

D/8/24-25

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

Embery (4)

v

Fire Brigades Union

Date of Decision

28 October 2024

Contents

Decision.....3

Background.....3

The relevant statutory provisions5

The relevant rules of the Union6

Considerations and conclusion.....28

Decision

1. Upon application by Mr Paul Embery (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”): I do not uphold Mr Embery’s application for a declaration that the Union breached Rule G3(2)(ii) in the manner set out in paragraph 3 below because I have no jurisdiction to consider the application.

Background

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

On or around 13 February 2024, the union breached rule G3(2)(ii) of its rule book, in that the executive council decided to terminate disciplinary proceedings in respect of complaints brought by the vice-president against Matt Wrack and Riccardo la Torre. The effect of the executive council’s decision was that a disciplinary hearing did not take place to consider the complaints.

4. A hearing took place by Video Conference on 3 October 2024. Mr Embery represented himself. He submitted a skeleton argument. 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 gave oral witness evidence.
5. There was also in evidence a bundle of documents consisting of 212 pages, including the Union’s rules and the “All Different All Equal” (“ADAE”) policy.

Agreed facts

6. The following facts were agreed following a Case Management Meeting on 4 September 2024.
7. On 10 June 2022, Paul Embery registered a legal claim of defamation against Riccardo la Torre, a National Officer of the FBU (“the defamation claim”). Mr la Torre instructed solicitors to defend the claim.
8. The FBU’s Executive Council (the EC) met on 6 July 2022. Matt Wrack (General Secretary of the FBU) and Mr la Torre were present at that meeting. Ben Selby, then an EC member, proposed that the Union should fund the initial stage of Mr la Torre’s defence against the defamation claim. The EC agreed to the proposal and to keep the funding under review.
9. Mr la Torre did not, at any stage, make an application to the FBU to fund his claim.
10. On 8 January 2024, Mr Embery complained to Steve Wright (Vice President of the FBU) that Mr la Torre and Mr Wrack had breached Rule G1(1)(vi) by not following the ADAE policy when the EC decided to fund Mr la Torre’s defence of the defamation claim.
11. Mr Wright investigated Mr Embery’s complaint. On 29 January 2024, he submitted two reports of his preliminary inquiries to Ben Selby who had, by that date, been appointed as Assistant General Secretary. Mr Wright concluded that both Mr la Torre and Mr Wrack had committed an offence, under the Union’s rules, and made recommendations about the disciplinary sanctions which should be applied.
12. On receipt of the reports Mr Selby arranged an EC meeting and a disciplinary hearing to consider Mr Wright’s investigations.
13. Mr Wrack wrote to Mr Selby on 2 February 2024. He raised a number of serious concerns about the process being followed. He explained that Mr

Selby should seek advice on some of those concerns and that the concerns would need to be addressed by the EC.

14. On 3 February 2024, Mr Selby wrote to Thompsons Solicitors, seeking counsel's views to assist him in advising the Executive Council on how to proceed. On 6 February Thompsons instructed Lord Hendy KC and Nick Toms. They provided their advice on 9 February 2024.
15. Mr Selby arranged an EC meeting on 13 February 2024 to consider counsel's advice. Mr Wright, Mr Wrack and Mr la Torre were not present at that meeting. The EC agreed a proposal, made by Les Skarratts, to discontinue the disciplinary process against Mr Wrack and Mr la Torre.
16. The disciplinary process against Mr Wrack and Mr la Torre was discontinued.

Issue of jurisdiction raised by the Union

17. In its skeleton argument, the Union submitted that I did not have jurisdiction to hear the complaint. It was therefore agreed at the case management meeting that the parties would address the question of the Certification Officer's jurisdiction (section 108A(5) of the 1992 Act) as part of their submissions at the hearing.

The relevant statutory provisions

18. 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;

...

(5) No application may be made regarding—

a) the dismissal of an employee of the union;

b) disciplinary proceedings against an employee of the union.

The relevant rules of the Union

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

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)

(2) The President shall preside at the meetings of the Executive Council. The Vice-President shall be a member of the Executive Council and shall preside in the absence of the President. The National Treasurer shall be a member of the Executive Council. The General Secretary and Assistant General Secretary and other full-time officials

shall attend in an advisory capacity. Seven voting members shall form a quorum.

