. I have seen minutes of the Committee meeting held on 9 October 2018 which indicated that the Committee wished Mr Deans to continue with his investigation.

Mr Deans' witness statement records that Mr Gillam wrote, on 24 October 2018, inviting Mr Simpson to contact the Union to arrange an appointment for an investigatory meeting. I do not have a copy of that letter but Mr Deans' evidence records that the Union wanted Mr Simpson to meet him and explain his position.

27. Mr Deans' witness statement explains that Mr Gillam wrote again on 7 February 2019 requesting that Mr Simpson make an appointment for an investigatory meeting and that Mr Deans followed this up with a further letter on 18 February 2019. Mr Simpson responded with a number of requests for information ahead of the meeting. I have not seen Mr Deans' response to this letter and his witness statement does not make reference to a response.

28. It is clear, however, and appears to be agreed between Mr Simpson and the Union, that Mr Simpson did not attend an investigatory meeting and that Mr Deans concluded his investigation without him having met Mr Simpson. It is also clear that both Mr Gillam and Mr Deans attempted, without success, to arrange a meeting between Mr Simpson and Mr Deans.

29. Mr Deans produced his report and passed it to Mr Rafferty for consideration by the Committee. In his witness statement Mr Deans told me that, when producing the report, he considered the relevant material in his possession, which was Ms Dougall's report and his correspondence with Mr Simpson.

Referral to a Disciplinary Panel

30. Mr Rafferty told me that the Committee considered Mr Deans' report on 12 March 2019. I have seen the minutes of that meeting which record that the Committee decided to convene a disciplinary panel and that Mr Gillespie and two other members of the Committee would sit on the panel. Both Mr Rafferty and Mr Gillespie were at the Committee meeting which was chaired by Mr Gillespie.

31. Mr Gillespie told me that it was standard practice for a disciplinary panel to be chaired by the relevant Committee Chair. It was for individual members to identify, and declare where necessary, any conflict of interest. He did not consider himself to have a conflict of interest in this case. He explained that there

were time pressures on panel members, as they were lay members of the Committee who were employed elsewhere, but that there was no external pressure on the panel to reach any particular conclusion. Mr Gillespie told me that the panel members were all, at the relevant time, members of certain organisations, or movements, within the Union but that this did not affect their decision making in any way.

32. Mr Rafferty wrote to Mr Simpson, on 3 April 2019, to inform him that he was charged with breaching the Union Rules. The letter explained the charges as follows:

“Following an investigation and consideration by the Scottish Executive’s F&GP Committee, you are charged with having breached Rules 27.1.1, 27.1.3 and 27.1.5 of the Unite rule book.

The conduct which the disciplinary panel will consider is the lodging and pursuing of complaints (lodged initially on 2nd and 16th March) in respect of Brothers X and Y which were subsequently found, following investigation, to be without merit. The panel will consider whether they were potentially malicious, vexatious and/or defamatory.”

33. The letter also invited Mr Simpson to the Hearing, explained that he could be accompanied, provided the documentation on which the panel would rely and invited Mr Simpson to provide any additional documentation including witness statements.

34. Mr Simpson wrote to Ms Dougall on 17 April 2019. He raised a number of points about how she had conducted her investigation and the report itself. This included the following paragraphs:

“The currently available evidence makes it clear that you disregarded significant evidence, that the responses you received were in some cases altered, in some cases aligned to a degree defying credibility and in some cases disproportionately provided by members of the Communist Party....”

“In summary you did not carry out the work assigned to you to an acceptable standard according to rule. Your work product in the various forms of the report which have come to light so far has served to

misinform and mislead anyone in receipt of it and is now being used as the foundation for a case against me for the submission of “potentially malicious and/or defamatory” complaints. The virtual absence of diligence on your part leads to the inevitable assumption that the outcome was intentional.”

35. The letter goes on to provide examples of how Mr Simpson believes that Ms Dougall’s investigation was flawed. The letter concludes with this paragraph:

“In conclusion this might well be the first time you have been able to see the very broad scope of serious flaws in your investigation and associated report, rendering it in the most favourable light not fit for purpose. But in any event it embodies such a clear misrepresentation of the issues it is intended to address that anyone who relied on it would be either incompetent or be intentionally set on making an unjust determination. Given the gravity of the possible outcomes potentially arising from use or misuse of your report I am offering you now the opportunity to review the content in light of information available and to make any amendments you believe to be right. You may be aware that I am working to a timescale defined by Unite and consequently require your initial response on Friday 19 April 2019.”

