

D/1/24-25

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

Evans (3)

V

Prospect

Date of Decision

16 April 2024

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Decision

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

Pursuant to section 256ZA of the 1992 Act, I strike out the claimant’s complaint below on the grounds that the complaint, as advanced by the claimant, has no reasonable prospect of success.

Background

2. Mr Evans e-mailed his complaints to my office on 17 and 18 July 2023.
3. Mr Evans was, at the relevant time, a member of Prospect (the Union).
4. Mr Evans, confirmed his complaint as follows:-

That the union has failed to secure the election of 8 members of the executive in accordance with section 46(1)(a) of the 1992 Act.

The Relevant Statutory Provisions

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

46 Duty to hold elections for certain positions.

(1) A trade union shall secure—

(a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and

(b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

(2) The positions to which this Chapter applies (subject as mentioned below) are—

(a) member of the executive,

- (b) any position by virtue of which a person is a member of the executive,
- (c) president, and
- (d) general secretary;

(3) In this Chapter “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

(4) This Chapter does not apply to the position of president or general secretary if the holder of that position—

- (a) is not, in respect of that position, either a voting member of the executive or an employee of the union,

- (b) holds that position for a period which under the rules of the union cannot end more than 13 months after he took it up, and

- (c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.

(4A) This Chapter also does not apply to the position of president if—

- (a) the holder of that position was elected or appointed to it in accordance with the rules of the union,

- (b) at the time of his election or appointment as president he held a position mentioned in paragraph (a), (b) or (d) of subsection (2) by virtue of having been elected to it at a qualifying election,

- (c) it is no more than five years since—

- (i) he was elected, or re-elected, to the position mentioned in paragraph (b) which he held at the time of his election or appointment as president, or

(ii) he was elected to another position of a kind mentioned in that paragraph at a qualifying election held after his election or appointment as president of the union, and

(d) he has, at all times since his election or appointment as president, held a position mentioned in paragraph (a), (b) or (d) of subsection (2) by virtue of having been elected to it at a qualifying election.

(5) In subsection (4) A “voting member of the executive” means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).

(5A) In subsection (4A) “qualifying election” means an election satisfying the requirements of this Chapter.

(5B) The “requirements of this Chapter” referred to in subsections (1) and (5A) are those set out in sections 47 to 52 below.]

(6)The provisions of this Chapter apply notwithstanding anything in the rules or practice of the union; and the terms and conditions on which a person is employed by the union shall be disregarded in so far as they would prevent the union from complying with the provisions of this Chapter.

55 Powers of Certification Officer

(1) Where the Certification Officer is satisfied that a trade union has failed to comply with any of the requirements of this Chapter, either—

(a) on an application by a person having a sufficient interest (see section 54(2)),
or

(b) without any such application having been made, the Officer may make a declaration to that effect.

(2) Before deciding the matter the Certification Officer—

(a) may make such enquiries as the Officer thinks fit,

(b) must give the union and the applicant (if any) an opportunity to make written representations, and

(c) may give the union and the applicant (if any) an opportunity to make oral representations.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

(a) to secure the holding of an election in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be

conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order.

(5C) Where an enforcement order has been made—

(a) any person who is a member of the union and was a member at the time the order was made, or

(b) any person who is or was a candidate in the election in question, is entitled to enforce obedience to the order as if he had made an application under this section.

(6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination F5... notwithstanding that the information has not been furnished to him by the specified date.

(8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

(9) An enforcement order made by the Certification Officer under this section may be enforced (by the Certification Officer, the applicant or a person mentioned in subsection (5C)) in the same way as an order of the court.

(10) The following paragraphs have effect if a person applies under section 56 in relation to an alleged failure—

(a) that person may not apply under this section in relation to that failure;

(b) on an application by a different person under this section in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer's notice.

119 Expressions relating to trade unions

In this Act, in relation to a trade union—

“agent” means a banker or solicitor of, or any person employed as an auditor by, the union or any branch or section of the union;

“branch or section”, except where the context otherwise requires, includes a branch or section which is itself a trade union;

“executive” means the principal committee of the union exercising executive functions, by whatever name it is called;

“financial affairs” means affairs of the union relating to any fund which is applicable for the purposes of the union (including any fund of a branch or section of the union which is so applicable);

“general secretary” means the official of the union who holds the office of general secretary or, where there is no such office, holds an office which is equivalent, or (except in section 14(4)) the nearest equivalent, to that of general secretary;

“officer” includes—

- (a) any member of the governing body of the union, and
- (b) any trustee of any fund applicable for the purposes of the union;

“official” means—

- (a) an officer of the union or of a branch or section of the union, or
- (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them,

and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent;

“president” means the official of the union who holds the office of president or, where there is no such office, who holds an office which is equivalent, or (except in section 14(4) or Chapter IV) the nearest equivalent, to that of president; and

“rules”, except where the context otherwise requires, includes the rules of any branch or section of the union.

