

D/5/23-24

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

Dent

v

National Education Union

Date of Decision

13 March 2024

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Decision

1. Following an application from Mr Alan Dent (“the applicant”) under section 108A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I refuse to make a declaration that the National Education Union breached rule 8.1.8 during the election of a National Executive Member in May 2023 when Ian Watkinson produced material in which he was supported by the General Secretary, the General Secretary Designate and members of the National Executive who were not members of District 4.

Background

2. Mr Dent is a retired member of the National Education Union (NEU). On 27 July 2023, he made an application to my office regarding a complaint of a breach of the Union’s rules in relation to the National Executive Committee elections for 2023.
3. Following correspondence with Mr Dent, he confirmed his complaint as set out below:

Complaint Breach of rule 8.1.8

During the election of a National Executive Member in May 2023 Ian Watkinson produced material in which he was supported by the General Secretary, the General Secretary Designate and members of the National Executive who were not members of District 4. The material was in two forms: a card sent to members by Royal Mail (I have the card and can send it to you) and online material. Supportive comments included: “Vote for Ian”, “I encourage you to vote for him”, “I am happy to endorse Ian”, “Please vote for him”, and “I would urge members to re-elect him.” The union claims these are “supportive comments” and not “endorsements”, but the rule does not mention “endorsements”. It specifically forbids nomination and support”

4. A hearing took place by Video Conference on 21 February 2024. Mr Dent represented himself. He submitted a skeleton argument and his own witness evidence. The Union was represented by Adeola Fadipe of Doughty Street Chambers. The Union submitted a skeleton argument, prepared by Ms Fadipe and witness statements from Rachel Baxter (Senior Manager, GS support and Democratic Services Department) and Jayne Phillips (NEU Assistant General Secretary). Mr Dent and Ms Phillips gave oral witness evidence.
5. There was also in evidence a bundle of documents consisting of 97 pages. The bundle contained correspondence and the rules, policies and procedures of the Union for consideration at the hearing. Following a case management meeting the Union also submitted the minutes of the General Purposes Committee (GPC) meeting dated 17 June 2023 and the GPC National Elections review paper.

Agreed facts

6. The following facts were agreed at a case management meeting on 14 February 2024:
 - a) The Union held elections for its Executive Committee in 2023. Nominations closed on 7 March 2023. A ballot was held between 7 April 2023 and 2 May 2023.
 - b) Mr Dent received promotional material from one of the candidates in his area, Ian Watkinson. The material included photographs of, and quotes from, a Joint General Secretary of the NEU, the General Secretary Elect and a former President who was also a member of the Executive Committee.

- c) Mr Dent emailed the Union on 3 May 2023. He drew their attention to the promotional material and to Mr Watkinson's online publicity. He also quoted Rule 8.1.8 and asked the Union to explain how Mr Watkinson's promotional material complied with that rule.
- d) This was followed by an exchange of emails between Mr Dent and Ms Baxter. Mr Dent's issue was that he believed that Rule 8.1.8 had been breached. Ms Baxter replied with explanations as follows:

May 2023 11:20

Ian Watkinson has confirmed that he had the consent of three officers/officials to use their quotes on his Election material. There is no suggestion that the three officers/officials quoted on Mr Watkinson's election material have endorsed his candidature. There is a clear and important distinction between endorsement of a candidate and the use of quotes in support of a candidate's union activity.

In this case, it's the latter.

4 May 2023 13:46 – in response to an email which gave details of Mr Watkinson's online promotional material.

Yes, these are endorsements from elected members or prospective elected members.

- e) On 23 May 2023 Mr Dent made a formal complaint to the Union's NEC about the issue explaining that he believed that Mr Watkinson's material was a clear breach of Rule 8.1.8. The complaint was considered by the Union's General Purposes Committee on 17 June 2023.
- f) Ms Philips emailed Mr Dent on 26 July 2023 and explained that:

The General Purposes Committee reviewed the election process at their meeting in June. This included your complaint regarding Ian Watkinson's election material. It was explained to the Committee that the material contained an official and two officers seemingly endorsing the election of this candidate. The Committee concluded that inclusion of supportive quotes from officials and officers in election material does not constitute endorsement of candidates, and therefore there had been no breach of the NEU Rules on this occasion.