36. Mr Simpson wrote to Mr Rafferty on 21 April 2019. He provided documents and links to videos which he asked the panel to consider. He also asked for information held by Unite and, in some cases, submitted to Ms Dougall and Mr Deans during their investigations as well as seeking a full copy of Ms Dougall’s report. Although he did not indicate whether he would attend the hearing, he asked for a written list of questions to be provided in advance of the hearing so that he could provide written answers for the panel’s consideration.

37. Mr Rafferty replied to Mr Simpson on 26 April 2019. He explained that the documents submitted by Mr Simpson would be provided to the panel along with those which had accompanied Mr Rafferty’s letter of 3 April 2019. He added that Mr Simpson had provided an inactive link to one of the videos and that it was Mr Simpson’s responsibility to provide any further evidence if he wished to do so.

38. Mr Rafferty also explained that the panel would not provide questions in advance because their role is to listen to the case made by both parties and that Mr Simpson already had a full copy of Ms Dougall’s report.

39. Although I have not seen a reply to Mr Simpson's email of 17 April 2019 to Ms Dougall, Mr Rafferty explained the position to Mr Simpson in his letter as follows:

"I also note that you have written to Ms Dougall seeking amendments to her report, this will not be done. However again you will be entitled to make any representations you wish in respect of her report at the hearing."

40. A copy of Mr Rafferty's letter was included in the bundle of papers before the panel. Mr Simpson did not become aware of this until a paginated bundle was sent to him on 3 May 2019. In evidence Mr Rafferty told me that he passed this letter to the panel because he believed that it was important for the panel to see all relevant documentation. He acknowledged that he did not inform Mr Simpson that he intended to pass the letter to the panel.

41. Mr Simpson wrote two letters to the Union on 30 April 2019.

42. The first was to the General Secretary in which he made a complaint about what he described as a false allegation made by Mr Rafferty. Mr Simpson referred to the paragraph in Mr Rafferty's letter of 26 April which referred to Mr Simpson as having sought amendments to Ms Dougall's report. Mr Granfield, the Union's Member Relations Officer, replied to Mr Simpson and explained that the upcoming hearing was the place to challenge the veracity of the submissions which had been made. He explained that he would not be taking this forward as a complaint.

43. The second letter was to Mr Gillespie, chair of the disciplinary panel. In this letter Mr Simpson sought confirmation that the documents and video material he had supplied would be provided by the hearing and offered again to reply, in writing, to any question the panel had. He also noted that Mr Gillespie appeared to have connections, through the Union, and other organisations, to the two members about whom Mr Simpson had originally complained. Mr Simpson set out his concern about this as follows:

"It is my belief that the above compromises your position and ability to act impartially on the disciplinary panel through a conflict of interest. Please let me know if you also believe that the above factors compromises your

position on the disciplinary panel due to a perceived or real conflict of interest and impartiality. If so I would ask that you recuse yourself from membership of the disciplinary panel due to a potential, perceived or real conflict of interest or lack of impartiality. “

44. When giving evidence Mr Gillespie told me that he did not reply to Mr Simpson’s letter nor share it with anyone. He did not consider himself to have a conflict of interest and saw no reason why he should stand down from the panel. He told me that he acted impartially throughout.

The Disciplinary Panel

45. The disciplinary panel went ahead on 8 May 2019. Mr Simpson did not attend. The panel reached a number of unanimous conclusions about Mr Simpson’s conduct and decided to expel him from the Union. Mr Rafferty wrote to Mr Simpson setting out the decision, and the reasons for it, on 22 May 2019. I have seen this letter and it records the decision as to whether Mr Simpson’s conduct in making the original allegations was a breach of Rule but also reflects on the manner in which he engaged with officials conducting the investigations and the allegations of undue influence by the Communist party.

46. Mr Gillespie gave evidence about the approach taken by the panel. He was clear that he had acted impartially when considering the allegations against Mr Simpson. Mr Simpson asked Mr Gillespie whether the General Secretary, or anyone else, had sought to apply pressure for there to be an adverse finding against him. Mr Gillespie was clear that this was not the case. He gave evidence that he had no agenda against Mr Simpson and sought to give him a fair hearing. Nobody had put any pressure on him to make any particular finding. He told me that the decision by the Committee, in September 2018, to appoint a second investigator was made because they wanted to give Mr Simpson the opportunity to put forward his case. The Committee’s view was that it was important to give Mr Simpson the right to respond before a decision was made as to whether to refer the matter to a disciplinary panel.