- (3) Executive Council members shall be elected to office for four years. Following a term of office members shall be eligible to seek re-election.
- (4) The Executive Council shall meet not less often than once every three months.
- (5) Any member who fails to attend a meeting without offering a satisfactory reason may be removed from office. In the event of the enforced absence of a member either through prolonged illness, removal from office, prolonged family care leave or when the Executive Council post is vacant awaiting election, the Executive Council will appoint a Regional Official, who has been nominated by the Regional Committee from the affected Region, to act in place of that member. This Regional Official shall be afforded full voting rights at the meetings of the Executive Council.
- (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.
 - (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 D4 The General Secretary

- (1) The General Secretary shall conduct the business of the Union in accordance with the rules and act under the instructions of the Executive Council

Rule G1 Internal Union Discipline

(1) Offences

A member of the Union commits a disciplinary offence if that member:

- (i) Knowingly proposes or seconds an application for membership containing false statements;
- (ii) Wrongly or fraudulently receives or misapplies funds of the Union;
- (iii) Acts contrary to or fails to carry out instructions of the Executive Council;
- (iv) Discriminates against, harasses or bullies another whether on the grounds of race, creed, sex, sexual orientation or otherwise;
- (v) Fails to pay any fine imposed under this rule within two months of the conclusion of proceedings, without good and sufficient reason;
- (vi) Acts contrary to or fails to carry out or comply with the policies and/or rules of the Union;
- (vii) Acts in any way prejudicial to the interests of the Union;
- (viii) Is or becomes a member of, or acts or campaigns on behalf of, any racist or fascist political party or organisation.
- (ix) Seeks or accepts promotion or monetary inducements from a Fire and Rescue Service as a direct outcome of holding/or assuming office within the Union.

(2) Discipline at Regional Level

- (i) If a member believes another member, who may belong to a different Region (the defendant), has committed a disciplinary offence, he/she shall submit a written complaint setting out

details of the defendant's conduct to the defendant's Regional Secretary.

(ii)

- a) Upon receipt of such a complaint, subject to (d) and (e) below, the Regional Secretary shall consider whether a preliminary investigation of the complaint is necessary.
- b) If the Regional Secretary is of the opinion that a preliminary investigation is necessary he/she shall appoint an official of the Union (the investigator) to conduct such investigation. At this stage the defendant should be informed, in writing, of the complaint made against the member.
- c) If the Regional Secretary is of the opinion that a preliminary investigation is not necessary he/she shall convene a Regional Committee meeting for the purpose of a hearing to consider the complaint.
- d) If arising out of or directly related to the subject matter of the complaint, the Regional Committee has already determined or is in the process of determining whether or not any member should be granted representation, the member complained against shall have the option to have the complaint investigated and heard by a different Regional Committee. Where this applies, upon receipt of the complaint pursuant to Rule G1(2)(ii)(a) and before an investigator is appointed or other decision is taken, the Regional Secretary shall notify the member complained against of their right.
- e) Where (d) applies, the member complained against has 14 days from receipt of the notification from the Regional Secretary referred to in (d) to exercise that right by notifying

the General Secretary in writing. The General Secretary will then decide which alternative Region will be responsible for conducting the proceedings at regional level throughout. Subsequent references to the Regional Committee or Regional Secretary shall be treated as references to the Region so nominated by the General Secretary.

(iii)

Upon conclusion of a preliminary investigation under Rule G1(2)(ii)(b) above the investigator shall report in writing to the Regional Secretary that:

Either

- a) In the opinion of the investigator there are insufficient grounds to proceed with the complaint further, whereupon the Regional Secretary shall notify the member who submitted the complaint that no further action will be taken upon it, the defendant shall also be notified of this decision; or
- b) That in the opinion of the investigator the complaint should proceed further, whereupon the Regional Secretary shall convene a Regional Committee meeting for the purpose of a hearing to consider the complaint.

(iv) The Regional Committee may resolve to:

- a) Dismiss the complaint;
- b) Find the complaint justified and penalise the defendant.

(v) The penalties available to the Regional Committee shall be:

- a) A reprimand;
- b) A fine not exceeding 40 percent of a Firefighter's (competent) weekly rate of pay;
- c) Where the defendant is a candidate in a current election; the Regional Committee may choose to recommend to the Executive Council that the defendant may be disqualified from standing in that election;
- d) To recommend to the Executive Council that the defendant be debarred from standing for Union office for a specified period of time. For the avoidance of doubt this may be in addition to, or in place of, a penalty awarded as described in paragraph (a) or (b) in this Rule
- e) To recommend that the defendant should be expelled from membership of the Union.

(vi) As soon as is practicable, the Regional Secretary shall notify the defendant in writing of the resolution and if that resolution is to recommend expulsion the Regional Secretary shall send to the General Secretary:

- a) Within 14 days, a written report of the Regional Committee proceedings;
- b) As soon as is practicable, a copy of the Regional Committee's minutes recording the hearing and resolution.

(vii) Any member who is found guilty of an offence under Rule G1(1)(iv) and who is not expelled, will be automatically barred from holding Union office at any level.

(3) Discipline at Disciplinary Committee level

(i) The Disciplinary Committee shall be a committee of the Executive Council and shall comprise four members of the Executive Council as nominated by the Executive Council from time to time and the President who shall chair the meeting and who shall be entitled to a casting vote only.

(ii)

a) The Secretary to the Disciplinary Committee shall be a National Officer nominated to that post by the General Secretary from time to time.

b) The Secretary shall not be a member of the Disciplinary Committee nor have a vote at its meetings, but shall be present at its meetings to take minutes and advise on procedure.

