

D/2/24-25

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

Lambe

v

Fire Brigades Union

Date of Decision

22 April 2024

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Decision

1. Upon application by Mr Jon Lambe (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”): I uphold Mr Lambe’s application for a declaration that the Union breached Rule C(3)(6) in the manner set out in paragraph 4 below.

Enforcement order

2. For the reasons given at paragraphs 60 to 70 below I consider it appropriate to make an Enforcement Order but I do not consider it appropriate to impose a financial penalty in relation to Mr Lambe’s complaint.

Background

3. Mr Lambe is a member of Fire Brigades Union (“FBU” or “the Union”).
4. Following correspondence with Mr Lambe, the complaint was confirmed by him in the following terms.

“The Union breached Rule C(3)(6) because the Executive Council acted beyond its powers when rejecting a rejoin application by Mr Ahmed following his resignation. The decision as to whether Mr Ahmed can rejoin the Union can only be made by the Brigades Committee as per Rules B2(1)(ii) & B2(1)(iv).”

5. A hearing took place by Video Conference on 27 March 2024. Mr Lambe represented himself. He submitted a skeleton argument, and also submitted witness evidence from Mohamed Ahmed, Union member, and Shing Tuk David Shek, Union member and Executive Council member of the Union’s Region 10. Both Mr Ahmed and Mr Shek provided oral witness evidence. The Union was represented by Oliver Segal KC. The Union submitted a skeleton argument, prepared by Mr Segal. The Union also submitted a witness statement from Mark Rowe, a National Officer of the Union. Mr Rowe also provided oral witness evidence.

6. There was also in evidence a bundle of documents consisting of 211 pages, a supplementary bundle consisting of 86 pages, the Union's rules and branch guidance and two documents which Mr Lambe submitted with the Union's agreement.

Agreed facts

7. The following facts were agreed following a Case Management Meeting on 20 March 2024.
8. Mohamed Ahmed was a member of the FBU until February 2018. He left the Union after being racially abused by a union official. In 2022 Jim Kearns, another union official, tried to convince Mr Ahmed to rejoin the Union. Mr Ahmed shared with Mr Kearns what had happened before he left the Union in 2018. Mr Kearns made a complaint to the Union about the official who had racially abused Mr Ahmed. Following conversations with a number of union officials, including Jamie Newell who was investigating Mr Kearns' complaint, Mr Ahmed sought to rejoin the Union.
9. Mr Ahmed was working at Shadwell Fire Station at the time he expressed an interest in rejoining the Union. After that Mr Ahmed moved, on temporary promotion, to Plaistow Branch in December 2022. There was discussion between Shadwell Branch Officials, Plaistow Branch Officials and Regional Officials about which Branch should process Mr Ahmed's application. The decision was made that the Shadwell Branch members were best placed to consider the expression of interest because they knew him well and, the process had already started at Shadwell, his posting to Plaistow was only temporary and he was still showing on Shadwell's figures.
10. The London Regional Committee (the LRC) were informed that Shadwell branch had approved Mr Ahmed's application after the Branch Representative had spoken to Shadwell branch members. The LRC approved

the application, at a meeting on 17 April 2023, and passed it to the Union's Membership Services team so that the application could be completed.

11. Between 13 and 31 January 2023 Mr Newell and Mr Ahmed exchanged several emails about Mr Newell's investigation and another related matter. Mr Ahmed expressed his frustration with the length of time it was taking for Mr Kearns' complaint to be listed for a Hearing and for the other matter to be resolved. He explained, in an email dated 30 January 2023, that:

"Right now I am trying to get back into the Union and people within the North East who know [the Union official who had racially abused him] are placing obstacles in the way. I am desperate to get back into the union so I can have my say and have my voice heard."

12. In one of Mr Newell's emails, sent on 31 January 2023, he explained that:

"I have an instruction from Head Office to encourage your rejoin which should support any questions that local/area officials may have. I remain committed to that directive if you are willing to allow me to assist."

