

D/9/24-25

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

Pinder

V

GMB

Date of Decision

27 November 2024

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## **Decision**

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

I refuse to make the declaration requested by Ms Pinder that the Union had breached Rules 5.4, 5.6 and 5.11 on 2 February 2024.

## **Background**

2. Ms Pinder submitted an application to make a complaint on 12 February 2024, as a member of the GMB (“the Union”).
3. Following correspondence with my office, Ms Pinder, confirmed her complaint wording on 13 March 2024. This was subsequently amended following a Case Management Meeting on 13 August 2024 to:

### **Complaint**

That on 2 February 2024, the GMB breached Rules 5.4, 5.6, and 5.11 when the National and Vice President suspended Ms Burley, Ms Pinder, and Mr Hensby from all GMB positions. Rule 5 states that only the Central Executive Council, a regional council or regional committee may take action.

4. A hearing took place by Video Conference on 30 October 2024. Ms Pinder was represented by Jeremy Townend. He submitted a skeleton argument and witness statements from Ms Pinder, Sue Walker and Dave McLean. Ms Walker and Mr McLean were members of the Union’s Central Executive Committee (CEC) at the time of Ms Pinder’s suspension. Mr McLean did not give oral evidence.
5. The Union was represented by Stuart Brittenden KC. The Union submitted a skeleton argument, prepared by Mr Brittenden, which was amended after Ms Pinder made a successful application to amend her complaint. The Union also

submitted two witness statements from Barbara Plant (President of the Union) and one each from Emma Johnson (Head of People Management and Support) and Jamie Hanley (Legal Director and General Counsel).

6. There was also in evidence a bundle of documents consisting of 177 pages, including the Union's rules. Separately also in evidence was the GMB's Sexual Harassment Policy for Members, GMB's Sexual Harassment Policy 2022 and the CEC regional guidance on Rulebook Disciplinary and Grievance Procedures. Ms Plant's second witness statement included, as annexes, an email from Paul McCarthy (Interim Regional Secretary) to Gary Smith (General Secretary) dated 30 January 2024 and an email from Janet Davis (on behalf of Mr McCarthy) to Mr Smith dated 2 February 2024.

### **Agreed facts**

7. The following facts were agreed after a Case Management Meeting on 13 August 2024:

On 2 February 2024, Barbara Plant, GMB President, and Malcolm Sage, GMB Vice President wrote to Catherine Pinder. The letter explained that Ms Pinder had been suspended from all GMB positions. The reason for the suspension was that Ms Pinder had failed to give assurances, following correspondence from Emma Johnson, GMB Head of People Management and Support, regarding a very serious breach of confidentiality.

The GMB's Central Executive Council (CEC) met on 6 February 2024. The issue of Ms Pinder's suspension was raised at the meeting. The minutes record that Ms Pinder's suspension was noted.

The CEC met again on 13 March 2024. Ms Plant presented a report which included details of Ms Pinder's suspension amongst a number of other issues. The minutes record that the meeting agreed to support Ms Plant's actions, including the suspension of Ms Pinder.

## **The Relevant Statutory Provisions**

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

### **108A Right to apply to Certification Officer**

(1) A person who claims that there has been a breach or threatened breach of the Rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are –

(a) the appointment or election of a person to, or the removal of a person from, any office;

(b) disciplinary proceedings by the union (including expulsion);

(c) the balloting of members on any issue other than industrial action;

(d) the constitution or proceedings of any executive committee or of any decision-making meeting;

## **The Relevant Rules of the Union**

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

### **Rule 5 Membership**

- 4 A member may be disciplined in accordance with this rule, Rule 5A, GMB policies and any guidance issued under this rule or Rule 5A.

The Central Executive Council or a regional council or regional committee may, subject to clause 5 of this rule, take action under clause 6 of this rule,

- a. where they determine that a member has
- acted in a manner which has brought, or may bring, the union into serious disrepute or has harmed or may harm the union;
  - breached the rules of the union;
  - harassed another member, a member of the union's staff or a third party related to any protected characteristic;
  - made or in any way been associated with abusive, defamatory, or scurrilous written or oral comments made about the union, any of our officials or committees;
  - alone or together with any other members or people, breached any of the union's policies;
  - acted against the best interests of the GMB;
  - encouraged or taken part in the activities of, or communicated with, any organisation or group whose policies or aims are racist or promote racist beliefs;
  - acted in breach of clause 13 of this rule; or
- b. for any other sufficient reason.