(iii) If a member of the Executive Council believes (which belief he/she may form after conducting a preliminary inquiry) that a Regional Committee has failed, or will fail, to deal with a disciplinary complaint, he/she shall submit a written complaint setting out that belief and details of the defendant's conduct to the Secretary to the Disciplinary Committee.

At this stage the defendant should be informed in writing, by the Executive Council member, of the complaint made against the member.

(iv) Upon receipt of a report from a Regional Committee under Rule G1(2)(vi)(a) or a complaint under Rule G1(3)(iii), the Secretary to the Disciplinary Committee shall convene a

meeting of the Committee for the purpose of a hearing to consider the report or complaint.

(v) The Disciplinary Committee may resolve to:

- a) Dismiss the report or complaint;
- b) Find the report or complaint justified and penalise the defendant.

(v) The penalties available to the Disciplinary Committee shall be:

- a) A reprimand;
- b) A fine not exceeding 40 percent of a Firefighter's (competent) weekly rate of pay;
- c) Where the defendant is a candidate in a current election, the Disciplinary Committee may choose to disqualify the defendant from standing in that election;
- d) To debar the defendant from standing for Union office for a specified period of time. For the avoidance of doubt this may be in addition to, or in place of, a penalty awarded as described in paragraph (a) or (b) in this Rule;
- e) To expel the defendant from membership of the Union.

(vi) As soon as is practicable, the Secretary to the Disciplinary Committee shall notify the defendant in writing of the resolution and of any right of appeal. (viii) Any member who is found guilty of an offence under Rule G1(1)(iv), and who is not expelled, will be automatically barred from holding Union office at any level.

(4) Appeals

- (i) There shall be a right of appeal:
 - a) From the Regional Committee to the Disciplinary Committee when the Regional Committee has imposed a fine;
 - b) From the Disciplinary Committee to the Final Appeals Committee when the Disciplinary Committee has debarred the defendant from standing for Union office or expelled the defendant from membership of the Union.
- (ii) Final Appeals Committee:
 - a) The Final Appeals Committee shall be comprised of one Regional Official from each Region of the Union, plus one National Chair or Secretary from each of the National Sectional Committees;
 - b) Each Regional Committee/National Sectional Committee shall nominate to Conference for endorsement, a Regional Official/National Sectional Chair or Secretary to serve on the Final Appeals Committee. Should an official in between Conferences, resign or retire from office, or become ineligible, the Regional/National Sectional Committee will nominate an eligible official as a replacement which shall be endorsed by the Executive Council, to serve on the Final Appeals Committee until the next Conference;
 - c) Upon endorsement by Conference/Executive Council that Official shall serve as a member of the Final Appeals Committee until the next Conference;

- d) The quorum of the Final Appeals Committee shall be 50 percent of its total membership;
- e) The Final Appeals Committee shall elect one of its members as Chair and the General Secretary shall nominate a National Officer as its Secretary (who shall not be the National Officer who acted as Secretary to the Disciplinary Sub-Committee in its proceedings relating to the resolution under appeal) on each occasion it is required to meet;
- f) The Secretary shall not be a member of the Final Appeals Committee nor have a vote at its meetings, but shall be present at its meetings to take minutes and advise on procedure.

(iii) The Appeal:

- a) For the purposes of this paragraph, the Disciplinary Committee and Final Appeals Committee shall be known as “the Appeals Committee”;
- b) The defendant shall submit the appeal in writing (Notice of Appeal) specifying the grounds of the appeal;
- c) The time limit for an appeal shall be 14 days from the date the written notice of the resolution against which the appeal lies was sent to the defendant;
- d) It is the defendant’s responsibility to ensure that the Notice of Appeal complies with this paragraph and is received by the Secretary to the Appeals Committee within the time limit;

- e) Upon receipt of a Notice of Appeal the Secretary to the Appeals Committee shall convene a meeting of that committee for the purpose of a hearing to consider the appeal. He/she shall also require the Secretary of the committee against whose resolution the appeal lies to forward to him/her a report of that committee's proceedings and a copy of its minutes, recording the hearing and resolution;
- f) The Appeals Committee may resolve to dismiss the appeal or uphold the appeal and it may substitute a lesser penalty;
- g) Any decision of the Appeals Committee shall be final;
- h) As soon as is practicable, the Secretary to the Appeals Committee shall notify the defendant in writing of the resolution of the Appeals Committee.

(5) Convening of Meetings

- (i) Whenever the convening of a meeting is required by this rule, the procedure set out below shall be followed. For the avoidance of doubt, the meeting may be an ordinary meeting of the committee concerned or a meeting called especially for the purpose of the disciplinary proceedings, at the discretion of the Secretary to that committee.
- (ii) The Secretary shall as soon as practicable send written notice of the meeting securely by post to the defendant at his/her last known address not less than 21 days before the meeting. In addition, where the member's email address is available, the Secretary shall also send the notice electronically.

