

D/11/24-25

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

Cassidy

v

Unite the Union

Date of Decision

8 January 2025

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## **Decision**

1. Upon application by Mr Eddie Cassidy (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”): I do not uphold Mr Cassidy’s application for a declaration that on or around 4 December 2023, Unite the Union breached rules 14.9.4, 15.4 and 15.5 of the Union’s rule book

## **Background**

2. Mr Cassidy is a member of Unite the Union (“Unite” or “the Union”) and is a member of the Union’s Executive Council.
3. Following correspondence with Mr Cassidy, the complaint was confirmed by him in the following terms:

“On or around 4 December 2023, Unite the Union breached rules 14.9.4, 15.4 and 15.5 of the Union’s rule book.

These rules were breached in the following manner. Upon the retirement of Gail Cartmail as Executive Head of Operations - a role considered as second in command to the General Secretary - the General Secretary appointed Sarah Carpenter to the role, without any consultation, discussion, proposal or appointment process involving the Executive Council. This is a clear breach of rules 14.9.4, 15.4 and 15.5 and is a unilateral, deliberate decision which is clearly in contravention of the objects of the rule book.”

4. A hearing took place by Video Conference on 16 December 2024. Mr Cassidy represented himself. He submitted a skeleton argument. The Union was represented by Simon Gorton KC. The Union submitted a skeleton argument, prepared by Mr Gorton. The Union also submitted a witness statement from Sarah Carpenter, the Union’s Executive Head of Operations

and Barbara Kielim, the Union's Director of HR, Training and Development. Both Ms Carpenter and Ms Kielim also gave oral witness evidence.

5. There was also in evidence a bundle of documents consisting of 160 pages, including the Union's rules.
6. On the morning of the hearing, the Union submitted a document entitled, "An Executive Policy: Unite Executive Council Panel Arrangement for the Appointment of Officers" with the word's "Janet's report" in handwriting at the top of the page. Having sought and considered Mr Cassidy's views, I decided to admit this document as part of the bundle of documents.

### **Agreed facts**

7. The following facts were agreed following a Case Management Meeting on 10 December 2024.
8. The minutes of the Finance and General Purposes Committee on 22 July 2021 record that:

"The Chief of Staff drew the attention of the Committee to Rule 15.5 which lays down that 'The General Secretary shall be under the control of and act in accordance with the directions of the Executive Council.'

The Committee gave the Chair the authority to remind the incoming General Secretary of this rule and to advise him or her that there can be no change in the senior employees of the union, their employment and responsibilities, nor can any new employee be taken on to carry out their duties, without the prior approval of the Executive Council."

9. The General Secretary appointed Sarah Carpenter to the role of Executive Head of Operations on 24 October 2023. Ms Carpenter accepted the role on the same date. The General Secretary did not seek the Executive Council's approval before making the appointment.

10. The Executive Council met on 4 December 2023. At that meeting a member questioned why the appointment had not been considered by the Executive Council. The minutes record that:

“The Co-ordinator of Constitutional Affairs, Hannah Reed, explained that under rule 14.9.4, recently agreed by the Council, the Council had the power to appoint Officers of the Union but not staff or organisers. The Executive Head of Operations was a staff role and had never been appointed by the Council. A member of the Council highlighted the F&GP meeting of 21 July 2021, wherein it had been agreed that the General Secretary must act in accordance with the direction of the Council and that there must be no change in senior employees of the Union, their employment or responsibilities without Council approval. The Chair replied that the rulebook quoted by the Co-ordinator of Constitutional Affairs had been approved in 2023 and therefore constituted the most recent agreement of the body.”

### **The relevant statutory provisions**

11. 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**

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

### **Unite the Union Rule Book (Effective from Rules Conference 2019, v 2 Oct 2020)**

#### **RULE 14. EXECUTIVE COUNCIL**

14.9 The Government, management and control of the Union shall be vested in the Executive Council collectively, which may do such things consistent with the rules and objects of the Union as it may consider expedient to promote the interests of the Union or any of its members. In particular and without limiting the general powers conferred on it by these rules the Executive Council shall have the power to:

14.9.1 Ensure that properly prepared management accounts and annual statements of account relating to all financial affairs of the Union are

presented at its regular meetings, and it may call for the production of any book, vouchers, or documents.