The Appeal

47. Mr Simpson appealed the disciplinary panel's finding on 4 June 2019. The appeal was heard by a panel, chaired by Mr Woodhouse, the Chair of the Union. The appeal itself is outside the scope of this complaint. It is relevant, however, because the appeal panel considered whether the Union breached the principles of natural justice when taking disciplinary action against Mr Simpson.
48. In written evidence Mr Woodhouse told me that Mr Simpson did not attend the appeal hearing. Consequently, the panel heard only from Mr Deans and Mr Gillespie. They did, however, take some time to consider the correspondence which Mr Simpson had submitted ahead of the appeal so that they could identify a number of appeal points including whether the disciplinary process had breached the rules of natural justice.
49. Mr Woodhouse gave written evidence that the appeal panel was satisfied that Mr Simpson had been given ample warning of the concerns of the Union and a number of opportunities to either explain or deal with the allegations. He also told me that the panel considered that it was proper both for the Investigating Officer to consider that the initial allegations made by Mr Simpson were malicious, and for the Committee to decide that the making of such malicious allegations was a disciplinary matter. He explained that it was also proper for the lay Chair of a region, in this case Mr Gillespie, to Chair the disciplinary panel. He explained that the Chair does not act alone but as part of the wider Committee and that, at that stage, the only decision being taken was that the allegations merited a hearing.
50. In oral evidence Mr Woodhouse told me that the disciplinary process followed in this case was consistent with standard practice across the Union and with the Union Rules. He told me that the appeal panel took the view that Mr Gillespie had not breached the Union Rules.
51. Mr Woodhouse told me that the appeal panel had no hesitation in confirming the view of the Committee and that of Mr Simpson's expulsion.

Conclusions

Natural Justice

52. Mr Simpson raises the Union's compliance with natural justice as a central thread through his complaint. Both he and the Union agree that the Union is required to comply with natural justice. In previous decisions my predecessors and I have taken the view that the principles of natural justice are to be regarded as incorporated as implied terms into union rule books. Unite the Union have, however, gone further than some unions as they have incorporated the principles into their rule book at Rule 27.2

“Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice. “

53. In addition the EC Guidance itself states that:

“The disciplinary process is intended to be fair and conducted in accordance with the principles of natural justice. These directions are designed to ensure that this is the case.”

54. There is, therefore, no doubt that the Union should adhere to the principles of natural justice when proceeding with disciplinary action against a member. In previous cases my predecessors and I have established that, within this context, natural justice means that a union member facing disciplinary charges has a right to be given notice of those charges, the right to answer those charges and the right to be heard by an unbiased tribunal.

55. Mr Simpson, in written submissions and at the Hearing, argued that I should also take into account whether the proceedings were conducted in a way which was fair to him. The principles I have just outlined are intended to ensure that a process is, in a broad sense, fair and it is evident, from Rule 27.2 and from the EC Guidance, that the Union's intention is that the process should be fair. I, therefore, have no difficulty in agreeing with Mr Simpson that the Union's disciplinary process should be managed in a way which is fair.

56. Mr Simpson also argued that fairness is not restricted to the ability of a person having an opportunity to make representations. This is clearly the case as I have already established that a union member facing disciplinary proceedings must have sufficient notice of the charge and be heard by an unbiased tribunal. He goes on to argue, however, that fairness in natural justice demands:

- a. investigators being impartial without a conflict of interest;
- b. investigators and decisions makers focussing on facts;
- c. the provision of reasons for decisions and conclusions; and
- d. not altering evidence.

57. Mr Simpson has not provided a source for these principles. They are, of course, worthy principles and are certainly a guide for any investigators and decision makers, but, natural justice is a broad concept and its guiding principles are established through case law rather than being set out in legislation. It is difficult, therefore, to set out clearly what is required of natural justice in any particular situation. Mr Potter's view is that it is a contextual principle and that its requirements must depend on the circumstances of each particular case. In this case the disciplinary action is in the context of membership arrangements of a union which is, of course, a private organisation.

58. The two positions are not, however, poles apart. Mr Simpson is arguing for a process which enables the charges against him to be set out properly so that he has a chance to respond, and so that the decision makers are able to act fairly when considering the charges and his response. That is reasonable within the context of a membership disciplinary process and is consistent with natural justice. It does not mean, however, that he should be judged in the way that he would be if he faced criminal charges, for instance, or the loss of his livelihood. This is consistent with Mr Potter's view that the context is relevant to the application of natural justice.