**6 After reaching a determination under clause 4: -**

- a. The Central Executive Council, a regional council or regional committee may
- i. suspend the member from benefit
  - ii. ban them from holding any GMB office, and/or

- iii. ban a member from taking part in GMB activities (including attending any branch meeting or voting in any branch vote),  
in any case for as long as the Central Executive Council, regional council or regional committee considers appropriate; or
- b. a regional council or regional committee may recommend to the Central Executive Council that the member be expelled from membership; and
- c. the Central Executive Council may, following a recommendation from a regional council or regional committee, or of their own volition expel a member from membership.

If the Central Executive Council do not accept a recommendation from a regional council or regional committee to expel a member then the Central Executive Council may impose a sanction under paragraph a above. A member who is expelled from membership under this clause will not be eligible to re-join without the permission of the Central Executive Council.

- 11 If the conduct alleged against a member is deemed at any stage to be of such a serious a nature that requires it, then the Regional Committee or Regional Secretary may resolve at any time to suspend the member from any office held by the member and/or bar the member from taking part in any union activities (including meetings) of the union pending the outcome of the disciplinary process. Where the decision to suspend and/or bar is made by the regional secretary, such suspension and/or barring from taking part in union activities will cease at the end of the next following meeting of the Regional Committee, unless that suspension and/or barring is ratified by the Regional Committee at that meeting. A resolution under this rule by the Regional Committee to suspend and/or bar

from taking part in union activities or ratify a decision of the Regional Secretary under this rule will require a two thirds majority of the members of the Regional Committee present and voting in favour. There shall be no right of appeal against such decision.

### **Rule 10 Central Executive Council**

- 6 The Central Executive Council may use any powers and carry out all acts, duties and responsibilities it feels are necessary to achieve our aims, whether or not these powers, duties and responsibilities are specifically mentioned in these rules. The council will make sure our funds are not misused and, through the general secretary or any other officer they appoint will prosecute or take any other appropriate action against any officer or member who misuses or withholds any money or property belonging to us.
  
- 13 The Central Executive Council will make a decision on any matters not set out in these rules.

## **Considerations and Conclusions**

10. Ms Pinder's complaint relates to her suspension and two other CEC Members, Ms Burley and Mr Hensby. Ms Burley and Mr Hensby made similar complaints to my office but withdrew those complaints before the Hearing. I have, therefore, considered this complaint in respect of Ms Pinder only.

## **The Context**

11. It is not my role to decide whether the Union was right to suspend Ms Pinder. My decision is limited to the process which the Union followed when reaching the decision to suspend her. It is helpful to note, however, the context in which that decision was taken.

12. [REDACTED]



[REDACTED]

[REDACTED] The Union appointed Paul McCarthy, also an employee of the Union, as Interim Regional Secretary. Although I have not heard any live evidence from Mr McCarthy, I have seen documents which suggest that he had difficulties covering the role. In particular, there is an email, sent by his Assistant in his name, dated 2 February 2024 to the General Secretary in which he explains that:

I believe that from today I need to stand down from the position of Interim Regional Secretary due to the personal attacks that have been aimed at me and the GMB in general, from individuals both employed by the union and those in the role of lay readership.

He goes on to say that:

I am finding it difficult to be in the NYEH region and believe that people are taking an opportunistic advantage of the fact that I am not a full-time presence in and across the region in the role of Interim Regional Secretary. I believe the intent behind these actions are a deliberate attempt to skew ongoing processes and set an alternative and dangerous agenda that would attempt to damage GMB and me personally.

13. In January 2024 the Union became aware of a breach of confidentiality which resulted in the name of the complainant of sexual harassment being revealed. Ms Johnson, the Union's Head of People Management and Support, wrote to several senior members of the Union asking them if they had any knowledge of the breach of confidentiality. Ms Burley, Mr Hensby and Ms Pinder, did not reply. Ms Plant and the Vice President sought legal advice and suspended those three people on 2 February 2024. Subsequently, Ms Plant asked the CEC to ratify the decision to suspend the three members at its meeting on 6 February 2024 and again on 13 March 2024. The Presidential Team later lifted the suspension imposed on Ms Burley and Mr Hensby.

14. It is also worth noting that the Union had previously commissioned an independent review, from Karon Monaghan KC, which had identified that the Union was institutionally sexist and that bullying and harassment were endemic within its structures. Ms Plant told me that the allegations surrounding the Regional Secretary of the NEYH Region, and the identification of the complainant of the sexual harassment were the first significant allegations since the Monaghan Report had been published.