14.9.2 Direct that special audits or examinations of the books or finances of any part of the Union shall be made by special auditors appointed by the Executive Council.

14.9.3 Appoint and remove the Union's auditor and assurer in relation to membership records for which purpose the members of the Executive Council shall act as the delegates of the members by whom they were elected.

14.9.4 Appoint all officers who are employed as such by the Union (who shall have been paying members of this Union or, if employed by Unite, paying members of another trade union recognised by the union for bargaining purposes, for at least two years immediately preceding the date of application) other than the General Secretary. The promotion of individual officers (up to but excluding the level of General Secretary) and the allocation/reallocation of officer roles shall be subject to the approval of the Executive Council in each case.

14.9.5 Determine one or more constitutional committees of lay members to which each officer employed by the Union shall report and be accountable and ensure that the list of these allocations is available to members.

14.9.6 Consider all appeals and resolutions addressed to it, subject to where it deems appropriate the Council shall have the power to refer such appeals and references to Regional or National Industrial Committees.

14.9.7 Require reports to be submitted to it of all disputes, and shall take such action with regard thereto as it shall deem fit.

14.9.8 Raise or borrow money and secure the payment of money or the carrying out of any other obligation of the Union on any of the properties or securities of the Union in such manner as it shall think fit.

14.9.9 Decide questions of policy which may arise between Policy Conferences and which have not been decided by a previous decision of such a conference. Any substantive policy decisions made by the Executive Council to be ratified by the next scheduled Policy Conference.

14.9.10 Send delegates or deputations to represent the Union, and to delegate power to any person to act on behalf of the Union for any purpose.

14.9.11 Sanction payment of benefit in respect of any strike and in respect of any lockout.

14.9.12 Expend moneys on any of the purposes authorised by these rules, or on any other purpose which, in their opinion, is expedient in the interests of the Union or its members, including, at its discretion, the provision of legal services to members (and where it additionally and severally sees fit, to members' families), and the taking and defending of legal action by the Union.

14.9.13 Suspend, or impose any other penalty on any Branch, Region or other administrative section of the Union for such reasons and on such terms as they deem expedient and their decisions, save as herein provided, shall be final and conclusive for all purposes provided that every Branch, Region or other administrative section shall have the right within 14 days, of the date of notification of the decision of the Executive Council to give notice of appeal, and until the hearing of such appeal the decision of the Council shall be binding.

14.9.14 Delegate to any committee constituted under these rules such of their powers as are necessary or expedient and consistent with the



powers and duties of such committee as in these rules provided, and may modify or revoke such powers and duties from time to time.

14.9.15 Provide training for lay representatives, activists and its employees.

14.9.16 Decide its own Standing Orders and procedures in all matters not expressly provided for in these rules.

14.9.17 Make standing orders, consistent with these rules, governing the proceedings of Regional Committees, Industrial Committees and any other body provided for by these rules, as it sees fit.

14.9.18 Decide any question relating to the meaning and the interpretation of these rules or any matter not expressly provided for by these rules which decision shall be binding on all members of the Union.

## RULE 15. GENERAL SECRETARY

15.1 All elections for the General Secretary shall be on the basis of a ballot of the whole membership of the Union other than 'ordinary' retired members who shall not be eligible to vote. The fixed term of office for each General Secretary election will be set at 5 years. If the General Secretary position becomes vacant due to retirement, resignation or death within a fixed term of office a General Secretary election will be called.

15.2 The General Secretary shall not hold office without re-election for more than 5 years from the last day on which the votes were cast in his/her previous election.

15.3 The General Secretary shall be responsible for the administration of the affairs of the Union; including convening the meetings and implementing the decisions of the Executive Council, and such other duties as may be determined by the Executive Council.