256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, she may—

(a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,

(b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or

(c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

The Relevant Rules of the Union

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

Part 9: National Executive Committee

Functions of the committee

9.1 (1) There shall be a National Executive Committee (in this Part referred to as “the Committee”) elected in the manner hereinafter provided and which shall conduct the business of the Union in conformity with the policy from time to time laid down by National Conference and shall have such other functions as are provided by these Rules.

(2) The Committee shall between National Conferences be solely responsible for interpreting policy laid down by Conference and determining policy if no such policy exists. The Committee shall also be responsible for the interpretation of these Rules between National Conferences.

(3) The Committee shall manage and transact all matters and business arising in the affairs of the Union between meetings of National Conference.

(4) Members of the Committee, the President, Vice President and Deputy Vice-President shall be elected biennially as provided for in these Rules.

Powers of the committee

9.2 (1) The Committee shall have such powers, authorities and discretions as are necessary for or incidental to its functions and, without prejudice to the foregoing generality, shall have power:

(a) to invite two representatives from the Retired Members' Group to attend meetings of the Committee for the purpose of providing the Committee with factual information or with technical or professional advice with respect to matters taken into account by the Committee in carrying out its function; such representatives will not be entitled to vote at the meetings;

(b) to appoint representatives of the Union to any council and any other committee, union or organisation on which the Union is empowered or invited to be represented;

(c) to engage and dismiss persons as employees of the Union, which power shall be exercised in accordance with these rules;

(d) to determine the conditions of service of such persons as aforesaid;

(e) to direct the Trustees to enter into agreements or contracts for the purchase of any property whether real or personal, heritable or moveable, to authorise the sale charging disposal or other dealing of or

with any real or personal property held by the Trustees and to borrow or otherwise raise finance;

(f) to make provision for superannuation benefits for persons employed by the Union, to arrange for the constitution of Trusts for that purpose and for the administration of any such Trusts including the appointment and removal of employer's trustees;

(g) to constitute a Retired Members' Group and such professional groups, industry advisory groups, employer based groups and sectors as from time to time be determined, and to authorise the financial arrangements and rules of such bodies;

(h) to obtain the views or directions of Branches, Sectors or members on any matters in such manner and following such procedure as it may determine;

(i) to authorise industrial action in accordance with procedures laid down by the National Conference or the Committee from time to time;

(j) to appoint from time to time such committees (hereafter in this Rule referred to as "Sub-Committees") as it may think necessary for the despatch of its business and to delegate to them such of its functions or refer to them such matters as it may in its discretion determine;

(k) to make provision for provident benefits and individual services; and

(l) to affiliate to any organisation or body which has similar or complementary objectives to the Union.

(2) The Committee shall report to National Conference on any Sectors, Professional Groups or Employer Based Groups formed since the preceding National Conference closed.

(3) Any Sub-Committee shall conduct its business in accordance with such procedure as the Committee may direct or failing such a direction in

accordance with such procedures as the Sub-Committee may itself decide.

(4) The Committee may co-opt as non voting members of a Sub-Committee persons who are not members of the Union.

(5) Notwithstanding anything in these rules the Committee may by giving 6 weeks notice in writing terminate the membership of any member if necessary in order to comply with any decision reached through an agreed inter-union procedure for resolving membership disputes between unions.

(6) Where another trade union or staff union has objects and/or policies similar to those of the Union, the Committee shall have power to accept such an organisation as a body affiliated to the Union on terms which it may agree subject to ratification at the next National Conference of the Union and to review after a period not exceeding five years.

(7) The Committee shall have the right to act as the committee of management for all the purposes of the Trade Union and Labour Relations (Consolidated) Act 1992 where it is proposed that any other trade union should amalgamate with or transfer its engagements to the Union.

