D/4/25-26

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

Sartin (2)

V

UNISON: The Public Service Union

Date of Decision: 06 August 2025

Contents

Decision

1. Upon application by Mr Dan Sartin ("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 Mr Sartin that the Union breached Rule I(8) and the principles of natural justice on or around 30 March 2024.

Background

2. Mr Sartin submitted an application to make a complaint on 9 September 2024.

3. Following correspondence with my office, Mr Sartin confirmed the complaint as follows:

> On or around 30 March 2024, the union breached Rule I8 and the principles of natural justice, because the sanctions against Mr Sartin were the result of a flawed disciplinary process, insofar as it breached the procedures set out in UNISON policy and procedures for dealing with misconduct by members in relation to UNISON employees (formerly known as Appendix 2).

4. Mr Sartin provided detailed written particulars, which can be found as an appendix to this decision.

5. A Case Management Meeting (CMM) took place by video conference on 2 July 2025. The CMM was attended by Mr Sartin, with Brian Walter accompanying him and taking notes, and Stuart Brittenden KC of counsel for the Union, with Ann Rooney of Thompsons Solicitors. At the CMM, the format of the hearing was agreed, the facts recorded below at paragraphs 11-91 were agreed, and the parties agreed the issues that were to be resolved at the hearing. Mr Sartin informed me that he would be represented by Nicholas Toms of counsel at the hearing.

6. A hearing took place by Video Conference on 16 July 2025. Mr Sartin was represented by Mr Nicholas Toms. Mr Sartin submitted a skeleton argument which he had prepared himself. The Union was represented by Mr Brittenden. The Union submitted a skeleton argument prepared by Mr Brittenden.

7. Mr Sartin submitted a witness statement and gave oral evidence. He also submitted a witness statement from Brian Walter (a member of UNISON who had acted as Mr Sartin's representative throughout the disciplinary proceedings). Mr Walter also gave oral evidence.

8. The Union submitted witness statements from Karen Loughlin (Regional Secretary, Yorkshire & Humberside), Maureen Le Marinel (NEC Member), Debi Potter (chair of the UNISON Police, Probation and CAFCASS Service Group). and Maggi Ferncombe (Director of Political strategy). The Union's witnesses all also gave oral evidence.

9. There was in evidence a bundle of documents consisting of 1,119 pages, including the rules of the union and a second supplementary bundle consisting of 87 pages.

10. On the morning of the hearing, Mr Sartin submitted three further documents for inclusion in the bundle. I sought the views of the Union before deciding to allow the additional documents to be included in the second supplementary bundle. This took the second supplementary bundle to 93 pages.

Agreed facts

11. On 22 March 2022, Tim Roberts, Regional Secretary, UNISON Eastern, emailed Mr Sartin, with a letter attached. The letter stated that Mr Roberts and Karen Loughlin had been asked to investigate a complaint relating to a meeting of the Finance Management & Resource Sub-Committee (FMRC) of the UNISON NEC. The date of the relevant meeting of the FMRC was 26 January 2022.

12. The letter informed Mr Sartin that Mr Roberts and Ms Loughlin wished to interview him on 11 May 2022 and informed him that he could choose to be accompanied at the meeting by a friend or a fellow UNISON member.

13. Mr Sartin replied on 8 April 2022, stating that he was unavailable for the proposed interview date, and offered alternatives.

14. Ms Loughlin replied to Mr Sartin's offered alternatives, and it was agreed that Mr Sartin would be interviewed on 27 May 2022.

15. On 25 April 2022, Mr Roberts wrote to Kuldip Samra, UNISON's Head of HR/Employment Relations, informing them that the investigation had not been completed within 28 days and requesting an extension until 30 June 2022.

16. On 29 April 2022, Mr Sartin emailed Mr Roberts with Ms Loughlin copied in, raising several points ahead of his interview. Mr Sartin stated that he did not know the basics of the complaint, including whether he was to be interviewed as the subject of a complaint or as a witness to a matter concerning a complaint about someone else.