15.4 All employees of the Union shall be under ultimate control of the Executive Council whose approval shall be required before changing their terms and conditions of employment or superannuation arrangements. Subject to that ultimate control the General Secretary shall be responsible for managing all employees of the Union who, subject to their terms and conditions of employment, shall perform such duties and work from such locations as the General Secretary may direct.

15.5 The General Secretary shall be under the control of and act in accordance with the directions of the Executive Council.

15.6 The General Secretary may delegate to any employee of the Union such of the General Secretary's powers as the Executive Council may consider appropriate.

15.7 The General Secretary shall be entitled to attend all meetings of the Union and to take part in their deliberations but shall not have a vote.

## **UNITE Recruitment and Selection Policy and Procedure, 31 January 2013**

### **1 Purpose**

1.1 Unite is committed to a policy of treating all its employees and job applicants equally and to recruit the best person for each vacancy.

1.2 The Unite Equal Opportunity policy will always apply.

### **2 Related Policies and Procedures**

2.1 This policy is to be read in conjunction with the Union's Equal Opportunities and Data Protection policies. No decisions regarding recruitment or selection should be made by someone who has not read and understood these policies and without the involvement of the HR and Development Department.

### **3 Scope**

3.1 This policy is applicable to the recruitment and selection of all employees engaged to provide services for the Union, irrespective of whether such a contract is for a temporary or fixed term or is of a permanent duration. The policy will be made available to all employees and applies to both internal and external recruitment.

3.2 The policy seeks to ensure that the best candidate is chosen for each job vacancy regardless of sex, race, disability or other personal characteristics. Existing employees will be invited to apply for transfer and promotion opportunities wherever possible.

### **4 Principles**

The following principles will apply whenever recruitment or selection for complemented vacancies takes place:

4.1 The need for new posts to be established in the Union, or for existing jobs to be filled, will be determined by the EC, the General Secretary or the Chief of Staff depending on the specific positions.

4.2 Vacancies in the Union below General Secretary will be formally notified as open to application by existing employees who have the appropriate skills, knowledge and experience for the position(s) advertised.

4.3 Where the Union is unable to fill vacancies internally, or on operationally objective grounds needs to extend application externally, advertisements will be placed in the appropriate media. In such cases, the issue of external advertisements will be notified internally and serving employees will be entitled to apply for consideration. The Secretary of the relevant Bargaining Unit will be notified in advance of any such advertisements being placed.

4.4 The General Secretary reserves the right to make direct appointments to the Union's Senior Management Team.

4.5 Applicants will be screened against the job requirements as laid out in the job descriptions and person specifications.

4.6 Any qualifications or requirements applied to a job that have or may have the effect of inhibiting applications from certain groups of the population should only be retained if they can be justified in objective terms in respect of the job to be done.

4.7 Information on ethnic origin, sex, disability and nationality will be collected in order to monitor the numbers of applications from different groups. This statistical information will not be used in the physical selection process but will be used for reporting to the EC by the HR and Development Department at each stage of a recruitment/selection exercise.

4.8 Where applicable, industry approved selection tests should be specifically related to job requirements and should measure the candidate's actual or inherent ability to do the job.

4.9 Selection processes will be reviewed regularly on a joint basis to ensure they remain relevant and free from bias, either in content or in the scoring mechanism.

4.10 All EC members, officers, and staff taking part in recruitment and selection will have been trained in interviewing skills and equal opportunities.

4.11 Written records of interviews, reasons for decisions made at each stage of the process, and reasons for appointment or non-appointment, will be kept by the HR and development Department for six months, unless a longer period can be objectively justified and is in compliance

with the Data Protection Act 1998. Records will then be disposed of confidentially.

4.12 Interviews will assess candidates against job-related criteria only.

4.13 All information held about a candidate must be used only for the purpose for which the information has been collected.