The decision of the General Purposes Committee was subsequently approved by the Executive at their meeting in July.

7. Mr Watkinson was not successful in the election.

The Relevant Statutory Provisions

8. The statutory provisions 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; (e) such other matters as may be specified in an order made by the Secretary of State.

108B Declarations and orders

(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

(2) If he accepts an application under section 108A the Certification Officer—

(a) shall make such enquiries as he thinks fit,

(b) shall give the applicant and the union an opportunity to be heard,

(c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(d) may make or refuse the declaration asked for, and

(e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(3) 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

9. The Rules of the Union which are relevant for the purposes of this application are as follows:-

National Rules of the National Education Union:-

8.1.7 Limits will be placed on amounts that Local Districts can spend supporting nominated candidates in national elections including what such funds can be spent on. All candidates seeking nomination will be invited to attend General Meetings (and/or invited to submit an election statement) that are making decisions on nominations and all candidates in elections will be invited to attend hustings meetings (and/or invited to submit an election statement) arranged by local districts. If a candidate is unable to attend General Meetings or hustings meetings but submits an election statement, that will be circulated to members of the district.

8.1.8 No other part of the union as an entity other than the Local District would be able to either nominate or give support to any candidate in a national election save for the provisions set out in 13.12.6 and 13.15.

15.1 The professional staff shall include the General Secretary, Deputy General Secretaries (elected and appointed) and all other paid employees of the union.

18.6.3 If any member suffers pecuniary loss or damage from any cause which in the opinion of the Executive, after consultation with the Branch, arises from any action taken on the advice of the Union in the defence of professional rights or from any cause which in the opinion of the Executive renders the member worthy of support the Executive may make out of the Sustentation Fund such grants towards the maintenance and relief of such member as it deems advisable.

23.6 In the event of any dispute concerning issues in which these rules appear silent or unclear, the Executive shall interpret them and their ruling shall be conclusive and binding on all members of the Union.

Considerations and Conclusion

10. There is no dispute about the facts which led to the complaint. The only issue for me to consider is the interpretation of Rule 8.1.8. Mr Dent told me that the rule was “beautifully clear, simple and unambiguous”. In his view, the intention of the rule is to prevent those outside of the relevant District, whether individuals or groups, influencing the outcome of an NEC election. It also prevents staff, including the General Secretary, from supporting candidates seeking election to the NEC. In his view, the reference to “an entity” within the rule refers to the union itself and the reference to “part of the union” could include any member, committee, or officer. He told me that the General Secretary and the General Secretary Designate were also part of the Union and, therefore, excluded from supporting Mr Watkinson in this way.
11. He, therefore, believed that any of those supporting Mr Watkinson who were not part of the relevant District, in this case District 4, were acting outside of Rule 8.1.8.
12. The Union has not been so clear in its position. As set out at paragraph 6 above the Union has given a number of explanations as to why it did not consider Mr Watkinson’s campaign material to be in breach of Rule 8.1.8. In addition, when responding to Mr Dent’s complaint to me, Ms Phillips explained that, under the NEU Rules, the word “support” had a very specific meaning which related to the financial support which may be given to a candidate during the election process. She also referred me to the preceding Rule, 8.1.7, which, amongst other things, explained that limits would be placed on the amount that a Local District could spend on supporting nominated candidates.