Constitution of the National Executive Committee

9.3 The Committee shall, subject to the provisions of these Rules, consist of:

(1) Twenty-eight Working or Unemployed Members (hereinafter referred to as the "Voting Members" of the Committee); and

(2) the General Secretary, who shall be entitled to attend and speak but not vote.

9.4 The President, the Vice President, and Deputy Vice President of the Union (hereinafter referred to as the "Presidential Team") shall be elected from among the Voting Members of the Committee as is hereafter provided in the Rules;

9.5 The twenty eight Voting Members of the committee shall be elected for the period from the end of the National Conference in 2018, until the end of the National Conference in 2020 on the following basis:

(1) Five Voting Members will be elected by and from members of the transferring union and any members subsequently allocated to the BECTU Sector after the effective date (excluding those who at the effective date are members of the CMD sector of Prospect or who are subsequently allocated to that division of the BECTU sector who will vote in NEC elections as per rule 9.5 as amended below); and

(2) Twenty-three Voting Members will be elected by and from all amongst all other Prospect working and unemployed members.

Election of National Executive Committee

9.6 (1) The Voting Members of the Committee shall be elected by all Working or Unemployed Members of the Union in the manner appearing in Rules 9.7 and 9.8(2)-(5).

(2) The General Secretary shall call for nominations from branches no less than nine weeks before the date such nominations have to be received.

(3) The election of the Voting Members of the Committee shall take place every other year during the period nominated by the Committee which period shall, unless the National Executive Committee in its absolute discretion decides otherwise, commence on the day occurring 9 weeks before the first day of the next National Conference and close on the day occurring 5 weeks before the first day of the said National Conference. Any voting paper received by the independent scrutineer after 6pm on the day occurring 5 weeks before the first day of the said National Conference shall be declared invalid.

(4) A Working or Unemployed Member only shall be entitled to stand as a candidate in the election of Voting Members of the Committee provided as

follows:

(a) the Working or Unemployed Member is nominated as a candidate by at least one Branch of the Union and the candidate is still a Working or Unemployed Member at the time of the election;

(b) notice of nomination has been given in writing to the General Secretary by midday on the day occurring 13 weeks before the first day of the said National Conference;

(c) the nomination is accompanied by brief particulars of the member so nominated, and by an undertaking signed by the nominee to act in all respects in accordance with the Code of Conduct from time to time laid down by Conference in accordance with Rule 9.10, and to accept office and act as a member of the Committee if so elected provided that:

(i) where a member is so nominated by more than one Branch, only one of the nominating Branches shall be required to furnish such signed undertaking; and,

(ii) any notice of nomination shall be deemed not to have been given until it has been delivered to the General Secretary at the registered office of the Union; or been delivered to an e-mail address specified in the call for nominations given under Rule 9.6 (2).

(d) the notice of nomination shall be accompanied by a certificate signed by the Secretary of the 12 Branch, or such other member of the Branch as has been authorised by the Branch, that the nomination has been approved by a general meeting, or Annual Conference of the Branch, or by a committee of the Branch authorised to approve it;

(5) members nominated in accordance with Rule 9.6(4) under this sub-Rule may withdraw their nomination at any time before the date on which the election is declared to be closed

Proceedings of the National Executive Committee

- 9.15 (1) The Committee shall meet and conduct its business as it shall from time to time by resolution determine and shall have power to regulate its own procedure.
- (2) Each member of the Presidential Team and each Voting Member of the Committee shall have one vote and the General Secretary and Retired Members' representatives shall not have a vote.
- (3) All questions at any meeting of the Committee shall be decided by a majority of the votes cast, provided that in the event of an equality of votes whoever is in the Chair shall have a casting vote as well as the deliberative vote as a member of the Committee.
- (4) At the request in writing of the President or of 8 other Voting Members of the Committee the General Secretary shall forthwith summon a meeting of the Committee.
- 9.16 A quorum of the Committee shall be fifty percent plus one voting members.