## **Decision Making**

### The decision to suspend

15. Ms Plant told me that she and Malcom Sage, Vice President at that time, took the decision to suspend the three CEC Members. The decision was, therefore, made by the Presidential Team. They met with, and took advice from, a KC before they took the decision; Mr Hanley was also present at that meeting. Ms Pinder has not disputed this.
16. Ms Plant gave evidence that the Presidential Team has an implied power to act on behalf of the CEC between meetings. She agreed that this is not explicitly set out within the Union's Rules but explained that she had used the power regularly to take decisions between CEC meetings. The CEC usually meets six times a year which limits the business it can consider, and calling short notice meetings for urgent issues is impractical. The Union provided me with a list of examples where the Presidential Team had taken decisions on a range of issues including the appointment of Karon Monaghan KC to lead the independent inquiry (paragraph 14 above) and decisions to take industrial action.
17. Ms Pinder did not dispute that the CEC had a power to suspend a member. She was clear in evidence, however, that the Presidential Team did not have a general, or inherent, delegated authority from the CEC. Ms Pinder told me that, in all of the examples offered by the Union, there had been a prior discussion at

CEC which authorised the Presidential Team to act and take decisions on its behalf.

18. Neither party provided CEC minutes to support their position. Ms Pinder provided two emails which showed that Ms Plant and the Acting General Secretary had sought the CEC's authority to proceed with decision making around the independent investigation, and had reported back that such authority had been given.

#### CEC Meeting on 6 February

19. The CEC met on 6 February 2024. I have seen draft minutes from that meeting which show that the only issue addressed was the suspension of Ms Pinder, Ms Burley and Mr Hensby. The draft minutes record that the decision to suspend the three CEC Members was "noted".

20. Ms Plant, Ms Walker and Mr Hanley all attended the meeting. Ms Walker told me that the minutes were not accurate and that there was no discussion about the suspensions. Ms Plant and Mr Hanley told me that the minutes were accurate and that the decision to suspend Ms Pinder was noted by the CEC. They also told me that this meant that the CEC had simply recorded that Ms Plant had suspended the three CEC Members. Their view was that the CEC had not taken a decision on the issue and so could not be considered to have ratified, agreed or supported the decision at that meeting.

21. The Union's position ahead of the Hearing was that, at this meeting, the CEC had ratified the Presidential Team's decision to suspend Ms Pinder. During his submissions, Mr Brittenden acknowledged that the evidence from Ms Plant and Mr Hanley did not support this position and agreed that the CEC did not ratify the Presidential Team's decision on 6 February 2024. Consequently, I do not need to resolve the conflicting evidence as to whether the suspensions were discussed.

### CEC Meeting on 13 March

22. The CEC met again on 13 March 2024. The Union has provided me with draft minutes of that meeting. Ms Plant attended that meeting and confirmed to me that the minutes were accurate. None of the other witnesses who gave oral evidence attended the meeting. Mr McLean attended the meeting but did not attend the Hearing.

23. The minutes show that the CEC voted to support the suspensions in the NEYH Region. 24 CEC members voted for the motion with 8 voting against and 3 abstentions.

24. Ms Plant told me that the CEC did not raise any issues about the Presidential Team's power to suspend the three CEC members. This is not consistent with Mr McLean's written evidence that he, and others, questioned her about whether she had the power to suspend members. Mr McLean agrees, however, that the CEC voted on, and passed, the motion to support the suspensions. I do not, therefore, need to resolve the conflicting evidence about whether there was any discussion around the Presidential Team's power to suspend.

### **Conclusions**

25. Both parties appear to agree that the Union has the power to suspend a member before a determination has been reached in a disciplinary case (an interim suspension). They also agree that this power usually rests with the Regional Committee under Rule 5.11, and that the Regional Secretary may impose an interim suspension which must then be ratified at the next meeting of the Regional Committee.

26. There also appears to be agreement that the CEC has the power to suspend members. The Rules enable the CEC to suspend members after a determination has been made in a disciplinary case. That does not, however, apply to this case as Ms Pinder was suspended before a determination was made.

27. Mr Brittenden told me that it was also possible for the CEC to impose an interim suspension by relying on Rule 10.6 which enables the CEC to:

Use any powers and carry out all acts, duties and responsibilities it feels are necessary to achieve our aims, whether or not these powers, duties and responsibilities are specifically mentioned in these rules.

In his view, this power is sufficiently wide to enable the CEC to impose an interim suspension on a union member. Neither Mr Townend nor Ms Pinder challenged the CEC's ability to rely on this power when imposing an interim suspension. I am, therefore, satisfied that the CEC has the power to impose an interim suspension on a member where they are taking disciplinary action under Rule 5.4.