13. On the same day, Mr Ahmed sent a reply which included the phrase "Stick your union application".

14. On 3 February 2023 Matt Wrack, General Secretary of the Union, wrote to Ben Selby who was then Vice-President of the Union. He explained that, during the investigation into Mr Kearns' complaint:

"... there had been numerous communications which appear to be attempts to influence the inquiry or other related decisions. These have largely come from Mr Ahmed, although officials of the union may also have made similar interventions. In one case, it appears that Bro Newell was lobbied to carry out a suspension, The language and tone of the communications to Bro Newell are concerning and may involve attempts

to undermine due process and to harass or intimidate Bro Newell or others.

In view of this I refer the matter to you for consideration in accordance with the rules of the union. I shall collate the communications which are in my possession although I am aware there may be others of which I am not aware.

I am aware that Mr Ahmed has made an application to join the FBU. I have advised Gareth Beeton and Jon Lambe that this application cannot be processed until the conclusion of your inquiry. I have advised Mr Ahmed also.”

15. Mr Selby began his inquiries shortly after receiving Mr Wrack’s letter. He sought information from a number of individuals involved both in the complaint investigation and Mr Ahmed’s application to rejoin the Union. One of his lines of inquiry was whether the Union had followed the proper process when considering Mr Ahmed’s rejoin application.

16. On 15 February 2023 Mr Selby wrote to Mr Lambe, then Acting Executive Council (EC) Member for the London Region. He gave his initial impressions as to whether the Union had followed the proper processes:

“It’s very early days but I wanted you to know my initial impressions are that, despite their best intentions, some reps may not be too familiar with the principles involved with rejoin applications. My preferred approach is to treat any potential issues as learning points for us to discuss in the region and to make sure the rejoin processes we apply going forward can best ensure the democratic consideration and proper enrolment of former members. I trust you would support such an approach, so long as there is no evidence of deliberate misapplication.”

17. On 21 February 2023 Mr Selby wrote to Nathan Cane, North East Area Chair for London, expressing similar views:

“...from the evidence I have so far and so long as there is no evidence of deliberate misapplication – my preferred approach on this matter would be to treat any potential issues flagged up as learning points we may discuss going forward.”

18. On 24 April 2023 Mr Selby wrote to Mr Wrack setting out his findings. Mr Selby explained the process which had been followed by the Union in considering Mr Ahmed’s applications. He recorded his finding that there had been an unintentional mistake because Mr Ahmed’s rejoin application had not been subject to the proper process. He concluded that this meant that it was null and void and that, if necessary, the Executive Council should exercise their powers as appropriate under Rule B2(1)(vii), Rule C1(2), rule C3(1) and Rule C3(6). He then made the following recommendations:

“I recommend that no resubmitted rejoin application from [Mr Ahmed] should be considered or processed under Rule B2(1)(ii), B2(1)(iv) or B2(1)(v) until such time as all formal proceedings involving [Mr Ahmed] have concluded.”

“I also recommend the appropriate process, principles, and rules for rejoin applications as outlined above are discussed with the relevant Regional Officials and Area Officials.”

19. Mr Selby also recorded that he felt that some of the content of the communications sent by Mr Ahmed to Union officials was offensive and gave detail as to the reasons why. He explained that he would expect that, should Mr Ahmed rejoin the Union, he should, at that point, be subjected to a fair and thorough inquiry in accordance with Rule G1. He also made the following recommendation:

“If necessary, I recommend the Executive Council exercise their powers accordingly under Rule C1(2), Rule C3(1) and/or Rule C3(6).”

20. Mr Selby's Report was considered by the EC at its meeting on 14 and 15 June 2023. At this point Mr Selby had been elected into the role of Assistant General Secretary and was no longer the Vice President. The paper was presented by Tam McFarlane, a National Officer. Mr McFarlane provided a full copy of Mr Selby's report and drew the EC's attention to its recommendations.

21. The minutes of the meeting record that the following recommendation was accepted by the EC:

"I recommend that no resubmitted rejoin application from [Mr Ahmed] should be considered or processed under Rule B2(1)(ii), B2(1)(iv) or B2(1)(v) until such time as all formal proceedings involving [Mr Ahmed] have concluded."