13. At the Hearing, and in written submissions, Ms Fadipe expanded on the Union's initial submissions about the meaning of "support" in the Union's rules. She also made submissions on the meaning of the word "entity", whether Rule 8.1.8 should be read in isolation from Rule 8.1.7 and whether the Union could regulate the content of a candidate's election material.
14. From reading the correspondence between Mr Dent and the Union, it is clear that the Union and Mr Dent did not have a shared understanding of the meaning of Rule 8.1.8. Ms Philips explained, in evidence, that she and Ms Baxter discussed Mr Dent's emails and agreed how to respond. She told me that they addressed the issue of the distinction between "endorsement" and "support" because of the wording of Mr Dent's original email. Ms Phillips and Ms Baxter had a shared understanding of that distinction. They did not, however, address the meaning of the word "entity" because they both interpreted the use of that word in a different way. There was not, therefore, a shared understanding of the meaning of Rule 8.1.8 amongst Union staff.
15. Ms Philips told me that they were both clear that the rule was referring to financial support and considered that this might need some clarification. Consequently, they were considering a recommendation to Conference that the Rules should be clarified. They did not, however, consider seeking a ruling from the Executive Committee, under Rule 23.6, about how Rule 8.1.8 should be interpreted. Nor did they explain to Mr Dent that, in their view, Rule 8.1.8 referred to financial support.
16. I have to acknowledge, therefore, that the Rule is not "beautifully clear, simple and unambiguous" to everyone. It is clear, from Ms Phillips' evidence that she and Ms Baxter had different views and that both of those appear to be different to Mr Dent's understanding. In reaching my own conclusion on the meaning of the rule, I am conscious of the established principle that union rules should not be interpreted as if they were statute. They should be given a

reasonable interpretation bearing in mind their authority, their readership and their purpose.

17. Ms Fadipe told me that Rule 8.1.8 appears in the Rules headed “Local Structures” and in the subsection “General”. That section of the Rules requires the National Executive to create local structures. She did not expand on that submission; however, my reading of that sub-section is that it requires the Union’s Executive to create local structures including Local Districts and Branches to enable the Union to further its objects and to represent and engage members. The sub-section broadly sets out how those structures will be created and places limits on certain activities. The sub-sections which follow it set out specific arrangements for the Local Districts, Branches and the workplace.

18. Rule 8.1.8 must be read in that context. Doing so supports Mr Dent’s position that the rule was intended to prevent those outside of the relevant District from having a role in elections within that District. It leaves open the question, however, as to what is meant by “entity” in Rule 8.1.8 and, therefore, who is prevented from having an influence on the elections.

19. Mr Dent’s view, at the Hearing, was that entity referred to the Union itself. In part this was because, in his view, the grammar did not support any other interpretation. And also, because the clear intent of the rule was to prevent influences from outside the local District. Ms Fadipe’s view was that Rule 8.1.8 must be read in conjunction with Rule 8.1.7 because, to do otherwise, would negate the need for the rule to begin “No other part of the Union as an entity...”

20. As expressed above, I should not approach this rule as if it were statute. The more reasonable approach is to read it within the context of section 8 which sets out the Union’s frameworks for its local structures. As I have acknowledged above, doing so supports Mr Dent’s view that it prevents parts of the Union, other than the relevant local District, influencing elections. It also

supports Ms Fadipe's view that Rules 8.1.7 and 8.1.8 should be read together and, more broadly, should be read in the context of the creation and existence of local structures. Those structures include Local Districts, Branches and Workplace Representatives.

21. On that basis, I cannot agree with Mr Dent that the only interpretation of Rule 8.1.8 is that the word "entity" refers to the Union itself. If that were the intention there would be no need to include the word "entity" at all. It would add nothing to the rule. The usual use of the word "entity" is that it is used to describe something which exists in its own right and has an identity. Within the context of the Union Rules that could include any Union structures, formal or otherwise, which had a distinct existence. There was limited discussion on this point at the Hearing, but I am satisfied that this could include those structures included in sub-section 8.1 and, more widely, it would be reasonable for it to include any national committees such as the NEC, or its sub-committees. I am not persuaded, however, that it could include an individual member of the Union unless that member was acting on behalf of one of those committees or branches.

22. Part of Mr Dent's argument was that some of those supporting Mr Watkinson were members of the NEC and that by supporting him they were acting as representatives of the NEC. In his view this could be read to imply that there was NEC support for Mr Watkinson. He acknowledged, however, that there were 55 NEC members of whom 7 appeared to be expressing support for Mr Watkinson. From the literature I have seen none of those 7 NEC members appeared to claim that Mr Watkinson had the support of the NEC as a whole. Nor could 7 members out of a committee of 55 be seen as representative without such a claim. I am satisfied, therefore, that it would not be reasonable to infer that those 7 individuals could be seen to be representing the NEC as an entity. Mr Dent also argued that they might be acting as part of a "slate" of candidates who shared similar views and supported each other's candidacy. Ms Phillips also agreed that this happened. I do not, however, believe that a

slate of candidates could be considered as an entity within the context of section 8 of the Rules. If all candidates on the slate were elected they would form part of the NEC. If some were not, then the group of candidates who had campaigned together would have no separate existence.