28. Ms Pinder's position was that there was no reason for the Union to follow anything other than the usual process and that the issue of suspension should have been considered either by the Regional Committee or the Regional Secretary.

29. Ms Plant told me that it was not possible for the Regional Secretary or Regional Committee to consider whether it was necessary to impose suspension on the three Members for a number of reasons. Mr McCarthy, the Interim Regional Secretary, had told the General Secretary that he was resigning with immediate effect on 2 February 2024. There was, therefore, no Regional Secretary in post when the decision to suspend was made. Additionally, as the issues which led to the suspension had arisen within the Regional Committee, that Committee had a conflict of interest which was sufficient to prevent them from considering the suspension.

30. Ms Plant explained that the General Secretary would usually take a decision where there was no Regional Secretary, or where the Regional Secretary was unable, because of conflicts of interest or illness for instance, to take such a decision. In this case, however, the General Secretary had already declared a

conflict of interest himself because he previously had a close relationship with the suspended Regional Secretary. Consequently, in Ms Plant's view, the suspension could only be considered by the CEC, under Rule 10.6, or by the Presidential Team acting under their delegated authority.

31. Mr Townend rejected the Union's assertion that there was no Regional Secretary in place. In his view, Mr McCarthy remained in post on 2 February and so could have considered the suspension on that date. Even if that were not the case however, he argued that the Union could have appointed an Interim, or Acting, Regional Secretary to take the decision. I agree with Mr Townend that either of those options was a possibility and would have fallen within the Rules; however, they both appear to be unattractive options. Mr McCarthy had already expressed his concern about personal attacks during his role and was clear that he was standing down because of those attacks (paragraph 12). Appointing another Regional Secretary to take the decision may well have exposed another member of staff to such attacks. In any event, any decision by Mr McCarthy or his successor would need to be ratified by the Regional Committee which had a live conflict of interest because of the nature of the issues being considered. I am satisfied, therefore, that it was reasonable for Ms Plant to consider that the issue could be dealt with by the CEC under Rule 10.6.

32. It is worth noting here that I have not reached any view as to whether Mr McCarthy was subject to such attacks. It is not for me to do so. Mr McCarthy had, however, reported his concerns to his line manager, the General Secretary, and had also explained that some of his personal data had been disclosed in a manner which he believed amounted to a criminal act. In those circumstances it appears reasonable for the Union, as Mr McCarthy's employer, to ensure that he had no further involvement in the issue. It also seems reasonable for the Union to have acted to protect other staff from any risk of similar attacks whilst it took steps to investigate Mr McCarthy's allegations.

33. Ms Plant told me that once it became clear that Ms Pinder had not provided the assurances sought by Ms Johnson (see paragraph 13) she took advice, from a KC, as to the options available to the Union. I have not seen that advice; however, Ms Plant and Mr Hanley told me that the advice was that the Presidential Team could rely on their inherent, or implied, powers to act on behalf of the CEC between meetings. Ms Plant also told me that the KC had advised that the decision should be ratified by the CEC.
34. Ms Plant explained that the CEC had approximately 60 members and met about six times a year. It was not, therefore, possible for the CEC to deal with issues which needed to be considered urgently between meetings. In such circumstances, Ms Plant told me that she and Mr Sage regularly took decisions and reported those decisions to the CEC for ratification or simply to note. She explained that, where an issue was straightforward she may seek the CEC's agreement by email. In other cases, where there might be a need for significant analysis or discussion, she would normally inform the CEC of the Presidential Team's decision and then report back at the next meeting because it would be impossible to manage an email debate between 60 people on an urgent issue. The Union provided a number of examples across a range of subjects which, Mr Brittenden told me, supported this position.
35. As explained at paragraph 17, Ms Pinder took a different view. She told me that there was no wide power of delegation from the CEC to the Presidential Team. Her evidence was that, in all of the examples provided by the Union, the CEC had given explicit power to the Presidential Team to act on its behalf. She also told me that there was rarely a need for a decision to be taken urgently without the involvement of the CEC. It was always open to the Union to call a meeting by videoconference or to send an email and seek a decision.
36. In the absence of an explicit power of delegation, I need to consider the Union's position that it would be unable to effectively manage urgent business without an implied power of delegation. I have considerable empathy with this position.