22. On 14 July 2023 Mr McFarlane wrote to Mr Ahmed. He explained that the EC decided not to consider, or proceed with, his application to rejoin the Union until such time as all formal proceedings which involve Mr Ahmed have been concluded.

23. On 10 November 2023 Mr Selby wrote to Mr Ahmed following a meeting which discussed the processes which the FBU had followed when considering the allegations of racial abuse and Mr Ahmed's rejoin applications. Mr Selby explained, amongst other things, the steps Mr Ahmed should follow if he wished to rejoin the Union. He made an application which was considered by the Branch at which he was then based. The Union accepted that application and Mr Ahmed rejoined the Union.

The relevant statutory provisions

24. 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;

The relevant rules of the Union

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

Rule B2 Conditions of membership and contributions

(1) Ordinary Members

(i) Every person wishing to join the Union shall be proposed by one and seconded by another member of the Union. The names of new members shall be reported to the next meeting of the Brigade Committee concerned.

(ii) Any former FBU member wishing to re-join the Union shall have his/her application considered by the Branch concerned and then forwarded to the Brigade Committee.

- (iii) In the case of any former member expelled from the Union in accordance with Rule G1, the Brigade Committee shall consider the application with the recommendation of the Branch concerned. The Brigade Committee shall then forward the application to the Executive Council with any recommendation. The Executive Council shall decide whether the application shall be accepted. The re-entry fee shall be 50 percent of the weekly rate of pay of a Firefighter (competent).
- (iv) In all other cases, the Brigade Committee shall decide whether the application shall be accepted and whether to set any re-entry fee which shall not exceed 25 percent of the weekly rate of pay of a Firefighter (competent).
- (v) The application of each person accepted into membership in accordance with this rule shall be forwarded to the Brigade Organiser and then by him/her to the Head Office of the Union.
- (vi) The Union shall not knowingly and actively seek to take into membership present or recent members of another Union, without the agreement of that organisation.
- (vii) A person improperly enrolled in the Union may be excluded from membership by the Executive Council.

Rule C1 CONSTITUTION AND GOVERNMENT OF THE UNION

...

- (2) For the government of the Union there shall be a Conference and for the general administration of the Union between Conferences there shall be an Executive Council.

Rule C3 Constitution and powers of the Executive Council

(1) The management of the Union shall be vested in the Executive Council which shall consist of the President and one representative from each Region enumerated in Rule C1(2)

...

(6) The Executive Council shall, subject to these rules and to the decision of Conference, have full power and authority to take such action as it deems necessary for the conduct of the Union's affairs and the realisation of the objects set out in Rule A2. The Executive Council shall have the following powers that shall not in any way limit its powers as set out above.

(i) To determine the salaries of all the full-time employees of the Union and to administer arrangements for pension, retirement and kindred benefits for these employees. 20 FBU Rule Book 2022

(ii) To make levies on members to keep the funds in a solvent condition.

(iii) To make grants or loans to kindred organisations and parties connected with the Trade Union movement and, in exceptional circumstances, for services rendered.

(iv) To set up where necessary committees to deal with the special problems or business or special categories of the membership and to delegate to these committees such of its powers as it thinks fit, with the exception of the power to dismiss officials.

(v) To develop strategies for fairness at work, health and safety and Union education. To this end the Executive Council shall establish various committees, the work of which shall be reported to Conference.

(vi) To develop strategies designed to ensure health, safety and wellbeing. To this end the Executive Council will maintain a Fire Brigades Union Health and Safety Committee consisting of representatives of the Executive Council and the Regional Health and Safety Representatives. The Executive Council will also ensure that, not less than four times per year, a meeting of the Fire Brigades Union Health and Safety Committee shall take place.

Rule C7 BRANCH ORGANISATION

(1) Those members employed at a fire station, or subject to approval by the Brigade Committee at any other place of employment, shall comprise a Branch.

...