Considerations and Conclusions

Jurisdiction

7. My office has exchanged significant correspondence with Mr Evans on the question of my jurisdiction to consider this application. I have also invited the Union to make representations on this point; however, it has not done so. Mr Evans' complaint is that a number of senior staff participate in the Union's National Executive Committee (the NEC) in such a way that they are members of the Union's executive and should be elected to those roles in accordance with Section 46 of the 1992 Act.
8. Section 46 of the 1992 Act requires all members of the Union's executive to be elected according to the statutory provisions set out in Chapter IV of the Act. There are two definitions of executive within the 1992 Act. Section 46 (3) states that:

- a. “In this Chapter “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.”
9. Section 119 of the Act defines the “executive” of the Union as “the principal committee of the union exercising executive functions, by whatever name it is called”.
10. It is clear, and Mr Evans has not disputed, that the Union’s “executive” under s119 of the Act is the NEC which is created by Part 9 of the Union’s Rules. Rule 9 clearly sets out the composition and powers of the NEC. Mr Evans’ complaint is that a number of senior members of the union participate in the NEC meetings in such a way as to form, together with the NEC, the “executive” of the Union. Consequently, he believes that those individual members of staff should be elected in accordance with s46 of the 1992 Act. He has made it clear that he is not making a complaint that the relevant members of staff are members of, or acting as members of, the NEC. Nor has he made a complaint that the participation of those members of staff at NEC meetings is a breach of the Union’s Rules.
11. If Mr Evans is right that members of staff are participating in NEC meetings in the manner he has described then, in my view, there must be a breach of Rule 9. Rule 9 is clear and unambiguous as to the composition of the NEC. It does not leave any scope for the Union to adopt a practice which enables senior members of staff, or indeed anyone else, to participate in NEC decision making in such a way that would render them members of the executive under s119 or s46 of the Act.
12. Consequently, I cannot see how I can consider Mr Evans’ application without first considering a breach of Rule 9 in relation to the constitution or proceedings of the NEC. The 1992 Act does not, however, enable me to deal with such a complaint without first receiving a complaint from a member of the Union. My office has explained this to Mr Evans and invited him to make such a complaint but he has

declined to do so. My team has also explained that another union member could make such a complaint but we have not received any such complaint.

13. On that basis I am satisfied that I do not have the jurisdiction to consider this complaint in the absence of a complaint under s108(A) of the 1992 Act about a breach of Rule 9.
14. Mr Evans has challenged my position on jurisdiction. His view is that the wording of s46 of the 1992 Act is sufficient to enable me to do this and has drawn my attention to two previous cases. It is worth noting here that I agree with Mr Evans that I am able to consider a complaint under s46 without a complaint about a breach of the Union's Rules. Indeed, both myself and my predecessors, have done so. I do not agree, however, that in the circumstances of this case, I can do so.
15. Mr Evans has referred me to two complaints, considered by myself and my predecessor, in his correspondence. In *Crew v Aegis* (D/26/19-20) I concluded that members had been elected to the Union's executive without an election under s46. In that case there was no doubt, and the union accepted, that the relevant individuals were members of the executive committee. I did not, therefore, need to consider whether there was a breach of the union's rules on the composition of the executive committee. The only issue for me to consider was whether the relevant elections were compliant with s46. Mr Evans also drew my attention to *Gates v BECTU* (D/23-24/00). This complaint arose from the election of the then President of BECTU. Again, there was no dispute as to whether the person elected was President; the issue for the CO was whether the elections were compliant with the 1992 Act.
16. I am aware that Mr Evans is seeking an early conclusion of his complaint and has also already made an appeal to the Employment Appeal Tribunal following recent correspondence with this office. I have, therefore gone on to consider whether, if I am wrong on jurisdiction, this complaint should proceed to a hearing.

Evidence

17. Mr Evans has provided several documents which he believes supports his position that 8 named senior members of staff participate in the executive decision making of the union in such a way that they are members of the union's executive and should be elected in accordance with s46 of the 1992 Act.
18. Section 46 of the Act requires the following people to be elected:
 - a. Members of the Executive
 - b. Any position by virtue of which is a person is a member of the Executive
 - c. President
 - d. General Secretary
19. None of the people Mr Evans has identified appear to fall into b), c), or d); his complaint, therefore, is that the relevant individuals are effectively members of the Executive because of the contributions they make to NEC meetings. He has also explained that, in his view, they do not fall into the exceptions which are set out in s46 (3) of the Act as set out below;

“In this Chapter “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.”
20. Mr Evans told me that the practice of the union is that the 8 named individuals may, and do, attend and speak at some, or all, of the meetings of the NEC. He told me that this is established practice and is demonstrated, in part, by the fact that their apologies are recorded in the minutes should they be unable to attend. Whilst this may be true it does not, on its own, demonstrate that those individuals are members

of the executive. It is common practice in many unions for this to happen. The relevant issue is not whether those individuals attend or speak at meetings. Nor is it whether their apologies are recorded. The core issue is whether it is the Union's practice that those individuals may attend and speak at some, or all, of the meetings of the NEC, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