17. In the same email, Mr Sartin raised several questions, including asking if an informal resolution had been considered, as well as questions relating to the timescales for the investigation. Mr Sartin stated that he believed the investigation was being conducted contrary to the Union's Rules.

18. Mr Sartin also raised a concern that no welfare provisions have been made for lay members subject to disciplinary procedures. He stated that similar processes have sometimes taken years to conclude.

19. On 12 May 2022, Mr Roberts replied to Mr Sartin, confirming that he was to be interviewed as the subject of complaints made by Stephanie Thomas and Emilie Oldknow regarding his conduct in a meeting of the FMRC on 26 January 2022. Mr Roberts asked Mr Sartin if he would consider seeking an informal resolution and

stated that delays in holding an interview were due to pre-existing diary commitments.

20. On 16 May 2022, Mr Sartin replied to Mr Roberts, asking for detail regarding the precise conduct and/or words complained of. Mr Sartin confirmed that he would welcome the opportunity of informal resolution and proposed a 60-day “non-escalation period” during which both sides of the dispute would attempt to reach a resolution.

21. On the same date, Mr Roberts replied to Mr Sartin, restating that the complaint related to his conduct at the FMRC meeting on 26 January 2022, and agreeing to pass Mr Sartin's proposal relating to informal resolution to the General Secretary. Mr Roberts stated that he and Ms Loughlin wished to proceed with the interview scheduled for 27 May 2022, and asked Mr Sartin to confirm that he would be in attendance.

22. On 25 May 2022, Mr Roberts emailed Mr Sartin again, seeking confirmation that he would attend the interview scheduled for 27 May 2022.

23. On 26 May 2022, Mr Sartin replied to Mr Roberts, stating his view that if his request to resolve the matter informally were to be agreed, there would be no need to proceed with the interview scheduled for the following day. Mr Sartin also stated that he believed the process should be conducted in accordance with the principles of natural justice and, accordingly, he believed he should be provided with full particulars in relation to the allegations against him.

24. On the same date, Mr Roberts replied to Mr Sartin, stating that as one of the Union's appointed investigating officers, it was not within his remit to progress informal resolution, adding that he understood that the General Secretary had asked the Union's HR department to contact Mr Sartin about the request. Mr Roberts explained that the purpose of the interview was to assess if Mr Sartin's actions on 26 January 2022 should be regarded as misconduct. Mr Roberts again asked Mr Sartin to confirm if he would be attending the interview on the following day.

25. Mr Sartin replied to Mr Roberts on the same date. Mr Sartin stated that he would not attend the interview, because he objected to the process being followed. Mr Sartin stated that he would not attend meetings in relation to the complaint unless he received full particulars of the allegations under investigation and written confirmation that informal resolution was being refused.

26. Again, on the same date, Mr Roberts replied to Mr Sartin noting that the UNISON policy for dealing with misconduct by members did not include an obligatory informal stage, nor a requirement to pause an investigation while an informal resolution was being explored. Mr Roberts stated that he had been advised that the request for an informal resolution had been passed to the complainants, but that neither complainant had provided a response.

27. Mr Roberts stated that the policy contains no requirement that allegations be particularised prior to interviews but he added four quotes from submissions to the investigating team which included allegations of humiliation and bullying.

28. Mr Roberts drew Mr Sartin's attention to paragraph 3.7 of the policy, which states:

> A request to give evidence to the Investigation Team may be treated as an instruction of the union issued in accordance with the rules and regulation. In the event of a member unreasonably refusing to respond to the request, or obstructs the investigation process, then evidence of that refusal may be treated as evidence of disregarding a regulation of the union.

29. Mr Roberts stated that he believed the request made of Mr Sartin to attend an interview on 27 May 2022, was a reasonable request.