(iii) The notice of the meeting sent to the defendant shall be dated and shall specify:

- a) The date, time and place of the meeting;
- b) The purpose of the hearing;
- c) Details of the alleged offence sufficient to enable the defendant to appreciate the nature of the case against him/her;
- d) His/her right to attend, make verbal submissions, call witnesses and submit documentary evidence;
- e) His/her right to be represented by himself/herself or another member of his/ her choice (subject to that nominated member's agreement);
- f) His/her right to make written submissions;
- g) That his/her reasonable travelling expenses will be met; his/her representative's reasonable travelling expenses will be met;
- h) That the proceedings may ultimately lead to his/her expulsion from membership of the Union;
- i) That the meeting may proceed in his/her absence unless he/she submits written reasons showing good cause why he/she cannot attend;
- j) That he/she should acknowledge receipt and state within 10 days of the date of the notice whether he/she intends to attend the meeting. If acknowledgement is

not received within 10 days, the meeting shall proceed as set out in the written notice of the meeting;

k) That he/she is requested to forward copies of any documents to which he/ she will refer, to the Secretary;

l) And shall enclose a copy of any report submitted by the investigator under Rule G1(2)(iii)(b).

(iv) If, in the opinion of the Secretary there is good cause why he/she cannot attend, the hearing shall be postponed to a future meeting.

(v) Copies of any additional documentary evidence in his/her possession, received after the notice has been sent in accordance with these rules, shall also be sent to the defendant by the Secretary as soon as is practicable and, in any event, at least seven days before the meeting.

(vi) The Secretary shall send written notice of the meeting at least seven days before the meeting to the complainant and to those who are members of the committee holding the meeting. This notice shall include copies of the notice sent to the defendant, any Notice of Appeal, the complaint or report, relevant minutes of any previous hearing and any documentary evidence in the Secretary's possession.

(6) Hearings

(i) For the purpose of all hearings under this rule the provisions set out below shall apply.

(ii) The following may not be present except as complainant, complainant's assistant, defendant, defendant's representative or witnesses:

- a) At Regional Committee level: members of the defendant's Brigade (or agreed areas within Scotland, Northern Ireland, and London);
- b) At Disciplinary Committee and Final Appeals Committee level: members of the defendant's Region. This provision includes those who would normally attend meetings as members of the above committees save that at Regional Committee level, the Executive Council member and any Regional Official who is a member of the same Brigade (or agreed areas within Scotland, Northern Ireland, and London)' as the defendant may be present and participate in the proceedings and save that at Disciplinary Committee level, the President may be present and chair the meeting if he/she has not previously participated in the proceedings at regional level (in which case references in Rule G1(3) to President shall be taken as Vice-President).

The complainant, complainant's assistant, defendant, defendant's representative and witnesses shall withdraw from the hearing upon the conclusion of the presentation of evidence and submissions on behalf of both sides and shall not play any part in the discussion or debate upon the resolution before the committee holding the hearing.

(iii) The following shall act as complainant:

- a) At the Regional Committee: the member making the complaint save that if an investigator has been appointed under Rule G1(2)(ii) the complainant shall be the investigator.

- b) On report or appeal to the Disciplinary Committee and Final Appeals Committee level: an Executive Council or Regional Committee member nominated by the Regional Committee.
- (iv) The complainant may appoint an assistant who shall be a member of the Union to help him/her in the presentation of the case, but any such assistant shall have no speaking rights at any hearing under this rule.
- (v) The procedure adopted at the hearing shall be in accordance with such guidance notes as the Executive Council may approve from time to time.
- (vi) All hearings on report or appeal shall be by way of full rehearing and new evidence shall be admissible at the discretion of the Chair.
- (7) (i) The defendant may be represented at any hearing under this rule by another member of the Union (except a full-time official) if that member is willing to act as his/her representative.
- (ii) The defendant shall notify the Secretary to the committee holding the hearing of the name, address, and email address (if available) of his/her representative as soon as is practicable and, in any event, at least seven days before the hearing.
- (8) Where a disciplinary decision taken under this rule can be the subject of an appeal, it shall not take effect until either the time limit for appeal has expired and no appeal has been entered or the appeal has been dismissed. In all other cases the decision shall have immediate effect.

(9) For the avoidance of doubt, nothing in this rule shall in any way limit or fetter the powers of the Executive Council set out in Rule C3 and in the case of conflict between this rule and Rules G2 and G3, this rule shall be subordinate.

(10) For the avoidance of doubt, if a disciplinary complaint or report lies against a Regional Secretary, references above to the Regional Secretary shall be taken to read Regional Chair.