Issues do arise, from time to time, which require a decision to be taken quickly. And in some cases, the Union may be exposed to significant risk if a decision is not taken quickly. I do not agree with Ms Pinder that it is always possible to call an urgent meeting or deal with issues by email. Some urgent issues are, by their nature, sensitive and may not be suitable to be considered by email. Others may require considerable analysis by those taking a decision and so would require the Union to provide substantial information to the decision makers. Both the preparation of the papers and the detailed consideration could result in a significant delay to the decision making, whether by email or at a short-notice meeting (whether in person or by videoconferencing). This is particularly so where the CEC consists of 60 members, with a diverse range of skills and experience, who do not devote all of their time to the Union and may have other employed roles.

37. I am satisfied, therefore, that the Union could be stultified if it had to rely only on six full meetings of the CEC each year to reach decisions on all issues within its remit. The Union could, of course, increase the frequency of its meetings; however, this does not fully mitigate the risk of urgent business arising between meetings. Consequently, it is reasonable for the Union to implement a procedure to deal with urgent business between planned meetings. It is for the Union to decide what that process should be, and how it is documented. In my experience, some Unions form sub-committees to deal with specific issues which meet more frequently or make themselves available at short notice for urgent issues. Others delegate to a small group of lay officers and/or senior staff. This Union has provided evidence which, it believes, shows that urgent decisions are delegated to the Presidential Team. Ms Pinder has challenged this evidence but has not provided me with any documentary evidence, such as minutes or statements from CEC colleagues which challenges the Union's position.

38. Ms Pinder told me that, since her suspension, she has been denied access to her GMB Activist account and so has found it difficult to provide documents to support her position. I understand that this has made it difficult for her to provide,



for instance, copies of minutes of meetings. But she could have asked CEC colleagues to cover this point in witness evidence. Neither of her witnesses did so. Nor did she tell me that she had sought any documents from the Union but had been denied access. I am satisfied that she would have had time to seek such evidence because the Union provided the examples to my office on 18 April 2024 and my office sent those to Ms Pinder on 26 April 2024.

39. In the absence of such evidence, I accept that there is an implied delegation which enables the Presidential Team to take decisions on behalf of the CEC between meetings of the CEC. I am also satisfied that, whether or not such ratification was necessary, the CEC ratified the Presidential Team's decision at its meeting on 13 March 2024.

40. Consequently, I refuse to make the declaration sought by Ms Pinder.

## **Observations**

41. The bundle of the documents for the Hearing contained minutes for the CEC meetings on 6 February and 13 March 2024. Neither was marked as draft; however, it became clear during the hearing that neither had been agreed by the CEC and the minutes were, therefore, in draft form. The minutes should have been marked as draft before being provided to my office to ensure that those participating in the Hearing understood that that they were not agreed minutes.

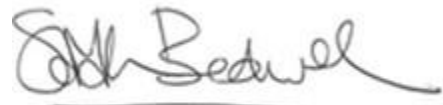
42. The Union does not appear to have any documented framework which sets out the extent, or limit, of the Presidential Team's implied delegation. It is not documented within the Rules and Mr Hanley told me that he did not know whether a document, such as schedule of delegation, existed. It is clear from Ms Pinder's evidence that she did not share the Union's understanding of the scope of the delegation. That may be the case for other CEC members too. The Union should consider setting out the terms of the delegation so that CEC members understand what action can be taken by the Presidential Team.

43. I have not reached a decision as to whether the Presidential Team's decision to suspend Ms Pinder needed to be ratified by the CEC as I do not need to do so. The Union's position at the Hearing was that it was not necessary. Ms Plant's evidence was that the KC's advice, at the time of the suspension, was that it should have been ratified. The Union may wish to resolve this issue when setting out the terms of any delegation.

44. Finally, I was provided with a letter which was sent, on Friday 19 January 2024, to Ms Burley asking her whether she had any knowledge of the breach of confidentiality that occurred. The letter asked for a reply, by a given deadline, confirming whether or not Ms Burley had any knowledge of the breach of confidentiality. In her witness statement Ms Johnson told me that an email on the same terms had been sent to each CEC member from the NYEH region. The letter sent, on 17 January 2024, to Ms Pinder, however, referred to the breach of confidentiality and made the following request:

Should you be aware of any conversations or information in relation to the matter please let me know by written response as soon as possible, and no later than 22 January 2024.

45. Ms Pinder explained that she did not reply as she had no knowledge of the breach of confidentiality. Ms Johnson explained in evidence that, as a Senior Lay Member, she would have expected Ms Pinder to have understood that a reply was required. Ms Johnson did not, therefore, send any further correspondence on this issue to Ms Pinder. That may be right; however, I find it surprising that the Union chose to move to suspension without first seeking such clarification.



Sarah Bedwell  
The Certification Officer