30. On the morning of 27 May 2022, Mr Sartin wrote to Mr Roberts, stating that he would attend the scheduled interview.

31. Notes of the interview were shared with Mr Sartin by email, on 21 June 2022.

32. Mr Sartin replied by email on 4 July 2022, with proposed amendments to the notes of interview, reiterating his request for full details of the allegations against him.

33. On 15 July 2022, Mr Roberts emailed Mr Sartin, confirming the allegations as:

> During the meeting of FMRC on 26 January 2022, you (Mr Sartin):
>
> i. Refused to allow Stephanie Thomas to contribute to discussion despite the fact that she had raised her virtual hand for a lengthy period and therefore created a humiliating and hostile work environment;
>
> ii. Failed to intervene when a committee member accused staff of having inappropriate "boozy lunches" with suppliers and/or potential suppliers which undermined the professionalism and integrity of staff and therefore enabled a hostile work environment;
>
> iii. Used the agenda item of "Chair's action" in a way not set out by the union's Financial Standing Orders and therefore created a hostile and intimidating environment for staff present at the meeting;
>
> iv. Created an intimidating, degrading and hostile environment for staff by unexpectedly announcing that you were recommending legal action re non-disclosure of information that they were legally unable to share;
>
> v. Created an intimidating, degrading and hostile environment for staff by refusing a request to withdraw the threat of legal action while further discussions were had prior to the NEC meeting;
>
> vi. Created an intimidating, degrading and hostile environment for staff by unexpectedly announcing that UNISON staff were

> unable to access legal advice if they challenged NEC decisions.
>
> The investigation is not complete and allegations may change.

34. On 2 September 2022, Mr Roberts interviewed Mr Sartin for a second time.

35. On 7 October 2022, Mr Sartin emailed Mr Roberts expressing concerns that he had not received any notes following the meeting on 2 September 2022. Mr Sartin also stated that in the meeting on 2 September 2022, Mr Roberts had informed him that two further allegations had been made against him, and that he could expect to receive these in writing ahead of a third interview. Mr Sartin stated that he had not yet received these.

36. On 11 November, Mr Roberts emailed Mr Sartin telling him that he and Ms Loughlin would not be "tabling any further allegations relating to your conduct", and stating that they had no plans to interview him again.

37. On 5 December 2022, Mr Sartin emailed Mr Roberts stating that over three months had passed since his second interview and asking when he might expect an outcome. Mr Sartin stated that he was finding "the current position of being in limbo very difficult".

38. Mr Roberts replied to Mr Sartin on 14 December, telling him that the investigation had been completed, and a report submitted to the General Secretary.

39. An investigation report was published on 7 December 2022.

40. The investigation report records the terms of reference for the investigation as:

> To carry out an investigation under UNISON's Policy and Procedure for dealing with misconduct by members in relation to UNISON employees into issues raised in emails from Stephanie Thomas (ST), Assistant General Secretary Region and Governance, dated 26 January 2022 and Emily Oldknow (EO), Chief Operating Officer,

dated 27 January 2022. ST and EO both sent their emails to Christina McAnea, General Secretary. A later allegation of victimisation from ST email dated 22 July 2022 was also raised but a separate investigation was undertaken.

41. The investigation report recorded that:

> The investigation has taken longer than expected due to the difficulties in securing mutually agreeable dates for interviews with the complainants, the subject of investigation and witnesses.

42. The investigation report concluded:

> There are sufficient grounds to believe that the member has committed misconduct in relation to employees of the union by behaving in a way that meant that staff felt threatened, bullied and humiliated by his actions."

43. On 5 April 2023, Maggi Ferncombe, who at the time was Director of the Executive Office in UNISON and has since become the Union's Director of Political Strategy, emailed Mr Sartin telling him that Ms McAnea had asked her to make arrangements for a facilitated meeting to discuss an informal resolution of the complaints made against him. Ms Ferncombe requested Mr Sartin's availability from 19-30 April 2023.