(4) General Branch meetings shall be held as considered necessary by the Branch Committee, provided that such a meeting is held at least once a quarter. A majority of Branch members may by requisition oblige the Chair to call a special Branch meeting. At each general Branch meeting, a report will be given of business conducted by the Brigade Committee.

Considerations and conclusion

26. Mr Ahmed's application to rejoin the Union is at the heart of Mr Lambe's complaint. Mr Lambe believed that Mr Ahmed made a valid application to rejoin the Union which was approved by his Branch and Regional Committee according to the Rules of the Union. Mr Lambe does not consider that the Executive Council (the EC) had the power to take a decision to defer Mr Ahmed's application when it met on 14 and 15 June 2023.

27. The Union's position is that, in the unusual circumstances of this case, the EC did have such a power. Additionally, Mr Segal argued that there was not a live application because the approach followed by the Branch and the London Regional Committee (LRC) when considering the application was not within the Rules of the Union. He also argued that Mr Ahmed had withdrawn his application in January 2024.

28. Consequently, I need first to consider whether there was a live application for the EC to consider.

The Application Process

29. Mr Ahmed told me that he made his application to re-join in December 2022. He told me that he let his Branch, Shadwell, know that he wished to re-join the Union as this was the usual process. He did not complete an application form and was not aware that there was an application form. Mr Shek told me that no application form was necessary and that Mr Ahmed had followed the usual process. Mr Ahmed told me that he followed the same process when he made a second application to re-join the Union later in 2023.

30. Mr Rowe told me that Mr Ahmed should have completed an application form. I have not, however, been provided with a copy of the application form which Mr Rowe believes should have been completed. At the Hearing the Union's position appeared to be that, without such an application form, no application had been made. Both parties agreed, however, that at some point before 30 January Mr Ahmed's details had been entered on the Union's membership database. Mr Shek provided, during the hearing and with the agreement of Mr Segal, a copy of an email dated 30 January 2023 from the Union's Member Services Team which demonstrated this:

“A new member has applied to join the FBU in your FRS. Their details are:

Name: Mohammed Ahmed

Member Number: 0110491

Service: London

Workplace: Plaistow Fire Station

Role: Watch Manager / Commander

Duty System: Whole Time Shift (Inc. Day Crewing)

Previously been a member: Yes

Under FBU Rules every person joining the Union shall be proposed by one and seconded by another member of the Union. To achieve this, please undertake the following actions:

1. If the applicant has indicated that they have not previously been an FBU member, you are asked to consult with your other Brigade Officials and agree to propose and second the applicant.
2. To do so, please forward this email to membershipservices@fbu.org.uk and copy in at least one other Brigade Official. The membership department will then confirm membership with the applicant. You should report the names of all new members to the next meeting of the Brigade Committee.
3. If the applying member has indicated that they have previously been in the FBU, you must carry out the actions required under

Rule B2. In these circumstances, please ensure that the membership department are informed.

Thank you for your assistance in this matter.

Sincerely,”

31. This email does not provide the date on which the application was made. But both parties accepted that the email demonstrated that an application had been made. The date of the application is relevant to the Union’s argument that the application should have been considered by the Plaistow Branch as Mr Ahmed had been working there, on temporary promotion, from early December 2022. I deal with that point at paragraphs 40 and 41 below.
32. I am satisfied, therefore, that at some point on or before 30 January 2023 Mr Ahmed had made an application to join the Union. Although the Union has argued that he should have completed an application form I have not been referred to a Rule, or any other document, that requires an application form. Nor did Mr Selby raise this as an issue in his report of his inquiry. I also note that the lack of an application form did not prevent local, regional or national officials considering the matter.
33. At the Hearing the Union raised an issue about whether, in the absence of an application form, the Union would have access to a potential member’s personal details such as the firefighter’s name, address, place of work and bank details. Mr Shek explained that these were normally provided after the branch had considered the application. This is consistent with the email from Membership Services at paragraph 30 above being provided at the end of January 2023 after Shadwell Branch had discussed Mr Ahmed’s application.
34. The Union also argued that Mr Ahmed had withdrawn his application before the LRC considered and approved it. Mr Segal told me that Mr Ahmed had declared a settled intention not to be a member of the Union in October 2022. He referred me to Mr Ahmed’s email of 21 October 2022 to Mr Newell and

others. The email explained why Mr Ahmed did not want to enter into mediation with the union official who had racially abused him and how he had felt following that abuse. At the end of the email Mr Ahmed explained:

“I have to be in the LFB [London Fire Brigade] as it means my family have a roof over their head. I do not have to pay subs to an organisation that I consider to be institutionally racist. You can have as many groups representing “people of colour” it means nothing without genuine support for your members. We can all wear “anti-racist” sticker and give a speech on panel about racism”.

35. Mr Segal then referred me to Mr Ahmed’s email described at paragraph 13 above in which he told Mr Newell to “Stick your union application”. Mr Segal told me that this email was the only evidence on which the Union relied when taking the view that Mr Ahmed had withdrawn his application.
36. It is difficult to see how the Union can rely on this one email as evidence that Mr Ahmed had withdrawn his application. The email was part of an exchange about the progress of an investigation into a complaint of racial abuse. Earlier in the exchange Mr Ahmed had explained that he was trying to re-join the union. He was clearly extremely frustrated by what he saw as a lack of progress in arranging a hearing for the complaint once the investigation had been completed. He also expressed concern that the union official who had abused him was being protected by the Union.
37. I have seen nothing to suggest that anyone asked Mr Ahmed whether he was, in fact, withdrawing his application. Nor have I seen anything, other than comments made at the EC meeting in June, to suggest that anyone at the union considered that the application had been withdrawn.
38. On the contrary the Union appeared to consider that an application had been made but would not be considered until Mr Selby had completed his inquiries. This is referenced in letters sent on 3 February by Mr Wrack to Mr Ahmed, Mr

Lambe, and Mr Gareth Beeton, then London Regional Chair. It is also included in Mr Wrack's letter to Mr Selby which referred Mr Ahmed's correspondence to him for consideration. It is also consistent with the approach taken by Mr Selby in his report of his inquiry and the decision of the Executive Council at its meeting on 14 and 15 June 2023. The evidence is clear, therefore, that the Union did not consider that Mr Ahmed had withdrawn his application.

39. It is worth noting that Mr Ahmed told me that his position on the Union changed after October 2022. The reason he left the Union, in 2018, was because of the racial abuse. He had not wished to leave but felt that he could not remain. This meant that he lost the benefits of union membership. He wanted to re-join the Union because he wanted his voice to be heard and because he wanted to be a part of the Union with the benefits that brings. Mr Ahmed came across to me as a genuine witness who had suffered racial abuse which left him with a genuine, and understandable, grievance about how he had been treated. It is clear that he was frustrated by the Union's processes and what he saw to be unreasonable delays. That is what led him to using the phrase "stick your union application". As he explained to me, he would have contacted his branch or region if he genuinely intended to withdraw his application. I am satisfied, therefore, that he did not withdraw his application. I am also satisfied that, at that stage, the Union did not consider that he had withdrawn his application.

40. There was significant discussion at the Hearing about the process followed by the Branch when considering Mr Ahmed's application. Briefly, the Union's position was that the application should have been considered by Plaistow because Mr Ahmed moved there, on temporary promotion, in early December 2022. The Union also considered that, as the application had been considered at Watch meetings, which were not minuted, rather than Branch meetings, which should have been minuted, it had not been properly considered within the Union Rules. Mr Lambe told me that it was appropriate

for the application to be considered at Shadwell as that was Mr Ahmed's permanent place of employment and for the reasons given at paragraph 9 above. Mr Shek also explained, in evidence, that it was normal practice for a Branch to consider re-join applications outside of a Branch meeting.

41. This discussion was, however, very much about the process which the Union followed in considering Mr Ahmed's application rather than the application itself. In my view, the process which the union followed when considering the application is not relevant to whether the application remained live. I do not, therefore, need to reach a decision on the process. Even if the union did not follow the proper procedures when first considering it, Mr Ahmed had a live application in place until such time as it was rejected, accepted or withdrawn. Mr Ahmed did not withdraw it. Consequently, if Mr Selby was right that the proper process was not followed then he should have raised it with the local Union officials and encouraged, or perhaps even instructed, them to follow the proper procedures. I have seen no evidence that he did so.