59. With that in mind, I would only add that Mr Simpson's references to evidence and to focussing on facts must be seen in the context of a membership disciplinary process. A Union disciplinary panel is not a court of law. It is not in a position, for

instance, to establish facts beyond reasonable doubt. On that basis, I am satisfied that it remains appropriate for me to adopt the principles of natural justice set out at paragraph 54 above when reaching a decision on Mr Simpson's complaint and to consider whether the process adopted by the Union was fair.

Complaint One

60. I think it helpful if I first set out the scope of my consideration in respect of this first complaint. I have already considered, and struck out, Mr Simpson's complaints on the following issues and I cannot, therefore, reach any findings on those complaints as part of this decision:

- a. Ms Dougall's investigation into the initial complaint made by Mr Simpson about X and Y (D/9/19-20)
- b. The initiation of an investigation to determine whether Mr Simpson had made vexatious complaints about X and Y (D/5-6/19-20).
- c. The appeal process (D/2-12/20-21).

61. Further, my role is limited to considering whether the Union breached its disciplinary rules and/or natural justice when taking action against Mr Simpson. I have no power to consider the outcome of the disciplinary or appeal panel or the Union's policy on harassment, dignity and respect.

62. My role, therefore is to consider whether the Union's charges against Mr Simpson were sufficiently serious as to warrant referral to the disciplinary panel and, if so, whether he was made aware of them and given the opportunity to be heard.

63. It is clear that the disciplinary process arose from Ms Dougall's report following her investigation into the complaint which Mr Simpson had made about X and Y. This led to the Committee suspending Mr Simpson during the investigation which was undertaken by Mr Deans. Mr Deans, having made several attempts to meet with Mr Simpson, submitted his report to the Committee who referred the matter to a panel for disciplinary action. Mr Rafferty conveyed that decision to Mr Simpson on 3 April 2019.

64. Mr Potter's view was that this was the point at which the Union charged Mr Simpson under Rule 27. I have set out, at paragraph 32 above, extracts from Mr Rafferty's letter which include the description of the Rule which the Union alleged had been breached and the conduct which led to the alleged breach. Mr Simpson appears to argue that charges were made by Mr Deans. It is clear to me, from the Committee minutes of 4 September 2018, 9 October 2018 and 12 March 2019 that the Union commissioned an investigation by Mr Deans which was considered, once completed, at their meeting on 12 March 2019. Following the decision at that meeting, that Mr Rafferty wrote to Mr Simpson and set out the charges which were referred to the Committee.
65. It could be argued that the Committee's decision on 12 March 2019 is the point at which the referral was made; however, I do not think this would make any material difference as it is Mr Rafferty's letter which gives notice to Mr Simpson of the charges and the hearing date.
66. Mr Simpson raised a number of issues around the wording of the Rules. He explained that the issues investigated by the Union had been described at various points, and by various people, as allegations, concerns and charges. He explained that Ms Dougall had put forward her view about his intentions in making his original complaint about X and Y. That view had been supported by Mr Deans and the Committee had then made a charge which was not fully set out. He argued that Ms Dougall had not made any allegations and that no action should have been taken following her report because it simply expressed a view.
67. He also argued that Rule 27.3.2 required the Union to show that the allegations he had made against X and Y were malicious, vexatious or defamatory before disciplinary action could be taken against him. He explained that he understood this to mean that the Union must set out, in the charge, what those allegations were. He agreed that the Union did not need to demonstrate that those allegations were proved before it took action, only that the charge should set out explicitly the conduct which was being referred for disciplinary action. His view

was that the Union had not done so, which meant that he was unable to respond to the charge against him.

68. The key issue for me to decide is whether Mr Rafferty included sufficient detail in his letter of 3 April 2019 to enable Mr Simpson to respond to the charge against him. Having read that letter I cannot understand why Mr Simpson felt unable to respond to the charge. Mr Rafferty identified the Rules under which Mr Simpson was being charged and explained the conduct which led to the charge with reference to the dates of Mr Simpson's original complaints about X and Y, the pursuit of those complaints and the fact that they had been found to be without merit.

69. In my view this should have been sufficient for Mr Simpson to respond to the charge. If it were not, however, he could have sought clarification from the Union. I have been provided with copies of letters which he wrote to Ms Dougall, Mr Rafferty, Mr Gillespie and the General Secretary in the time between him receiving Mr Rafferty's letter of 3 April 2019 and the Hearing on 8 May 2019. None of those letters seek clarification of the charges against him or explain that he does not know what those charges are.