(11) For the purpose of this rule, “member” shall include Ordinary, Retired and Out of Trade, and Honorary members

Rule G3 INTERNAL UNION DISCIPLINE: EXECUTIVE COUNCIL MEMBERS, PRESIDENT, FULL-TIME OFFICIALS AND NATIONAL SECTIONAL OFFICIALS

(1) (i) If the Vice-President believes (which belief he/she may form after conducting a preliminary inquiry) that the national secretary or national chair of one of the six national sectional committees, an Executive Council member, the President, or a full-time official (the defendant) has committed an offence contrary to Rule G1(1), he/she:

(a) May suspend the defendant from all or any office or position he/she holds in the Union;

(b) Shall as soon as practicable send a written complaint to the General Secretary setting out details of the defendant’s conduct and action taken to suspend the defendant.

(ii) If a defendant is suspended from office he/she shall be ineligible to stand for election to any post within the Union pending the outcome of proceedings under this rule.

- (iii) If the Vice-President suspends a defendant, he/she may take such steps as he/ she considers necessary to ensure the good management of the Union pending the outcome of proceedings under this rule.
 - (iv) If a full-time official is suspended under this rule, that suspension shall be on full pay.
 - (v) Should the election for an office from which the defendant has been suspended fall due during the period of suspension then that election shall also be suspended pending the outcome of proceedings under this rule, as shall the election for any other office for which the defendant is, or would be, but for the operation of this rule, eligible to stand.
 - (vi) A defendant, suspended under this rule shall not attend or call meetings of the 60 FBU Rule Book 2022 Union or represent the Union in any capacity as an Executive Council member, national sectional official or full-time official but may continue to receive such honoraria and allowances and such Union papers marked “for information only” as he/she would have received but for his/her suspension.
 - (vii) A defendant suspended under this rule shall not attend the premises/offices of the Union, unless requested to do so by the Vice-President or another National Official.
- (2) (i) Upon receipt of a complaint under G3(1) the General Secretary shall convene a meeting (which may be an ordinary meeting) of the Executive Council to take place within 48 hours of the receipt of the complaint by him/her for the sole purpose of giving a report of the complaint and of the reasons for any suspension to the Executive Council.
- (ii) Thereafter the General Secretary shall convene a meeting (which may be an ordinary meeting) of the Executive Council in accordance with Rule G1(5) which shall commence within 28 days of the conclusion

of the meeting referred to at Rule G3(2)(i) for the purpose of a hearing to consider the complaint. In addition to the matters referred to in Rule G1(5) the notice of the meeting sent to the defendant shall also inform him/her that the proceedings may lead to him/her being permanently debarred from office in the Union. If the defendant is a full-time official the notice of the meeting sent to him/her shall also inform him/her that the proceedings may lead to his/her dismissal from the Union's employment.

(3) (i) Save as appears below the hearing shall be in accordance with Rule G1(6).

(ii) The complainant shall be the Vice-President.

(iii) The Executive Council shall consider the disciplinary complaint against the defendant and shall make a resolution to either

(a) Dismiss the report or complaint; or

(b) Find the report or complaint justified and penalise the defendant. The penalties available to the Executive Council shall be:

(a) A reprimand;

(b) A fine not exceeding 40 percent of a Firefighter's (competent) weekly rate of pay;

(c) Where the defendant is a candidate in a current election, the Executive Council may choose to disqualify the defendant from standing in that election;

(d) To debar the defendant from standing for Union office for a specified period of time. For the avoidance of doubt this may be in addition to, or in place of, a penalty awarded as described in paragraph (a) or (b) in this Rule;

- (e) To debar the defendant from standing for Union office permanently.
For the avoidance of doubt this may be in addition to, or in place of, a penalty awarded as described in paragraph (a) or (b) in this Rule;
 - (f) To expel the defendant from membership of the Union; and
additionally
 - (g) In the case of a full-time official, dismissal, which penalty may be imposed in addition to (f) above. If the defendant is suspended and the decision does not include a penalty of debarment then he/she shall be, subject to penalty, returned to office and the suspension lifted.
- (4) (i) There shall be a right of appeal from the Executive Council to Conference when the Executive Council has expelled the defendant from membership of the Union or debarred him/her from holding office, or, in the case of a full-time official, where FBU Rule Book 2022 61 the Executive Council has dismissed him/her, or declared him/her disqualified for standing in an election for the post that he/she currently occupies.
- (ii) The Where the appeal lies to Conference.
- (a) The appeal shall be considered at the meeting (which may be an ordinary meeting or especially recalled for this purpose at the discretion of the General Secretary) of the Conference immediately subsequent to the meeting of the Executive Council which made the resolution against which the appeal lies;
 - (b) The defendant shall submit a Notice of Appeal to the General Secretary in accordance with Rule G1(4)(iii)(b) to (e);
 - (c) Upon receipt of a Notice of Appeal the General Secretary shall circulate to delegates to Conference at least seven days before the start of Conference (unless it is impractical to do so and then at the earliest

opportunity) a copy of the defendant's Notice of Appeal and a copy of the relevant part of the Executive Council minutes;

(d) At the meeting of Conference the defendant (or his/her representative) shall be afforded an opportunity to address the Conference;

(e) Following on from the defendant, the complainant shall be afforded an opportunity to address the Conference;

(f) In response to the complainant, the defendant may make closing remarks;

(g) Immediately after which without debate the President shall put the Notice of Appeal to the vote either as a whole or in parts at his/her discretion. The Conference may uphold or dismiss the appeal and may not substitute its own decision for that of the Executive Council. The decision of Conference shall be final.