21. Mr Evans is clear that the 8 named individuals participate in this way. He told me that they provide information which goes beyond "factual information" or "technical or professional advice". He provided a spreadsheet which shows, in his view, the occasions on which he believed those individuals (and a further 4 not named in his complaint) participated in NEC discussions beyond providing "factual information" or "technical or professional advice". I have reviewed that spreadsheet and am satisfied that most of those instances related to the information contained within a Union Circular, or information about policy developments and operational areas such as the public sector pay remit guidance or membership growth.
22. Mr Evans highlighted two instances as demonstrating that the 8 individuals participate beyond giving factual information. The first is a report given, by the Senior Deputy General Secretary (SDGS), to a closed session of the NEC about a disciplinary panel. He provided me with minutes of that meeting. Those minutes record that the SDGS introduced the report of the disciplinary panel and its conclusions. Mr Evans argued that this was not factual; however, the minutes show that the SDGS's report was a summary of the disciplinary panel's investigations and conclusions. My reading of the minutes is that the SDGS gave a factual report of the Disciplinary Panel's views and conclusions. Mr Evans has not provided any evidence to suggest that the report given by the SDGS was not factual.
23. It is also worth noting here that the minutes appear to differentiate between those who were "attendees" at the meeting and those "in attendance". Whilst the minutes do not explain the difference between these terms, I note that the SDGS is listed as

being in attendance along with the Union's People & Operations Director and a notetaker. It appears, therefore, that there is a distinction between the members of the NEC (and hence the executive) and members of staff.

24. Mr Evans also highlighted a discussion in another closed session of the NEC where the Head of BECTU Sector, gave "the background to the organising of these members". He did not, however, provide any information which suggested that the background provided was anything other than factual information.
25. Mr Evans also argued that, where members of staff had provided opinions beyond factual information they could not be regarded as providing professional advice except, potentially, the Union's Head of Finance. To support this he provided an analysis of the intention behind s46 of the Act, together with excerpts from Hansard which, in his view, show the Government's intentions when introducing the legislation.
26. I am not satisfied, however that, in this case, it is necessary to go beyond the wording of s46 of the 1992 Act to understand its impact. In my view s46 is clear about which positions should be elected under Chapter IV of the Act. Most people would regard "technical or professional advice" to include advice or opinion from a senior member of staff to the executive committee of a union whether or not that member of staff was, for instance, a lawyer or an accountant. I consider it to be entirely appropriate for a senior member of staff to advise the NEC on issues which fall within that individual's remit and expertise. Indeed, in many cases this would be part of their role and included within their job description. The fact that they provide such advice does not mean that they are participating in the decision making. Equally, if they were not able to attend a meeting and offer such advice the NEC may not have access to the expertise of its senior staff.
27. I have reviewed the spreadsheet provided by Mr Evans and am satisfied that where advice had been given, it does not go beyond what could be considered to be "technical or professional" advice. For instance, on 28 November 2018 the minutes record that the SDGS advised the NEC that "the ESI rules will require tidying and

highlighted two changes that would expand the membership of the Executive Sector Committee and an increase to the quorum”. They also record that “The NEC approved the next stage to take the changes to the Sector Conference for endorsement.” It is hard to see how this could be anything other than “professional or technical advice” in relation to the rules of the Union.

28. Similarly, the minutes from 25 September 2019 record that the HoOD (identified by Mr Evans as the People and Operations Director) presented a circular and advised the NEC that the elections were open to all members across the Union. The minutes record that the elections opened on a weekend and closed over Easter. The minutes then record that the NEC endorsed the proposed themes, timetable and dates of the NEC ballot in line with the explanation of ballot closure dates and advice from ERS Scrutineers. My reading of the minutes is that the HoOD provided information and, potentially, advice about the conduct of the elections which was then endorsed by the NEC. In my view, is that this constitutes “factual information” along with, potentially “technical or professional advice”.
29. Consequently, from the information provided by Mr Evans in the spreadsheet and the closed sessions which he highlighted, I am satisfied that he has not provided any evidence to support his contention that the 8 named individuals participate in meetings other than to provide “factual information” or to give “technical or professional advice” to the NEC members. Consequently, I find that his complaint does not have a reasonable prospect of success even if it falls within my jurisdiction.
30. In reaching this decision, I have taken into account the extensive analysis of the definitions of “technical or professional advice” which Mr Evans has undertaken as well as his research into statements made in Parliament when the Bill was introduced. The language of S46 of the 1992 Act is clear, however, and there is no need to go beyond its wording to understand its intent. I am satisfied that “technical or professional advice” includes the sort of advice which Mr Evans has identified in the spreadsheet and submissions he has provided so far. I am also satisfied that he has not provided any evidence or documents which cause me to believe that the 8

named individuals may have participated in NEC discussions beyond providing such technical or professional advice.