70. Mr Simpson also argued that the Union breached Rule 27.3.2 because the allegations which he had made about X and Y were true. They were not, therefore, vexatious, malicious or defamatory. I have no power to consider whether the allegations which were made by Mr Simpson were true; nor do I have a power to consider whether the Union were right in referring Mr Simpson to the disciplinary panel or in expelling him from the Union (other than that in doing so they acted in accordance with the rules). It is clear to me, however, that Ms Dougall's investigation report expressed the view that Mr Simpson's actions in making the allegations against X and Y may be construed as vexatious. Similarly, it is clear that the Committee had the power, under Rule 27.3.2, to refer the matter to a disciplinary panel. Rather than do that, however, they decided to commission a second investigation, by another Senior Officer, to enable Mr

Simpson to put his case forward before a decision was made about whether to engage the disciplinary procedure.

71. Consequently, I am satisfied that the Union did not breach Rule 27.1.7 or Rule 27.3.2 when taking action against Mr Simpson. I am similarly satisfied that there was no breach of natural justice. Mr Simpson was given opportunities during the second investigation and ahead of the disciplinary panel to make his views known. Finally, I am satisfied that the issues raised about Mr Simpson's conduct were sufficiently serious to enable the Union to commission an investigation and refer the matter to a disciplinary panel. In my view, this is expressly provided for in Rule 27.3.2.

72. Consequently, I refuse to make the declaration sought by Mr Simpson.

73. I would add that Mr Simpson has suggested that the Union had breached EC Guidance because Mr Deans did not provide his report to the Committee as soon as is practicable. It is clear from the papers, however, that the delay in producing the report was in part, at least, because the Union made several attempts to arrange a meeting between Mr Simpson and Mr Deans.

Complaint Two

74. The core of this second complaint is whether, having chaired the Committee which commissioned the investigation into Mr Simpson's conduct, received Mr Deans' report and referred the charges against Mr Simpson to the disciplinary panel, Mr Gillespie should have chaired the disciplinary panel.

75. Mr Simpson's view is that Mr Gillespie raised the initial concern about Mr Simpson's conduct, prosecuted it through the disciplinary process and then acted as the final decision maker by finding against Mr Simpson and expelling him from the Union. He argued that this is a breach of natural justice and, consequently, a breach of Rule 27.2 and the EC Guidance. Mr Simpson also argued that this introduced bias, whether real or perceived, into the Union's handling of the case.

76. Mr Potter's view is that Mr Simpson's conduct was first raised with the Committee by Elaine Dougall. The Committee, as the relevant Regional Committee, has responsibility for the conduct of the disciplinary procedures. In Mr Simpson's case the Committee decided to investigate the concerns raised by Ms Dougall and then, once it had received that second investigation report, to charge Mr Simpson under Rule 27.1 and to hold a disciplinary panel. That disciplinary panel was chaired by Mr Gillespie and included a further two members of the Committee. In effect the Committee delegated its disciplinary powers, as provided for by Rule 8.8, to a sub-committee. Mr Potter explained that neither Mr Gillespie nor the Committee had raised the initial concerns; they had acted on issues which arose from Ms Dougall's investigation. Whilst they commissioned the report, the Committee could not be seen as a prosecutor as they had asked Mr Deans to investigate the concerns and then taken a decision to charge Mr Simpson once his report had been received.

77. Having read the Rules, I agree with Mr Potter. The Rules clearly give the Committee oversight of the process. The Committee has the power to commission an investigation, consider whether a charge should be made and be the decision maker. Rule 8.8 is clear that the Committee may delegate that power. On that basis I do not agree with Mr Simpson that Mr Gillespie, or indeed the other panel members, raised the initial concern about Mr Simpson's conduct or undertook the investigation. Their role, ahead of the Hearing, was to oversee that process as part of the Committee and take decisions, under Rule 27 about whether the concerns should be investigated and whether Mr Simpson should be charged following that investigation.

78. Mr Simpson did not appear to make the argument that the rules themselves are unfair. His argument was that, in his case, the process was unfair. In making his case he was clear that the argument that the process adopted in his case was consistent across the Union did not mean that it was bound to be consistent with natural justice. He is, of course, right on that point. Consequently, I need to consider whether the application of the rules in his case was consistent with

natural justice and whether the roles played by Mr Gillespie introduced an element of bias, whether real or perceived, and unfairness.