(iii) Any official, as defined by Rule G3, who is found guilty of an offence under Rule G1(1)(iv), and who is not expelled, may be barred from holding Union office at any level

(iv) Where the defendant is a candidate; and the defendant is found guilty of wilfully carrying out canvassing activity, or other activity, in respect of that election which is contrary to any rule, or policy agreed by Conference and/or the Executive Council that governs canvassing and elections the Executive Council may choose to disqualify the defendant from standing in that election.

(5) For the avoidance of doubt:

(i) A decision to reinstate a full-time official either under Rule G3(3) or on appeal shall have the effect of entitling him/her to continuity of employment, pension rights, back pay, and any other emoluments to

which he/she would have been entitled under his/her Contract of Employment as if he/she had never been dismissed.

ii) A decision to reinstate any defendant to office shall not affect the term of office which shall expire on the same date as if the suspension had not occurred.

(6) For the avoidance of doubt:

(i) A decision to appeal that allows a full-time official to stand in an election the outcome of which shall determine whether or not he/she is elected to serve a further term in his/her current position shall have the effect of entitling him/her to continuity of employment, pension rights, back pay, and any other emoluments to which he/she would have been entitled under his/her Contract of Employment as if the original decision had not taken place.

(ii) The Executive Council will take any necessary measures such as the scheduling of the election, expiry date of the term of the office.

(7) For the avoidance of doubt if the complaint lies against the Vice-President then references above to the Vice-President shall be taken as National Treasurer and if the complaint lies against the General Secretary then references above to the General Secretary shall be taken as Assistant General Secretary.

(8) Any resolution under this rule shall take effect at the same time as provided by Rule G2(6), save that any decision of the Executive Council to dismiss a full-time official shall have immediate effect.

(9) The defendant has the right to representation under this rule as set out in Rule G1(7), save that if the defendant is a full-time official he/she may be represented by a full-time official if that official is willing to act as his/her representative.

(10) Nothing in this rule shall prevent a member of the Union instituting disciplinary proceedings against an Executive Council member or full-time official under Rule G1 unless proceedings under this rule have already commenced in which case no proceedings may be brought under Rule G1 pending the outcome of proceedings under this rule.

Considerations and conclusion

Jurisdiction

20. Section 108A (1) and (2) of the 1992 Act enables me to consider applications from union members about a Union's disciplinary procedures. Mr Embery's application relates to disciplinary procedures brought against Mr Wrack, the Union's General Secretary and Mr la Torre, a National Officer. Both Mr Wrack and Mr la Torre are employees, and members, of the Union. Mr Embery is also a member of the Union.

21. Section 108A (5) of the 1992 Act, however, excludes me from considering applications which relate to the dismissal of an employee from a Union and disciplinary proceedings against an employee of a Union. Mr Embery's position is that this does not prevent me from considering his application because, in his view, the incidents he complained about related to Mr Wrack and Mr la Torre's actions as members and because the Union took disciplinary action under its membership procedures (rather than its employee disciplinary procedures). Mr Segal explained that, in his view, I was precluded from considering the complaint because the actions related to their employment rather than their membership. Both parties drew my attention to the decisions in *Hicks v Unite the Union (No 2)* (D32-39/14-15) in making their arguments.

22. In *Hicks v Unite* (at paragraph 108) my predecessor, Mr Cockburn, reached the conclusion that section 108A(5) precluded him from considering a complaint about disciplinary procedures in relation to the applicant's

employment but did not preclude him from dealing with complaint about a disciplinary procedure which arose only from the applicant's membership of a Union. He reached the following conclusion:

In my judgement, the correct interpretation of sub-section 5(b) is that it must be read consistently with sub-section 5(a) to mean that no application may be made to the Certification Officer regarding disciplinary proceedings taken against an employee of the Union in his/her capacity as an employee. Accordingly, as the disciplinary proceedings that Mr Hicks wished to pursue against Mr Turner were in Mr Turner's capacity as a member of the Union I find that I am not precluded by section 108A(5)(b) from considering this complaint.

23. Both parties agree that this case is relevant and neither disputed Mr Cockburn's finding. Both also believed that Mr Cockburn's finding supported their position. Mr Segal told me that the disciplinary procedures clearly related to Mr la Torre's and Mr Wrack's employment. Mr Embery explained that they were clearly related to their union membership and that, even if this were not the case, the charges had been taken forward, and then discontinued, under the union's member disciplinary procedures.