4.14 All candidates will be asked at the first interview stage to provide documentary evidence of their right to live and work in the UK, to ensure compliance with the Immigration, Asylum and Nationality Act 2006. A photocopy of the accepted documentation will be taken. Where necessary, the HR and Development Department will provide a full listing of what documentation is acceptable.

4.15 Reasonable adjustments will be made to reduce any disadvantage faced by people with disabilities in both making an application in response to an advertisement and in attending an interview.

4.16 The recruitment and selection process for candidates with disabilities will take into account such adjustments to working arrangements, or physical features of the work place/station/premises, as are reasonable to accommodate their needs, and will be such that they are not placed at a substantial disadvantage compared with candidates without disabilities.

## **5 Process**

The recruitment process will be followed in accordance with the following criteria:

5.1 Authority to recruit or select must be granted by the EC, General Secretary or Chief of Staff (depending on the specific post(s) to be filled) before any advertisement or notice is placed.

5.2 Where the Union is considering advertising new posts in the organisation, or filling an existing vacancy, prior notification will be given to the Secretary of the relevant internal Bargaining Unit.

5.3 A job description will be produced with full details of the position, tasks, reporting line, responsibilities of the jobholder and number of employees to be managed, if applicable. The skills, experience, qualifications and competencies of the jobholder should be laid out in the person specification.

5.4 Job advertisements will be based on the job description and person specifications and/or competency profile. Internal vacancies will be notified by e-mail and posted on the Intranet. For external positions, the appropriate advertising options will be used. In all cases, advertisements or vacancy notices will confirm the closing date for applications to be made

5.5 In any cases involving the use of recruitment or employment agencies, such agencies will have been approved for use by the Union and discussed with the Bargaining Unit. They will follow the organisation's standards laid down in this and the Equal Opportunities Policy. No union employees should make any agreements with or commitments to recruitment or employment agencies without the prior approval of the HR and Development Department.

5.6 Applicants are encouraged to apply via the online system but hard copies of application forms will be acceptable.

5.7 All applicants will be pre-screened by the HR and Development Department. All applicants that meet the specified criteria will be discussed with the relevant line manager and, in appropriate cases, the General Secretary, Chief of Staff or Regional Secretary.

5.8 The Union will pay reasonable travel expenses for candidates travelling to interview. Travel arrangements for any candidates based

overseas and in RoI, IoM and the CIs should first be discussed with the HR and Development Department.

5.9 Prior to the interview candidates will be provided with information about the Union's role and responsibilities.

5.10 All interviews should consist of three interviewers, including the relevant line manager and ideally a member of the HR and Development Department.

5.11 If no HR representative is available, line managers should ensure that all details are collected and interview notes co-ordinated.

5.12 Interview questions will be designed by the relevant line manager and the HR and Development Department based on the job description and person specification/ competency profile, and the outcome recorded on a grid.

5.13 Each interviewer should complete the grid in the interview debrief recording a level against each competency.

5.14 Where two candidates are as qualified as each other to be recruited or promoted, and one of the candidates has a protected characteristic of being a woman, having a disability, or being from a black or other ethnic minority background, the panel shall be entitled to recruit promote the candidate with the protected characteristic.

5.15 All interview documentation must be returned to the HR and Development Department for secure storage. Only those that require access for specific and authorised purposes will be able to access this information. HRD will be responsible for providing formal feedback to any unsuccessful candidates who request it.

5.16 Upon selection of a suitable candidate, the HR and Development Department will identify and confirm the appropriate advertised starting

salary. They will handle all offers to successful candidate. Under no circumstances should line managers make informal or formal offers of appointment or infer to a candidate the outcome of a selection exercise.

5.17 No-one other than the EC, General Secretary, Chief of Staff, HR Director, and in the case of Regional Secretaries, after prior discussion with the HR Director, can approve offers being made to successful candidates.