79. Mr Simpson's principal concern appears to be that Mr Gillespie, Mr Rafferty and Ms Dougall were members of the same organisations or movements within, or linked to, the Union. He also argued that, as a result of that Mr Gillespie had links to the members about whom Mr Simpson had originally complained. In Mr Simpson's view this should have been sufficient for Mr Gillespie to have recused himself from the panel. He did not appear to argue, however, that the other two panel members should have recused themselves.

80. Mr Simpson has offered no evidence to show that there was real bias in the decision making process, either before or during the disciplinary panel. He has, however, made several allegations of bias to the Union, and to myself during the course of his complaint, but these have not been supported by any evidence. The evidence provided by the Union, in written statements and when giving evidence at the Hearing, supports their case that there was no real bias. Ms Dougall, Mr Rafferty and Mr Gillespie all told me that they approached the case without bias. Mr Woodhouse told me that the appeal panel took the view that Mr Gillespie had acted appropriately in his handling of the case. The documents also show that the Union undertook a second investigation to ensure that Mr Simpson had a chance to respond to the views expressed in Ms Rafferty's report. Mr Deans, who conducted the second investigation, made several attempts to meet with Mr Simpson to hear his views. On that basis I am satisfied that there was no real bias and the only question for me is whether the perceived bias which Mr Simpson raised was sufficient to render the disciplinary process unfair and in breach of natural justice.

81. Mr Potter referred me to the test of actual or perceived bias which is set out in *Porter v Magill* [2002] 2 AC 357. That test requires me to consider whether a fair minded observer, having considered the facts, would conclude that there is a real possibility that the judge was biased. That fair minded observer is neither complacent nor unduly sensitive or suspicious. If that fair minded observer would

conclude that there was a real possibility that Mr Gillespie was biased then he should have recused himself.

82. It is accepted by both parties that Mr Gillespie was a member of some of the organisations identified by Mr Simpson, as were Mr Rafferty, Ms Dougall and Mr Deans. Mr Gillespie told me that the two additional members of the Panel were also a member of some of those organisations. The question for me, however, is whether that in itself is sufficient for a fair-minded observer to question Mr Gillespie's fairness. Mr Simpson clearly believes that it was.

83. When giving evidence Mr Gillespie drew my attention to the letter written to him by Mr Simpson on 30 April 2019 which asked Mr Gillespie to consider whether he should recuse himself from the Hearing. The text of that request is set out at paragraph 43 above. The reason for the request was set out by Mr Simpson as being common membership of some Unite Committees, and Unite Progressive Left Scotland, with a Unite colleague who Mr Simpson describes as a supporter of one of the members about whom he had originally complained. Mr Simpson also noted that the other Member was on the management committee of an organisation who had hosted an event at which Mr Gillespie spoke; however, Mr Gillespie told me in evidence that he did not recall attending such an event.

84. In my experience it is not uncommon for Union Members and staff to also be a part of movements or organisations which are affiliated to, or linked with, the Union. I do not think, however, that this can be sufficient for the fair minded observer described at paragraph 81 above to believe that real or perceived bias could exist. Nor am I persuaded that the fact that Mr Gillespie sat on a Union Committee with a supporter of the person about whom Mr Simpson had originally complained, is sufficient to demonstrate real bias. On that basis I refuse to make the declaration requested by Mr Simpson.

85. I would add, however, that it would have been best practice for Mr Gillespie to have shared the letter written by Mr Simpson with the other members of the panel or with Mr Rafferty as Scottish Secretary. This would have ensured that they were comfortable with his decision as to whether he could be perceived as being biased

and demonstrated a greater degree of transparency. I am conscious, however, that Mr Gillespie himself drew my attention to this letter and explained the actions he took and I make no criticism of him.

Complaint Three

86. The core of this third complaint is whether, by including Mr Rafferty's letter of 26 April 2019 to Mr Simpson, the Union breached Rule 27.2. It is agreed that the letter was provided to the panel who met on 8 May 2019. It is also agreed that Mr Simpson was not aware of this until he received the bundle of papers accompanying Mr Rafferty's letter of 26 April 2019 which appears to have been posted on 3 May 2019.

87. The Union's position is straightforward. The letter was produced on 26 April and the Hearing had already been listed for 8 May 2019. There can, in Mr Potter's view, be no question of a rule breach because the letter did not exist on 3 April 2019 when Mr Simpson was given notice of the hearing and the documents which would be provided to the Panel. And, in any event, Mr Simpson was aware of the contents of the letter because it had been written to him.