24. I cannot agree with Mr Embery that the Union's decision to take his complaint forward under its member disciplinary procedures is, on its own, sufficient to disable the exclusion in section 108A(5). The purpose of that section must be to prevent me from intervening in issues which relate to employment and are properly reserved to the Employment Tribunal. If I were to accept Mr Embery's argument then a union may be able to circumvent employment law by following the member disciplinary procedures, rather than its employment procedures, where it was able to do so. That cannot be right, and so it follows that the union's choice of disciplinary procedure, whether member or employee, should not be a deciding factor as to whether section 108A(5) applies. I would add that, Mr Embery's position may also enable union

members, who are also employees, to raise parallel complaints to my office and the Employment Tribunal which cannot be right.

25. This means that the only question for me, on jurisdiction, is whether the fact that Mr la Torre did not apply for funding under ADAE, and Mr Wrack did not ensure that Mr la Torre did so, relates to their employment or their union membership.
26. Both parties agree that Mr Wrack and Mr la Torre are employed by the Union. The role of the employer is, in practice, undertaken by the EC. Mr Rowe told me that Mr Wrack is Mr la Torre's line manager and that Mr Wrack reports directly to the EC. The membership of the EC is set out in Rule C3. Neither Mr Wrack nor Mr la Torre are members of the EC but attend, in an advisory role, in their official capacity as General Secretary and National Officer respectively. This is set out at Rule C3(2). This is consistent with Mr Segal's position that both Mr Wrack and Mr la Torre were acting as employees, rather than members, when attending the meeting. The Rules do not give anyone a right to attend EC meetings by virtue of their union membership alone.
27. The minutes of the meeting on 6 July 2022 show that the EC were informed about, and discussed, the defamation action brought by Mr Embery. The minutes also show that Mr Selby, an EC Member at that time, proposed that the Union should fund Mr la Torre's defence of the action and that this was agreed, subject to review, by the EC. I have seen nothing which disputes this evidence.
28. Mr Embery told me that the ADAE policy applies to all members and that consequently any breach of that policy must be a membership issue. The Union agrees that the policy applies to all members, including the General Secretary and National Officials. Mr Segal did not agree, however, that this meant that any allegations of breaches of the policy were automatically within my jurisdiction. He explained that Mr Wrack and Mr Rowe had attended the

EC meeting as employees, and that the offer of funding was made to Mr la Torre as part of his employment relationship.

29. Dealing first with Mr la Torre. He was the subject of a defamation claim and had been, until the relevant EC decision, funding his own defence. The EC, his employer, offered to fund the initial stages of his defence and had agreed to keep the position under review. Mr Embery appears to believe that Mr la Torre should have either refused the payment or made an application under the ADAE policy for such funding. It is worth noting that there is a difference of opinion as to whether the ADAE policy applied to the defamation action. I have, however, seen no evidence that anyone, including Mr Embery, considered that the ADAE policy applied to the defamation action at the time that action was taken, or at any point until the defamation action was discontinued and Mr Embery made his complaint. Even if it did, however, it is clear to me that Mr la Torre was an employee of the Union who was offered funding by his employer. Consequently, I agree with Mr Segal that any decision to accept, or refuse, that funding was made in the context of Mr la Torre's employment and is, therefore an employment matter. It is also worth noting that Mr Embery has not provided any evidence which suggests that this was not the position.

30. Mr Embery's complaint about Mr Wrack was that he did not intervene, whether at the meeting or afterwards, to ensure that Mr la Torre made an application under ADAE. Like Mr la Torre, Mr Wrack attended the EC meeting as an employee and played no part in the decision making to offer funding to Mr la Torre. Mr Embery appears to believe that, as General Secretary, Mr Wrack was under an obligation to ensure that Mr La Torre made an application for funding. There is a dispute as to whether Mr Wrack was under such an obligation; however, if this was the case and the obligation arose from his employed role as General Secretary then any action, or any failure to take action, arising from that obligation would be an employment issue.

31. On that basis I can only reach the conclusion that the disciplinary action, which is the subject of Mr Embery's complaint to me, related to Mr Wrack and Mr La Torre's employment. Consequently, this application is outside my jurisdiction.

32. Mr Embery asked me to take into account my decision in *Armstrong v Unite the Union* (D/24/18-19). That case, however, related to a rule which prevented the Union from charging a union member, under its membership disciplinary procedures, for actions relating to their union employment. As Mr Embery acknowledged there is no similar FBU Rule and so I do not consider that case to be relevant here.