44. On 9 April 2023, Mr Sartin replied to Ms Ferncombe. He told her that April was busy for him, so he might not be able to meet until May. Mr Sartin also asked who would run the facilitated meeting, who would be present, and whether, if following the meeting, both Mr Sartin and Ms Oldknow were satisfied that the matter was satisfactorily resolved, he would receive a formal letter confirming closure of the complaints from Ms McAnea.

45. On 10 April 2023, Mr Sartin followed his email of the previous day, confirming 3 dates in May that he could attend a facilitated meeting.

46. On 13 April 2023, Ms Ferncombe emailed Mr Sartin telling him that Ms Oldknow was not available on any of the 3 dates offered by Mr Sartin. Ms Ferncombe also told Mr Sartin who the meeting would be facilitated by, that he would be entitled to bring a representative, and that if the informal resolution process was successful then he would receive written confirmation of closure of the complaints.

47. On 17 April 2023, a date of 10 May 2023 was agreed by email for a facilitated informal resolution meeting.

48. On 27 April 2023, Carly French, the Union's Head of HR and Employee Relations, wrote to Mr Sartin confirming that an informal resolution meeting had been scheduled for 10 May 2023. Ms French also included in her letter, 7 points described as a summary of the findings of the investigation.

49. On 18 May 2023, Ms Ferncombe emailed Mr Sartin telling him that since the informal resolution meeting had not resulted in an agreed resolution, the matter would proceed through the formal procedure.

50. On 19 July 2023, Ms Ferncombe emailed Steven North, as Chair of the Staffing Committee, seeking his views on the proposed composition of the disciplinary panel.

51. On 25 July 2023, Ms Ferncombe emailed Mr North, with Ms McAnea copied in, advising him that her rationale in appointing a panel was to discount NEC members who sat on the FRMC at the time of the relevant meeting, to discount those who had recently been involved in a disciplinary panel, and to discount NEC members without prior experience of sitting on a disciplinary panel. Ms Ferncombe explained that this discounting process left 3 names remaining, Alastair Long, Jane Doolan, and Maureen Le Marinel.

52. On the same date, Ms Ferncombe emailed John Stolliday advising him that a hearing was to be convened, and asking for arrangements to be made with 3 panel members.

53. On 28 July 2023, Mr North replied to Ms Ferncombe asking for details about when each NEC member most recently participated in a disciplinary panel, and how many disciplinary panels each NEC member had sat on.

54. On 7 August 2023, Ms Ferncombe replied to Mr North, telling him that unless he provided a legitimate reason why one or more of the names she had proposed should not be on the panel, she would be moving forward with convening the panel.

55. On 8 August 2023, Mr North replied to Ms Ferncombe saying that he had requested further information so that he could determine whether the proposed panel was the most appropriate available. Mr North also explained that he did not agree that prioritising experience of disciplinary panels was the correct decision.

56. On the same date, Ms Ferncombe replied, stating that she believed Mr North was obfuscating and unnecessarily intervening in the matter. She added that she believed she had still not been provided with a legitimate reason why any of her proposed panel members should not be involved.

57. Again on the same date, Mr North replied, stating that he believed he was "merely carrying out the role assigned to me by the policy and procedure." Mr North repeated his request for further information about the previous disciplinary panel experience of NEC members.

58. On 15 August 2023, Ms Ferncombe wrote again to Mr North, stating that she had significant concerns regarding how Mr North had carried out his responsibilities under the procedure. She added that she would be proceeding with convening the panel.

59. On 16 August 2023, Mr North raised objections about two proposed panel members, Mr Long and Ms Le Marinel. Mr North told Ms Ferncombe that Mr Long had recently participated in a disciplinary investigation, and so should be ruled out for the same reasons as other NEC members. With regard to Ms Le Marinel, Mr North told Ms Ferncombe that he objected to her presence on the panel, "as a result of her well-documented hostility towards Time for Real Change, which Dan Sartin

is associated with." Mr North said that he believed proceeding with the hearing on the basis of the proposed panel would be unfair, would not have the appropriate consent of the Chair of the Staffing Committee, and would likely lead to an unfair outcome.