5.18 All offers of appointment are subject to two satisfactory references, medical clearance, a check on relevant qualifications when appropriate, and eligibility to work in the UK where applicable. The HR and Development Department will apply for and verify all references, which will be requested once applicants have indicated acceptance (subject to the conditions highlighted above). References will ideally come from current and/or previous employers, if applicable. If the references or medical clearance are not satisfactory, an offer of appointment may be revoked.

5.19 Induction of new employees will start as soon as a candidate accepts a position. The HR and Development Department will send out a copy of the written statement of terms and conditions of employment and all related new starter forms that need to be completed.

## **6 'Stand-Downs' and Secondments**

6.1 Where a complemented full-time officer position becomes temporarily vacant, because of the permanent post-holder's long-term absence for one reason or another, the role may be covered by a 'stand-down' arrangement. Prior authority to appoint a 'stand-down' officer in appropriate cases will need to be given by the General Secretary or Chief of Staff via the application procedure. The appropriate Regional Secretary will organise the stand-down cover following approval.



6.2 The Union will be seeking to develop a process for identifying a pool of talented employees with the potential to be stand-down officers and will be progressively working towards this.

6.3 On occasions, complemented posts may be filled by a temporary 'secondment' – that is, the transfer in of a suitably qualified employee from another operating unit within the Union.

6.4 In some cases, depending on the particular job role, a secondment from outside of the Union may be considered. Any such appointments will not be expected to extend beyond 12 months. In the case of an external secondment, the individual will not be transferred onto the Union's payroll and will remain an employee of his or her permanent organisation. On each such occasion, there will be prior discussion with the Secretary of the Bargaining Unit.

## **7 Appeals Procedure**

7.1 Internal, permanent employees who have concerns about any aspect of this policy or its operation will be entitled to use the appropriate provision of the Union's Grievance Policy and Procedure.

## **Considerations and conclusion**

13. There is little dispute about the evidence in this complaint. Both parties agree that the General Secretary appointed Ms Carpenter to the role of Executive Head of Operations (EHO) without consulting the Union's Executive Council (EC). Mr Cassidy argued that Ms Carpenter's role was an Officer role within the Union and, consequently, the EC should have been involved in the appointment. Mr Gorton argued that the role was not an Officer role and, therefore, the General Secretary was able to make the appointment herself, without reference to the EC.

14. The status of the role is important because the Union has different recruitment procedures for different categories of employee. Ms Kielim told me that the categories include officers, organisers and staff. There is a distinct recruitment process for each category. I have been given considerable evidence about each process which is not in itself relevant to the complaint as there is no dispute as to which process was followed. The complaint is, essentially, that the Union adopted the process for appointing a member of staff when it should have followed the process for appointing an Officer. This meant that the EC was not asked to approve the appointment. The key issue for me, therefore, is whether the role of EHO is an Officer role.
15. Mr Cassidy argued that the EHO had always been an Officer role. The role had previously been referred to as Chief of Staff. He did not accept that by changing the title of the role it could be reclassified as a staff role. Whilst he did not give witness evidence, he implied during the hearing that the appointment of the former Chief of Staff had been authorised by the EC. He did not, however, provide any evidence to show that this was the case. He also suggested that the appointments of previous members of the Senior Management Team had been authorised by the EC. I have seen no evidence which supports this position. Ms Carpenter's witness statement is clear, however, that the EC did not approve the appointment of her immediate predecessor as EHO.
16. Ms Kielim told me that Officer roles are those which are considered industrial and are member facing. Ms Carpenter had previously been Regional Secretary which was considered to be an Officer role. She had moved into a staff role when she became EHO. Ms Kielim explained that it was not unusual for Unite employees to move between the categories. She explained that organisers might, for instance, become Regional Officers. She also told me that Ms Carpenter had originally joined Unite as a member of staff before moving into Officer roles, and had now returned to a staff role. Ms Carpenter's evidence supported this.