The Complaint

33. The Union did not raise the issue of jurisdiction until Mr Segal made written submissions ahead of the case management meeting on 4 September 2024. I would normally hear such submissions at a preliminary hearing but, as Mr Embery's complaint was already listed for a hearing and the witness evidence and written submissions had been prepared, I decided, and both parties agreed, to consider the jurisdiction at the same time as the substantive complaint. It, therefore, seems sensible for me to record my views as to whether the Union acted in breach of its Rules. This may prevent a re-hearing should Mr Embery successfully appeal my decision on jurisdiction.

34. The FBU disciplinary Rules are set out in Rule G. Rule G is headed Internal Union Discipline. Rule G1 sets out the process for members of the Union, Rule G3 sets out how the process differs where the defendant holds a position such as National Officer or General Secretary. Mr Embery made his complaint under Rule G3 and the Union followed the process set out under that Rule.

35. Mr Embery's position is that, once the EC had received Mr Wright's reports (see paragraphs 11 and 12 above) and listed the case for a disciplinary

hearing, the EC had no power to discontinue the process ahead of the disciplinary hearing. In his view, Rule G3(2)(ii) required the EC, having received the complaint, to hold a hearing at which the EC would reach a decision as to what, if any, disciplinary action was required. In Mr Embery's view no other course of action was permitted under the Rules and any other course of action must amount to a breach of Rule.

36. I find Mr Embery's position somewhat difficult to accept. He acknowledged that the decision makers at a hearing would be the EC and that, had they proceeded to a disciplinary hearing, the EC would have been entitled to reach the conclusion that no action was required. He explained that, had there been a hearing, there would have been an opportunity for Mr Wright to explain why he reached his conclusions and to explore the legal advice which the Union had obtained and that this may have led to a different conclusion.

37. That might have been the case; however, I can only consider whether the Union's actions amounted to a breach of Rule. Mr Segal asked me to consider two points. The first was whether Rule C3(6) and Rule G1(9) enabled the EC to depart from the usual disciplinary process. The second was whether, taking into account common sense and natural justice, the EC was entitled to discontinue proceedings ahead of a Hearing under Rule G3(2)(ii).

38. Rule C3(6) gives the EC "full power and authority to take such decisions as it deems necessary for the conduct of the Union's affairs and realisation of the objects set out in Rule A2". That power is limited by the phrase "subject to these Rules and the decisions of conference". I have considered this Rule in a previous complaint, *Lambe v FBU (D/2/24-25)*. In that case I did not consider that circumstances existed which meant that a common sense reading of Rule C3(6) enabled the EC to depart from a decision which had been properly taken by a Regional Committee.

39. Mr Embery's complaint is, however, very different to that brought by Mr Lambe. In this case, the EC had received legal advice which advised the EC that the disciplinary procedures were misconceived and that proceeding with them carried significant risk to the Union. The EC itself would have been the decision maker had the case proceeded to a disciplinary hearing. They were not, therefore, taking a decision which the Rules had reserved to another Committee. They also had to take into account their responsibilities as an employer including their duty of care and statutory obligations under employment law.

40. I am satisfied, therefore, that the EC were entitled to reach the decision to discontinue the proceedings by relying on Rule C3(6). There may have been other options open to them, including proceeding to a hearing, however they were entitled to take the decision to discontinue.

41. In reaching this view I have taken into account G1(2)(ii). A common sense reading of that Rule is that Rule G1, G2, and G3 do not fetter the EC's powers in any way. Consequently, the EC must, where necessary, be able to depart from the procedures set out in the rules. When relying on this power I would expect the EC to be able to justify its decision. It is clear from the minutes of the EC meeting on 13 February 2024 that the EC considered its decision, carefully considered the advice and explored the options which were available to them.

42. I am satisfied, therefore, that the Union did not breach its Rules in the manner set out by Mr Embery.

Observations

43. Mr Embery's complaint to the Union related to Mr Wrack and Mr la Torre's adherence to the ADAE policy following the EC's decision to fund Mr la Torre's defence of the defamation action. I have seen no evidence that anybody, including Mr Embery, believed that the ADAE policy was relevant to

the defamation claim until Mr Embery made his complaint to the Union. That was several months after he brought the action and after it had been discontinued. I have not considered whether the policy was relevant as I have not needed to do so. My reading of the policy, however, is that it requires those seeking funding to make an application. I have seen no evidence that Mr la Torre sought funding.

44. Mr Embery raised a number of questions about the legal advice considered by the EC. The issue for me is not, however, the nature of the advice nor whether the EC were right to act on the advice. The only question for me is whether the EC were entitled to take the decision to discontinue the disciplinary process.

45. The only witness evidence available to me was that provided by Mr Rowe. He was not personally involved in the decision making following Mr Embery's complaint to the Union. As I recorded in *Lambe v FBU* my consideration of this case would have been assisted if those directly involved in the incidents complained about, including Mr Embery, gave evidence orally. It would enable both parties, and myself, to ask relevant questions which may not be addressed in the documentary evidence.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', is written over a horizontal line. The signature is enclosed in a thin black rectangular border.

Sarah Bedwell
The Certification Officer