23. The position of the General Secretary and the General Secretary Designate is less clear. The General Secretary is a member of the Union's professional staff. Ms Phillips was clear in her evidence that staff, including the General Secretary, should not seek to influence elections in any way. The Union issued guidance to this effect ahead of the General Secretary election earlier in 2023. It did not issue similar guidance ahead of the NEC elections. Ms Phillips said that this was because all staff reported directly, or indirectly through their managers, to the General Secretary and so staff had a very real interest in the outcome of that election. I note, however, that the General Secretary reports to the NEC and so a similar principle would apply.

24. Ms Phillips' view was that the General Secretary, as a member of staff, should not seek to influence the outcome of the NEC elections. Nor did she think that, in this case, he or the General Secretary designate, had done so. This was because the quotes provided by Mr Courtney, then General Secretary, and Mr Kebede, then General Secretary Designate, were limited to comments on the work achieved by Mr Watkinson and did not explicitly encourage members to vote for him. I find this argument difficult to accept. The quotes were included on an election flyer which encouraged members to vote for Mr Watkinson and were alongside a quote from a former President encouraging them explicitly to do so. In my view, most members receiving the election flyer would read these as an encouragement to support Mr Watkinson.

25. In their correspondence with Mr Dent, Ms Baxter and Ms Phillips focussed on this apparent distinction between support and endorsement rather on their view that the impact of Rule 8.1.8 was to limit only financial support. Ms

Phillips told me that this was also the focus of the GPC when they reviewed the election process and Mr Dent's complaint. The minutes of the GPC meeting do not, however, make any reference to Mr Dent's complaint.

26. Rule 8.1.8 does not make any distinction between endorsement and support. It simply refers to support. Ms Phillips told me that she and Ms Baxter understood this to refer to financial support. Consequently, I find it surprising that the focus of the replies to Mr Dent was the distinction between support and endorsement. Ms Phillips told me that this was because the wording of Mr Dent's original complaint referred to "endorsement" whilst the rule referred to support. She went on to say that she and Ms Baxter thought it would be helpful to seek a rule change to clarify that the reference to "support" in Rule 8.1.8 referred only to financial support. Their plans were put on hold, however, following Mr Dent's complaint to me.

27. Mr Dent did not agree that Rule 8.1.8 referred only to financial support. He asked me to apply the usual interpretation of the word "support" to Rule 8.1.8 so that it included expressions of support which were not financial. This would, in his view, extend to the quotes included in Mr Watkinson's election material.

28. Ms Fadipe argued that Rule 8.1.8 could only be interpreted to refer to financial support. There were two reasons for this; the first is that the rule can only properly be read in conjunction with Rule 8.1.7. I have already accepted that this must be the case and, more broadly, that the rule should be read in the context of the rest of that sub-section. Rule 8.1.7 creates a limitation on the financial support that a Local District can offer to a candidate. Rule 8.1.8 explains that no other part of the Union can provide support. A reasonable reading of the Rules would, therefore, be that Rule 8.1.8 prevents any other entity of the Union offering financial support.

29. It is worth noting that Ms Fadipe also drew my attention to several NEU rules which used the word support to refer to financial support. Most of these rules

were, however, unrelated to elections and were in the context of financial support. For instance, Rule 18.6.3 was in the context of the sustentation fund and Rule 18.7.1 in the context of the NEU Trust Fund. I did not find these arguments helpful and have not taken these wider rules into account in my decision.

30. The second reason was that the use of the word “support” in its natural usage creates an uncertainty around what is permissible. Ms Fadipe argued that this could extend to private expressions of good wishes to a fellow candidate or to social media posts. I agree that this could create an element of uncertainty although I think, in practice, this could be dealt with in guidance. It would, however, be problematic to regulate. This is because, a candidate would have no control over supportive comments made by another person on their own social media channels.