88. Mr Simpson makes a wider point. His view is that it is not only a clear breach of the Rules but it is also a breach of natural justice. If I have understood his arguments correctly his view is that the letter contains a malicious and untrue allegation which was intended to prejudice his case and create bias, and that he did not have sufficient notice that this letter would be provided to the Panel.

89. The requirement for documents to be provided 4 weeks ahead of the Hearing is contained within the Union's Executive Committee's Directions (the EC Directions). Those Directions are provided for by Rule 27.2 and set out the procedure which must be followed when the Union takes forward disciplinary proceedings. The Directions explain that:

"The Union shall ensure that any documents to be relied upon in support of the charge should be sent to the member at least 4 weeks before the disciplinary hearing is to take place. If the Union is to allow witness

evidence, then witness statements shall be prepared and sent to the member at least 4 weeks before the hearing.”

90. The Union’s position is that Mr Rafferty followed this guidance on 3 April 2019 by supplying copies of the documents on which the Union intended to rely at that time. Mr Potter argued that the Union had not breached its Rules, or its Directions, because the letter in question had not been written at that time. He acknowledged that the Union could have deferred the Hearing but argued that there was no requirement in the Rules for them to do so.

91. Mr Simpson’s position is that the Directions require that there should be 4 weeks’ notice and so the Union had no choice other than to defer the Hearing.

92. I am satisfied that Mr Rafferty acted in compliance with the Directions on 3 April 2019 by supplying all documents on which the Union intended to rely and giving at least 4 weeks’ notice of the Hearing. The question, therefore, is how the Union should have dealt with any late documents. The Rules and the Directions are silent on this and so I do not agree with Mr Simpson that the Union had no choice other than to defer the Hearing. The Rules do not appear to prevent additional documents being provided to the Panel after the initial bundle is provided.

93. Turning now to Mr Simpson’s complaint about natural justice. The purpose of the Directions, quoted at paragraph 89 above, can only be to ensure that a member who is charged with a disciplinary offence is able to see the evidence on which the Union relies and respond to it. This is also consistent with the principles of natural justice as set out above and contributes to a fair process. The potential impact of submitting late evidence, or information, is also relevant to whether the process is fair.

94. Mr Simpson argued that Mr Rafferty’s letter contained a false allegation intended to prejudice his case and create bias. From the documents provided to me it seems that the false allegation to which Mr Simpson refers is the reference (see para 42 above) to an apparent request from Mr Simpson that Ms Dougall should amend her investigation report. I do not agree, however, that this can be described as a false allegation. I have set out extracts from Mr Simpson’s letter of

17 April to Ms Dougall above (see paras 34 and 35). My reading of those extracts is that Mr Simpson is pointing out what he sees to be deficiencies in Ms Dougall's investigation and report and is inviting her to review that report and make any amendments she believes to be right. The penultimate sentence of his letter reads as follows:

“Given the gravity of the possible outcomes potentially arising from use or misuse of your report I am offering you now the opportunity to review the content in light of information available and to make any amendments you believe to be right.”

95. Whilst Mr Rafferty has paraphrased this request his wording does not appear to be inconsistent with Mr Simpson's wording. Nor does it appear to be phrased as an allegation. On that basis I do not agree with Mr Simpson that Mr Rafferty's wording could reasonably be described as a malicious allegation.
96. As to Mr Rafferty's intentions, I have not seen any evidence that he intended to prejudice Mr Simpson's case or to create bias. On the contrary Mr Rafferty told me, in evidence, that he believed that the panel should have access to all relevant information. I asked Mr Simpson to refer me to any evidence which supported his assertion that Mr Rafferty's intention was to prejudice his case or create bias. He explained that, in his view, it was self-evident from the letter itself and did not refer me to any other documents or witness evidence.
97. I cannot agree with Mr Simpson that he was in any way prejudiced by the letter having been seen by the panel. In my view the letter contains a reasonable description of a request made by Mr Simpson. I have not seen any evidence to support Mr Simpson's argument that this was a malicious allegation, and nor have I seen any evidence that Mr Gillespie intended to prejudice Mr Simpson in any way. Similarly, I cannot see why that paragraph, which is a description of a request Mr Simpson had made, could be prejudicial.
98. It is also clear to me that Mr Simpson could have provided information to the panel in response to that letter had he chosen to do so. The letter was written to Mr Simpson, and he made reference to it in his letter of 30 April to Mr Gillespie

who chaired the panel (see paragraph 43 above). Mr Simpson was, therefore, aware of its contents. More importantly he clearly felt able to make his views known to Mr Gillespie ahead of the disciplinary panel and had the opportunity to make representations to the panel, either in writing ahead of the panel hearing or at the hearing itself. I have not seen any evidence that he made such representations ahead of the hearing and it is agreed that he did not attend the hearing; however, I am satisfied that he had the opportunity to do so. I would add that I have not seen any evidence that Mr Simpson asked the panel to defer the hearing so that he could make such representations.