60. On 18 August 2023, Ms McAnea emailed Mr North. Ms McAnea noted Mr North's objections but stated that she believed the objections raised by Mr North had no bearing on the panel composition. Ms McAnea also told Mr North that she had discussed the matter with the Union's Director of Legal Services. Following this, Ms McAnea explained that she believed there were serious grounds to believe UNISON could be exposed to legal proceedings as a result of Mr North's intervention. Ms McAnea said that Mr North's involvement could give rise to the risk of actual or apparent bias. She concluded that, in order to preserve the integrity of the process, further consultation with the Staffing Committee would be conducted through its Vice-Chair rather than Mr North as its Chair.

61. On 14 September 2023, Ms Ferncombe wrote to Mr Sartin, informing him that the Union was bringing charges against him. She told Mr Sartin that a Disciplinary Panel Hearing had been arranged to take place on 17 October 2023. The letter informed Mr Sartin that the Disciplinary Panel would be reaching decisions on the following allegations:

    i. That DS as Chair of the FRMC did not intervene or challenge another NEC member during the FRMC on 26th January 2022 when Paul Holmes made unsubstantiated allegations of inappropriate behaviour against staff ie 'boozy lunches'. This is out with UNISON's rules and working together guidelines and union's rules B2.4 and B2.6

    ii. That DS as Chair of FRMC without any prior warning to EO as Secretary of the Committee (or any other officer); moved a verbal motion to commence legal action against staff (letter before action), refusing all advice from EO as Secretary to

the Committee and insisted that the FRMC take a vote. This is outside all of UNISON's established procedures including the working together guidelines, the Financial Standing Orders and UNISON's rules B2.4 and B2.6

iii. That during the FRMC meeting on 26th January 2022, multiple staff were visibly upset and felt demeaned and/or intimidated when DS as Chair made his verbal motion threatening legal action against anyone who did not comply with his request as Chair. The impact on staff he appeared to ignore - refusing EO's request to speak when trying to de-escalate the issue.

iv. That DS's actions during the meeting of the FRMC on 26th January 2022 made staff feel anxious, demoralised, threatened and demeaned.

v. That DS wrote on 8th February confirming that it would be members of the General Secretariat Group who would receive the letter before action referred to above. This is outside UNISON's normal procedures (complaint procedure) and UNISON rule D 2.12.2

vi. That DS has committed misconduct in relation to employees of the union by behaving in such a manner that staff felt threatened, bullied and humiliated by his actions.

62. On 20 September 2023, Mr Sartin emailed Ms Ferncombe, raising concerns about the date of the Disciplinary Panel Hearing, and requesting that it be postponed. Mr Sartin told Ms Ferncombe that he had made a complaint to the Certification Officer, which was due to be heard on 31 October 2023 and 14 November 2023. Mr Sartin made several other points, including that his chosen representative was unavailable until shortly before the Disciplinary Hearing date and as such, he would be unable to prepare. Mr Sartin concluded that since the process had been

outstanding for a long time, during which he had "maintained a cordial and productive relationship with the complainant". Mr Sartin added that he did not believe a further delay would negatively impact the outcome. Mr Sartin also requested to be told the names of the panel members.

63. Ms Ferncombe informed Mr Sartin that his concerns would be shared with the Chair of the Disciplinary Panel, Ms Le Marinel. On 27 September 2023, Ms Marinel informed Ms Ferncombe that she was happy to agree a short postponement of the Disciplinary Hearing, on the grounds of the availability of Mr Sartin's representative, but that it must take place within the first three weeks of November 2023.

64. On 28 September 2023, Ms Ferncombe relayed Ms Le Marinel's decision to Mr Sartin.

65. On 3 October 2023, Mr Sartin replied to Ms Ferncombe. He expressed his disappointment at the decision of the Chair and repeated his request to be told the names of the panel members. He requested that the Disciplinary Hearing be scheduled for 16 November 2023.