31. Consequently, I agree with the Union that the most logical, and reasonable, reading of Rule 8.1.8 is that the reference to support is limited to financial support as set out in Rule 8.1.7. On that basis I do not have to decide whether the General Secretary, or the General Secretary designate, is an entity of the Union.

32. For the reasons set out above, I refuse to make the declaration requested by Mr Dent. I do, however, have some general observations for the Union to consider which are set out below.

Observations

Jurisdiction

33. The Union raised an issue about whether this complaint fell within my jurisdiction because Mr Watkinson was not successful in the relevant election. This issue was first raised at the case management meeting when the Union appeared to accept that the complaint was within my jurisdiction and again by Ms Fadipe at the Hearing.

34. My authority to consider this complaint is set out in s108A of the 1992 Act. It enables a member of Union to apply to me for a declaration that there has been a breach of rules relating to the election or appointment of a person to an office. This complaint relates to the Union's Rules governing such an election. The fact that the complaint relates to the election material of an unsuccessful candidate does not appear to be relevant to my jurisdiction. Nor does it render the complaint academic. Had I found in favour of Mr Dent I would have been able to consider an enforcement order which required the Union to take steps to remedy the breach or to prevent such a breach occurring again. Whilst it may not have been appropriate for me to require the Union to re-run the election, I might have considered it appropriate to require the Union to take steps, ahead of the next NEC elections, to ensure compliance with its Rules. And I may have imposed a financial penalties order under Schedule A4 of the 1992 Act.

The Union's response to Mr Dent

35. Mr Dent told me that the Union's responses to his initial complaint enraged him and that he felt he was being fobbed off. I understand why he felt this way. The Union appeared to have focussed on the distinction between "endorsement" and "support" and also whether Mr Watkinson had permission from the relevant individuals to include those comments. None of those replies appeared to deal with either the wording of Rule 8.1.8 or Mr Dent's complaint. Nor did they explain that, in the Union's view, support actually referred to financial support. That argument was used only after Mr Dent had made a complaint to me. I recommend that the Union review its processes for handling complaints to ensure that it deals with the relevant issues and clearly explains the Union's view. Had they done so in this case it is possible that they could have avoided a complaint to the GPC and to me.

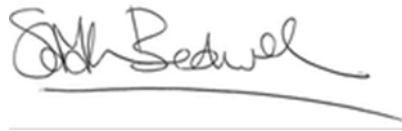
The Role of the Union's staff

36. Part of Mr Dent's concern was the provision, in NEC election material, of quotes from the General Secretary and the General Secretary Designate. Rule 15.1 makes it clear that the General Secretary is a member of the Union's professional staff. The Union and Mr Dent agree that staff should not influence the outcome of the Union's elections. As I have noted above, I think it likely that those receiving the campaign material would read Mr Courtney and Mr Kebede's quotes in the same way as Mr Dent and understand them to be an encouragement to vote for Mr Watkinson. I have not, however, been referred to a rule which would prevent the General Secretary, or any other member of staff, from offering such quotes. If the Union's position remains that staff should not seek to influence the democracy of the Union then, in my view, it should consider whether it is necessary to include a rule, or to produce guidance, to this effect so that there is clarity in the future. In doing so I would recommend that it ensures that any distinction between support and endorsement is clearly set out. Similarly, I think it would be helpful, as Ms Philips suggested, for the Union to clarify that Rule 8.1.8 refers only to financial support.

The Union's role in regulating election material

37. Finally, Ms Fadipe told me that the Union could not regulate candidates' election material as this was produced by the candidate themselves. I have not dealt with this point above as I have not made the declaration requested by Mr Dent. I think it important to note, however, that it is entirely reasonable for a Union to deal with issues arising from a candidate's election material. It is for the Union to decide whether this should be proactive or reactive, and to decide what steps should be taken where election material is deemed to be in breach of the election rules or inappropriate in other ways. It is also within my

jurisdiction to consider complaints about election material where, as in this case, there was an arguable case that the relevant rules had been breached.

A handwritten signature in black ink, reading "Sarah Bedwell", is enclosed within a thin black rectangular border. The signature is written in a cursive style with a long horizontal flourish at the end.

Sarah Bedwell
The Certification Officer