31. I have also taken into account that Mr Evans was not at the relevant meetings and so cannot offer primary evidence himself. He told me he has been contacted by others who may provide witness statements which support his position. He has not, however, provided extracts from emails which demonstrate this nor any statements to support this position. Nor has he identified any individuals who would be prepared to give evidence. That means that, at this stage, I can only rely on the information which he has provided so far.
32. Mr Evans has recently told me that he cannot provide that information because:

“The witnesses have already been the subject of intimidation and I am not prepared to expose them to further intimidation without being sure that their testimonies will be properly considered, this can only be done orally.”
33. I am, of course, concerned at any suggestion that witnesses may face intimidation. I am also concerned about any suggestion that intimidation, or fear of intimidation, might prevent evidence from being available to me. Mr Evans has not, however, provided me with any documents to support his contention. It would have been open to him to do so without releasing the names of those individuals. Similarly, he has not provided me with any copies of documents which show that potential witnesses believe they face intimidation or that any such intimidation has taken place. He has been in extensive correspondence with my office and has had significant opportunity to have done so. He need not have named those individuals at this stage.
34. I have also taken into account guidance given by other Courts and Tribunals on the use of a power to strike out a case. Mr Evans identified Linden J’s guidance in *Twist DX* and *Ors v Armes* UKEAT/0030/20/JOJ (V) as being relevant. Paragraph 43 of that judgment sets out guidance on the Employment Tribunal’s use of its powers to strike out a complaint. As I have recorded above, however, the

documents provided to me by Mr Evans do not support his arguments. It is not the case, therefore, that I have conducted a mini trial of the facts. It is also worth noting here that neither myself nor my office have asked Mr Evans to prove his case at this stage; that would not be appropriate. What we have requested is documents or information which show that he can support his complaint at any Hearing and that it has a reasonable prospect of success. He has not done so. I am satisfied, therefore, that I have not conducted a mini trial of the facts and that I am able to take a clear view as to the prospects of success of this complaint.

35. I have also had regard to Mr Justice Mitting's finding in *Patel v Lloyds Pharmacy Ltd* UKEAT/0418/12/ZT where he recorded that:

“In a case that otherwise has no reasonable prospect of success, it cannot be right to allow it to proceed simply on the basis that "something may turn up.”

36. That is essentially what Mr Evans is asking me to do. He has not provided any evidence which supports his arguments but is asking me to list this complaint for a Hearing so that I can hear oral evidence which would support it. In my view, it would not be proportionate or appropriate for me to proceed to a hearing without seeing some information or evidence which shows that Mr Evans has a reasonable prospect of success. To do so might be seen as a “fishing expedition”.
37. Section 256ZA of the Act 1992 Act requires me to send notice to the party against whom the strike out order shall be made giving them an opportunity to show cause why the order should not be made. My office wrote to Mr Evans on 11 January 2023. This letter stated that, having considered the application and further correspondence, I was minded to exercise my powers under section 256ZA of the 1992 Act to strike out his complaint on the grounds that it had no reasonable prospect of success or was otherwise misconceived. The letter gave my preliminary views on jurisdiction and on the substantive complaint. It invited Mr Evans to provide written representations as to why I should not strike out the complaint. Mr Evans did not provide a substantive response to that letter but did make an appeal to the Employment Tribunal and has subsequently told me that he

believes that the letter was not valid. Mr Evans' appeal raised a number of points which I have dealt with above; it did not provide any additional information which caused me to change my view that his application is outside my jurisdiction and/or has no reasonable prospect of success.

A handwritten signature in black ink, appearing to read "Sarah Bedwell", written in a cursive style. The signature is positioned above a horizontal line that extends across the width of the signature.

Sarah Bedwell

The Certification Officer