42. I think it also worth noting that Mr Selby's position on Mr Ahmed's application appears to have changed during the course of his inquiry. His initial view, expressed in his emails to Mr Lambe and Mr Cane (see paragraphs 16 and 17 above), was that his preferred approach would be for any issues arising from the local and regional processing to be treated as a learning point for the future. It appears, therefore, that in February 2023 Mr Selby did not see these issues as being a barrier to Mr Ahmed's application proceeding. By the time he prepared his report in April 2023, however, he appears to have reached the view that there was an unintentional mistake in how the application was processed which rendered the application itself null and void. In his Report he recorded;

"I find that there has been an unintentional mistake. [Mr Ahmed's] application has not been subject to the proper process and is therefore null and void. If it becomes necessary the Executive Council should

exercise their powers as appropriate under Rule B2(1)(vii), Rule C1(2) and Rule C3(6).”

43. I have seen no evidence which shows why Mr Selby’s position changed. Nor do I have any evidence to support Mr Selby’s reasoning for referring this to the EC rather than referring it back to the local area, or for concluding that the application was null and void. I would have found it helpful if Mr Selby had given evidence so that I could explore this issue with him. Mr Rowe told me that he had not been personally involved in the application or Mr Selby’s inquiry. Consequently, I can only rely on the documents which have been provided to me. Those documents support my view that there was a live application in place at the end of January whether or not it had, at that stage, been properly processed. I also find that, if Mr Selby had identified a procedural defect, the proper course of action would have been to arrange for the application to be reconsidered locally in accordance with Rules B2(ii) and B2(iv).

Mr Selby’s Inquiry

44. Mr Selby’s inquiry was not limited to the application process. It also considered the nature of the correspondence which Mr Ahmed exchanged with Mr Newell and other Union officials. Mr Selby concluded that he found some of the emails sent by Mr Ahmed to include slurs and accusations about the union and FBU officials which he (Mr Selby) considered to be offensive. He concluded that:

[Mr Ahmed] is not currently an FBU member. If they were an FBU member, I find I would believe [Mr Ahmed] to have committed offences under Rule G1.

Therefore, I find that it would be unfair on the union-official involved, unfair on [Mr Ahmed] and unsafe for the union to consider the merits of a re-

submitted application from [Mr Ahmed], or to accept [Mr Ahmed] into FBU membership until such time as all on-going proceedings have concluded.

Considering that I consider the content of the communications set out by [Mr Ahmed] to be offensive, I would expect that should [Mr Ahmed] rejoin the Union in the future, Mr Ahmed should at that point be subjected to a fair and thorough Inquiry in accordance with Rule G1.

If, necessary, I recommend the Executive Council exercise their powers accordingly under Rule C(1)2, Rule C3(1) and Rule C3(6).”

45. Mr Selby’s Report was sent to EC members on 5 June 2023 and considered by the EC at its meeting on 14 and 15 June 2023. That report included a number of findings and recommendations.

The Executive Council meeting on 14 and 15 June 2023

46. I have seen two sets of notes from the EC meeting. The first were provided by the Union. The second are Mr Shek’s personal notes. The notes appear to be consistent with each other, although Mr Shek has provided more detail, and so I have assumed that they are both accurate and reliable.

47. The EC took two decisions. Before doing so there was discussion about whether the local and area officials had properly considered Mr Ahmed’s application and the nature and tone of the communications between Mr Ahmed and Union officials. There was also discussion about whether the EC had a power to intervene in a decision which had already been considered by the LRC.

48. Mr Shek proposed that the application should be processed in accordance with the Rules of the Union. His motion was defeated by 7 votes to 6.

49. The EC then voted on a proposal from Mr Skarratts, an EC Member, that the Union should not consider a re-submitted application until such time as all

ongoing proceedings had been concluded. This vote was carried; again by 7 votes to 6.