17. There appears to be no formal definition within Unite's Rule Book or EC guidance which sets out which employed roles fall into which categories. Mr Cassidy believes that this is because the rules are very clear and so no guidance is needed. I agree that the rules are clear that the EC should authorise all appointments to Officer roles and that there is a clear process which sets out how those appointments should be made. I have not, however, seen a document which explains which roles, or types of roles, are Officer roles. Ms Kielim told me that Officer roles usually, but not always, include Officer in the title and that the roles are always member facing. Consequently, a Regional Officer or Regional Secretary would be considered to be an Officer, but a Research Officer, Ms Carpenter's first role in Unite, would not be considered to be an Officer role as it would not be member facing.
18. Without such a definition, or EC guidance, there is likely to be some confusion, or dispute, about which roles fall into each category. I have been provided with a copy of Unite's Recruitment Policy which I understand was adopted by the EC in January 2013. That policy is clear as to the principles and processes which should be followed when employees are recruited. It is also clear that authority from the EC, General Secretary or Chief of Staff would be required depending on the specific position. It does not, however, identify which roles require authority from whom. Nor does it identify which roles, or types of roles, are Officer roles.
19. Ms Kielim told me that, when recruiting to a role, HR would make the decision, together with the Recruiting Manager, as to the relevant category and consequently the appropriate recruitment process. She also told me that the policy enables the General Secretary to make direct appointments to the Senior Management Team without following the usual staff recruitment procedure and that the General Secretary also has discretion as to which roles form part of the Senior Management Team. The General Secretary

may, therefore, appoint someone into a senior role within the Union without following any recruitment procedures and without any reference to the EC.

20. As there is no document which sets out the categories of employee, I must rely on the evidence which has been provided to identify whether the EHO role is an Officer role. Mr Gorton referred me to the following documents:

Letters of appointment which related to the Regional Secretary role (Ms Carpenter and her successor) which refer to the appointments being confirmed or ratified by the EC.

Letter of appointment for an Assistant General Secretary (in 2013) with the terms and conditions for EC-appointed officers appended.

Letters of appointment to the EHO role addressed to Ms Cartmail and Ms Carpenter which make reference to the appointment being offered by the Union following discussions between each candidate and the General Secretary.

21. I agree with Mr Gorton that these support the Union's position that the EHO is not an Officer role. I also agree that the process which was followed by the General Secretary in appointing Ms Carpenter is consistent with the Union's recruitment for a member of the Senior Management Team. This evidence is not, however, definitive as it is HR and the recruiting manager, in each of these cases the General Secretary, who take the decision about which category each role falls into before recruitment begins.

22. Surprisingly, I have not been provided with a copy of the role description for the EHO. I have, however, been provided with a copy of the role description for a former Chief of Staff. Ms Carpenter described the EHO role in her witness statement with reference to the Chief of Staff role explaining that her role was broadly consistent with that of the Chief of Staff. She was clear that, like the Chief of Staff, she has no responsibility for member facing work or

managing members. Nor does the Chief of Staff job description make any reference to such responsibilities.

23. Whilst I do not consider the Union's evidence to be wholly convincing, I am conscious that Mr Cassidy has not provided me with any evidence which contradicts the Union's position. He has not provided any minutes which show that appointments to the Chief of Staff role were previously authorised by the EC. Nor has he shown that it was custom and practice for Senior Management Team appointments to be authorised by the EC. Similarly, there is no evidence that the Chief of Staff or EHO roles are member facing. On that basis, on the balance of probabilities, I find that the EHO is not an Officer role.
24. Consequently, I refuse to make the declaration requested by Mr Cassidy that the Union breached Rule 14.9.4 when appointing Sarah Carpenter into the role of Executive Head of Operations.
25. Mr Cassidy has also alleged that, by appointing Ms Carpenter as EHO, the General Secretary also breached Rule 15.4 and 15.5.
26. Dealing first with Rule 15.4, the complaint is that the General Secretary did not have the power to change Ms Carpenter's terms and conditions without the agreement of the Executive Council. Mr Gorton explained that the purpose of this rule is to ensure that any significant changes to the terms and conditions of staff, collectively, should be considered by the Executive Council. This would include, for instance, changes to the Superannuation Scheme. He did not consider that this rule required individual changes, for instance to someone's working hours or salary on promotion, to be considered by the Executive Council as this would be disproportionate and unworkable. Such changes were more appropriately handled by the HR team, Mr Gorton explained. Mr Cassidy agreed that small contractual changes could be handled outside the EC but that major changes, including significant salary increases or promotions, should be referred to the EC. If

that resulted in a significant workload for the EC then, in his view, the EC could consider delegating some decision making to the HR team.