99. Consequently, I am not persuaded by Mr Simpson's argument that the Union breached the principles of natural justice. The document was available to Mr Simpson ahead of the panel hearing, there was no evidence that it was provided to the panel with malicious intent and Mr Simpson could have raised any issues with the panel ahead of, or at, the panel hearing. The fact that Mr Simpson chose not to do so does not render the process unfair.

100. On that basis I refuse to make the declaration requested by Mr Simpson.

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

Mrs Sarah Bedwell

The Certification Officer

Annex

The Complaints

Complaint 1

Rule(s) breached by Unite the Union:

Rule 27.3.2

Unite harassment, dignity and respect policy.

Principles of natural justice as incorporated in Unite rules and in Rule 27. Date(s) of rule breaches :

From 7-9-2018 to 7-9-2019

Description of rule breach:

Unite's instigation of an investigation to determine whether I had made malicious and vexatious complaints against X and Y on or around 7-9-2018 breached rule 27.3.2. I was not informed of any allegations of serious breaches of rules 27.1.1 to 27.7.7 or provided with any evidence that my complaints had been subsequently shown to be vexatious, malicious or defamatory.

Further to the above the Union breached rule 27.3.2, breached Unite's policy on harassment, dignity and respect and breached the principles of natural justice by laying charges and arranging a disciplinary hearing for 8-5-19 in the absence of allegations of serious breaches of clauses 27.1.1 to

27.1.7 and without showing such breaches of clauses 27.1.1 to 27.1.7 to be vexacious, malicious or defamatory or serious prior to referral to the disciplinary procedure."

Rule 27.3.2 states "Allegations of serious breaches of clauses 27.1.1 to 27.1.1 which are subsequently shown to be vexacious, malicious or defamatory may be considered a breach of rule and liable to be referred to this disciplinary procedure."

Complaint 2

Rule(s) breached by Unite the Union:

Principles of natural justice as incorporated in Unite rules.

Unite Rule 27 including Unite Rule 27.2. Date(s) of rule breaches:

From 4-9-2018 to 8-5-2019

Description of rule breach:

It is a principle of natural justice that no person may judge their own case . Unite breached this principle and undermined procedural fairness by arranging for John Gillespie, the Chair of the F&GP Committee and chair of the Scottish Unite Executive Committee, to act as chair of the disciplinary panel set up to consider disciplinary charges brought by the F&GP Committee and the Scottish Unite Executive Committee against me.

Mr Gillespie chaired the F&GP committee of 4th September 2018 that decided to instruct an investigation into possible malicious and vexacious intent and decided on my suspension from elected positions.

Mr Gillespie chaired the F&GP committee of 9th October 2018 that decided to instruct Stephen Deans to "further investigate".

Mr Gillespie chaired the F&GP committee of 12th March 2019 that decided to "put together" a Rule 27 panel.

It is a breach of unite Rules and Natural justice for Mr Gillespie to have been a member of the committee which raised the initial concerns, initiated the investigation into those concerns, confirmed that the investigation found the concerns to have foundation and to then have gone on to participate in hearing the case concerning those concerns.

Complaint 3

Rule(s) breached by Unite the Union:

Rule 27.2

Principles of natural justice as incorporated in Unite rules including Rule 27. Date(s) of rule breaches:

From 4-5-2019 to 8-5-2019

Description of rule breach:

Breach of Rule 27.2 re disciplinary hearing arranged for 8th May 2019:

Unite breached Unite Executive Committee guidance for the application of rule 27 by failing to ensure that all "documents relied upon in support of the charge" were sent to me at least 4 weeks before the disciplinary hearing date of 8-5-2019 as evidenced below:

Breach of natural justice:

It is a breach of natural justice that the disciplinary hearing 'bundle' of documents received by me from Unite on 04-05-2019 included a letter written by Pat Rafferty Scottish Regional Secretary of Unite dated 26-04-2019 that was submitted late and contained a false allegation intended to prejudice my case and create bias.