50. Following the meeting Mr MacFarlane wrote to Mr Ahmed to explain that the EC had decided not to consider, or proceed with, his application until such time as all formal proceedings which involve Mr Ahmed have been concluded. Mr MacFarlane did not explain that Mr Selby had concluded that Mr Ahmed's application had been null and void, nor that the branch and/or the LRC had not followed the proper processes.

51. Mr Rowe told me that the only outstanding proceedings which involved Mr Ahmed, at that time, were the complaint against the official who had racially abused him and an investigation, under the Union's All Different All Equal (ADAE) policy into whether that official should be represented by the Union. Mr Rowe confirmed that Mr Selby's inquiry had been completed before the EC meeting and that no further investigations into Mr Ahmed's application or conduct were ongoing at that time. This was also Mr Shek and Mr Ahmed's understanding of the position. It appears, therefore, that the Union had decided to await the outcome of investigations relating to racial abuse towards Mr Ahmed before considering his application to the Union. I find this surprising. The issue for me, however, is whether the EC had the power to take that decision.

52. Mr Segal argued that the EC did have the power to take that decision and relied on Rule C1(2), Rule C3(1) and Rule C3(6). Read together Rule C1(2) and Rule C3(1) provide that the EC is responsible for the management of the Union and general administration between its Conferences. Rule C3(6) then gives the EC "full power and authority to take such actions as it deems necessary for the conduct of the Union's affairs and the realisation of its objects." That power is, however, subject to the Rules and to the decisions of Conference.

53. Mr Lambe does not dispute this. His view is that Rule B2(1)(iv) is clear that the Brigade Committee, in this case the LRC, is responsible for the final decision on any re-join application within that Committee's area. In his view, Rule C3(6) does not enable the EC to intervene in a re-join application which has been considered by the Brigade Committee. His view is that any member whose rejoin application has been approved by the relevant Brigade Committee should be admitted into the Union.

54. I agree with Mr Lambe that the Rules envisage that the Brigade Committee is the final decision-making body for all re-join applications unless the applicant had been expelled from the Union. The Union appears to agree with this but argues that there are well established principles which mean that union rules should be interpreted with common sense. In Mr Segal's view this means that Rule C3(6) must be read in such a way as to enable the EC to exclude from membership an applicant who was acting inconsistently with the Union's objects whilst the Union investigated that conduct.

55. I do not disagree with Mr Segal that there may be circumstances in which the EC is able to intervene pending an investigation. I do not agree, however, that those principles apply to Mr Ahmed's application.

56. Rule B2(1)(iv) is clear that the Brigade Committee is the decision maker where a former member seeks to re-join the Union. It enables that Committee to "decide whether the application shall be accepted". The Union has made two arguments as to why the EC was able to intervene even though the LRC had already decided to approve Mr Ahmed's application. The first is that the Branch officials had not properly considered the application. If that was the case then it could easily have been rectified locally as I have set out above. If that were the only issue, then I would have expected the application to be referred back to local officials.

57. The second is that it was necessary to conduct investigations into Mr Ahmed's conduct before he was admitted into the Union. My difficulty here is

that Mr Selby's inquiry was completed ahead of the EC meeting. I have seen no evidence that any investigation into Mr Ahmed's conduct was commissioned, or undertaken, after the EC meeting. Mr Rowe, Mr Ahmed and Mr Shek all told me that they were not aware of any investigation after Mr Selby produced his report dated 24 April 2023. Mr Rowe told me that the proceedings referred to in Mr MacFarlane's letter, of 14 July 2023, to Mr Ahmed were an investigation into the conduct of the union official who racially abused Mr Ahmed, and the investigation into whether the union should offer representation to that official.

58. The Union's evidence is, therefore, that there were no outstanding investigations into Mr Ahmed's conduct. That can only lead me to the conclusion that the EC, inadvertently or otherwise, decided to prevent Mr Ahmed from joining the Union during the investigation into the conduct of the union official who he had accused of racial abuse and the investigation into whether that person should be represented by the Union. I do not consider that a common sense reading of Rule C3(6) gives the EC power to take a decision in those circumstances.