27. I have already decided that the EHO role is not an Officer role and the EC does not need to authorise an appointment into that role. On that basis it seems to make little sense for the EC to be asked to approve the change of terms and conditions of an appointee into that role. A change of role, whether or not it attracts a salary increase, will inevitably involve a change in job description and, in some circumstances, a change of terms and conditions. In my view most Union members would expect that the person responsible for making the appointment should also be responsible for setting the salary, job description and terms and conditions. In this case that person would be the General Secretary. In other cases, for instance where the EC is making the appointment, the EC may authorise the changes. Consequently, I refuse to make the declaration, requested by Mr Cassidy, that the Union breached Rule 15.4.
28. Turning to Rule 15.5, from the evidence before me it appears that the General Secretary adopted the same process that was used when Ms Cartmail was appointed into the EHO role and followed the Union's recruitment policy which had been agreed by the EC. She was, therefore, acting in accordance with the EC's established directions and procedures. I have seen no evidence which suggests that there was a breach of Rule 15.5 and so refuse to make the declaration sought by Mr Cassidy.
29. It is worth me noting that as Mr Cassidy has not persuaded me that the EHO role is an Officer role there is a question about whether I have jurisdiction to consider his complaints about Rule 15.4 and 15.5. Mr Gorton argued that, in these circumstances, Rules 15.4 and 15.5 cannot relate to the appointment of an Officer and are, on the face of it, outside my jurisdiction.
30. I understand Mr Gorton's point; however, it is arguable that those rules relate to the constitution and proceedings of the Union's Executive Council. That is

because they relate to the powers of the Executive Council in relation to the General Secretary and all employees of the Union. Neither party, however, made any submissions on this point at the hearing or in writing. Having concluded that the Rules 15.4 and 15.5 had not been breached then I do not think it necessary for me to seek further comments now. Had I found that there had been a breach I would have sought the parties' further views on jurisdiction before I reached a final decision and, if appropriate, considered an enforcement order.

### **Observations**

31. During the Hearing Mr Cassidy made submissions about a potential breach of rule 15.6 as he believed that the General Secretary should have sought approval from the EC before delegating certain responsibilities to Ms Carpenter. I explained to him at the hearing that I can only consider the complaints which are set out in his formal complaint above. I have not, therefore, considered a breach of Rule 15.6.
32. The facts of this complaint were largely agreed between both parties. I did not, therefore, have to balance conflicting evidence. It would have been helpful, however, for me to have seen a copy of the job description for the EHO role. As reflected above I was surprised that the Union did not provide that for the purposes of the hearing. If one does not exist then I would recommend that the Union prepares one to ensure that everyone, including the EC, the General Secretary and Ms Carpenter understands the nature of the role.
33. Ms Kielim told me that the Union's recruitment policy was agreed by the EC in January 2013. I do not know whether the policy has been reviewed since its introduction; however, Ms Kielim told me that it had not been revised. If it has not been reviewed, then I recommend that the Union consider doing so. I also recommend that the Union considers whether it would be helpful to set out which types of roles fall into which employee categories. That should

enable the EC and the Senior Management Team to have a shared understanding of which appointments should be approved by the EC.

34. Finally, it was clear that the parties did not have a shared understanding on which issues should be considered by the EC under Rule 15.4. I recommend that the Union considers, and agrees, which issues are reserved to the EC to avoid any misunderstandings in the future.

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

Sarah Bedwell  
The Certification Officer