66. On 16 November 2023, Mr Sartin was written to by Ms Ferncombe informing him that a hearing date had been set for 13 December 2023.

67. Brian Walters emailed Ms Ferncombe on 21 November 2023 telling her that he would be acting as Mr Sartin's representative for the hearing and requesting that the names of the panel members be shared so that he could "be assured there is no bias, perception of bias or conflict of interest from the panel members." Mr Walters asked that Ms Ferncombe to confirm that there would be "no reference to or inclusion of any material from Stephanie Thomas in the documents sent to the panel. As she is no longer a complainant, such inclusion would arguably be prejudicial."

68. Mr Walters also asked that any witnesses be identified, along with an indication of the charges each would be addressing. Mr Walters told Ms Ferncombe that he wanted this information so that Mr Sartin could consider whether to call "additional

rebuttal witnesses". Mr Walters also asked Ms Ferncombe to confirm that the provisions of Schedule D would apply.

69. Mr Walters received a reply by email on 23 November 2023 from the Member Liaison Unit which told him that conflict of interest checks had been undertaken with the panel, and that they would introduce themselves at the start of the hearing. The email stated that the bundle had been sent to Mr Sartin on 14 September 2023. The email did not state who the witnesses would be and did state that Mr Sartin could decide who he wished to call as witnesses. The email also stated that the process being followed was the UNISON policy and procedure for dealing with misconduct by members in relation to UNISON employees, and that a copy had been included in the bundle of documents provided to Mr Sartin on 14 September 2023.

70. Day 1 of the Disciplinary Hearing took place on 13 December 2023.

71. On 14 December 2023, Helen Chater, Investigations Officer, UNISON Member Liaison Unit, emailed Mr Sartin, proposing 16 and 17 January 2024 as further dates for the disciplinary hearing.

72. On 15 December 2023, Mr Sartin replied to Ms Chater, confirming that he was available for the proposed dates.

73. On 5 December 2023, Mr Sartin wrote to UNISON's Member Liaison Unit, submitting a formal complaint about the conduct of the disciplinary investigation.

74. Day 2 of the Disciplinary Hearing took place on 16 January 2024.

75. On 17 January 2024, Ms Le Marinel, as Chair of the Disciplinary Panel, wrote to Mr Sartin, informing him that the panel had considered procedural concerns he had raised, and had concluded that the hearing process should proceed. Ms Le Marinel told Mr Sartin that the hearing would reconvene on 27 and 28 February 2024.

76. On 24 January 2024, Ms Ferncombe wrote to Mr Sartin in response to his formal complaint of 5 December 2023, recommending that his concerns be raised with the

Disciplinary Panel at the hearing itself, or in advance via the Panel Secretary. Ms Ferncombe also told Mr Sartin that his concerns could be raised at the appeal stage.

77. On 29 January 2024, Mr Sartin emailed Ms Le Marinel, through the Member Liaison Unit, asking to be provided with written reasons for the panel's decision that the hearing should proceed despite the procedural concerns he had raised.

78. On 8 February 2024, Ms Le Marinel replied to Mr Sartin, telling him that she believed her letter of 17 January 2024 outlined the decision-making process appropriately.

79. Days 3 and 4 of the Disciplinary Hearing took place on 27 and 28 February 2024.

80. On 15 March 2024, the Panel met Mr Sartin in person, to deliver its decisions. The Panel upheld allegations 1, 2, and 4, partially upheld allegation 3, and dismissed allegations 5 and 6. The Panel's findings were confirmed to Mr Sartin in writing on 20 March 2024 along with written reasons. Mr Sartin was also informed of a sanction as follows:

> The Panel, following representations in mitigation decided that in accordance with Rule I, para 8, sub section 4-7, as set out in Appendix 2 4.13, that a sanction of Censure, and in applying this sanction we 'strongly condemn' the inaction taken by you as the chair of FRMC in the meeting of the FRMC on 26th January 2022. This sanction will include a requirement for you to make a 'meaningful apology' to staff of the FRMC, this should be undertaken at a future FRMC meeting. The 'meaningful apology' should be agreed with the Chair of Staffing and the General Secretary, and it should include recognition of the upset on 26th January 2022. That you undertake additional training in respect of chairs training including roles and responsibilities and unconscious bias training.