Conclusions

59. Consequently, I agree with Mr Lambe that the Union breached Rule C3(6) because the EC acted beyond its powers when rejecting Mr Ahmed's re-join application. In the circumstances of this case any errors in the processing of Mr Ahmed's application could have been dealt with locally and would not have rendered his application null and void. Mr Ahmed had a live application at the time the EC met on 14 and 15 June 2023. The Union's own witness told me that he was not aware of any investigations into Mr Ahmed's conduct after Mr Selby completed his report in April 2023. Nor have I seen any documentary evidence to suggest that any such investigations took place. There were, therefore, no outstanding investigations into Mr Ahmed's conduct.

Enforcement

60. Mr Ahmed has rejoined the Union. There is, therefore, no need for me to require the Union to take steps to remedy the breach which I have found.

61. It is clear to me, however, that there are different approaches to the processing of re-join applications. This was identified by Mr Selby in his report. His initial view was that these could be dealt with through learning points. In his report he recommended that the appropriate processes, principles and rules for re-join applications should be discussed with the relevant Regional Officers and Area Officials. It is also evident, from the EC meeting minutes, that EC members took different views about whether the right approach had been taken locally.

62. Mr Rowe and Mr Shek both told me that Mr Selby's recommendation appears not to have been taken forward. It is not for me to set out how the Union should consider re-join applications. However, it is clear from this case that, whether or not the Rules are clear about where responsibility lies, there is some confusion about how re-join applications should be handled at Branch level. This could easily be resolved through guidance. Consequently, I order that:

The Executive Council consider the recommendation made by Mr Selby that there should be discussions about the processes, principles and rules for re-join applications. The Executive Council should then consider whether it is necessary to issue guidance to Branch, Area and Regional Officials setting out the Executive Council's expectations of the process. The Executive Council should consider these issues, and issue any necessary guidance, on or before 31 December 2024.

Financial Penalty

63. Having reached the decision that the Union has breached its Rules I am required to consider whether I should impose a financial penalty. I sought Mr Lambe and the Union's initial views on this at the Hearing.
64. The Union made no submissions other than that a financial penalty would not be necessary.
65. Mr Lambe was clear that he had brought this complaint only because he had believed that the Union had not properly considered Mr Ahmed's re-join application and may have treated him unfairly. He talked of his passion for the Union and did not want to feel responsible for the Union being required to pay a financial penalty.
66. In my view the Union's actions have had a significant impact on Mr Ahmed who had left the Union following racial abuse by a union official. Mr Ahmed was unable to join the Union for a significant period of time which meant that he was not represented at work and could not contribute to the Union. Mr Ahmed has now re-joined the Union; however, I have seen no evidence as to what changed between June 2023 when the EC met to consider Mr Ahmed's application and the point at which he re-joined.
67. The Union offered only one witness who had not been involved in the events which led to the breach. Consequently, I have relied on documentary evidence and have not been able to understand the reasons why some decisions were taken. It would have helped me to hear from Mr Selby and others involved in the process. That could have included Mr Newell who investigated the complaint of racial abuse and was present at the EC meeting, and Mr Wrack who was clearly involved in communications with Regional Officials in early 2023. Their evidence would undoubtedly have helped my decision making.

68. I am, however, conscious that Mr Lambe, who chairs the LRC and told me that he brought the complaint on behalf of that committee, does not believe that a penalty is necessary. I am also conscious that the Union was dealing with an unusual situation. Additionally, some of the correspondence from Mr Ahmed showed his extreme frustration with the situation and it is understandable that the Union wanted to look into that correspondence.

69. On balance, therefore, I do not think it necessary to impose a financial penalty on the Union. I have considered whether a conditional penalty would be appropriate; however, my Enforcement Order should be sufficient to ensure that there are no such breaches in the future. In line with my current guidance, I may take a different approach to a financial penalty should such a breach occur again.

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

Sarah Bedwell

The Certification Officer