81. The same letter also informed Mr Sartin of his right to appeal.

82. On 10 April 2024, Mr Sartin submitted an appeal to the Member Liaison Unit.

83. On 22 April 2024, the Member Liaison Unit emailed Debi Potter, Pam Sian, and Maura Mckenna asking them to sit on a Panel to hear Mr Sartin's appeal. Each was asked to confirm if they were aware of any conflict of interest which may compromise the fairness and transparency of the process. Ms Potter and Ms Sian replied by email on the same date, confirming that they were not aware of any conflict of interest which may have compromised the process.

84. On 7 May 2024, an electronic poll was circulated to the panel, seeking a date for the appeal hearing. On 15 May 2024, Ms Chater wrote to the panel confirming that 3 and 4 September 2024 had been identified as dates for the appeal hearing.

85. On 12 June 2024, the appeal hearing dates were confirmed in writing to Mr Sartin.

86. On the same date, Mr Sartin replied, stating that he was unable to attend an appeal hearing on the proposed dates due to the availability of Mr Walters, his chosen representative. Mr Sartin gave availability until 8 October 2024. Ms Chater responded telling Mr Sartin that the Panel were unable to attend an appeal hearing on his proposed alternative dates and included a second electronic poll seeking all available dates.

87. After failing to find a mutually acceptable date, a third electronic poll was circulated to the appeal panel seeking their availability for December 2024, by email on 9 October 2024. The appeal panel now consisted of Ms Potter, Ms Sian, and Andrew Goring. A fourth electronic poll was circulated on 30 October 2024, seeking availability throughout January to March 2025.

88. On 13 January 2025, John Stolliday, UNISON's Acting Director of the Executive Office, wrote to Mr Sartin, confirming that the appeal hearing would take place on 3 and 4 February 2025.

89. UNISON submitted a written response to Mr Sartin's appeal, dated 13 January 2025. The written submission invited the Appeal Panel to reject the appeal.

90. On 22 January 2025, Mr Goring emailed the Union withdrawing from the Appeal Panel due to a change in personal circumstances. He was replaced by Pat Jones. Mr Sartin was informed of the change to the panel by email from Mr Stolliday on 23 January 2025.

91. On 17 February 2025, Helen Reynolds, Secretary to the Appeal Panel, wrote to Mr Sartin informing him that the Appeal Panel had decided to uphold the decision of the Disciplinary Panel.

The Relevant Statutory Provisions

92. 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;

(e) such other matters as may be specified in an order made by the Secretary of State.

The Relevant Rules of the Union

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

I Disciplinary action

(8) Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:

By the Branch

.1 censure of the member;

.2 debarring the member from attending any branch meeting for a period not exceeding 24 months;

.3 referral of the matter to the National Executive Council for consideration of a more serious penalty including suspension or expulsion;

By the National Executive Council

.4 censure of the member

.5 debarring the member from holding any Union office for whatever period seems to it to be appropriate, up to a maximum of 36 months;

.6 suspension of the member from all or any of the benefits of membership for whatever period seems to it to be appropriate, up to a maximum of 36 months;

.7 expulsion of the member from the Union.

UNISON policy and procedure for dealing with Misconduct by members in relation to UNISON employees Formerly known as Appendix 2

3.0 Investigation procedure

3.3 Subject to any guidance produced by the National Executive Committee, ACAS guidance (and in the case of Northern Ireland, the equivalent code of conduct) and good practice, the Investigation Team shall be able to conduct its investigation in whatever way it considers is appropriate, given the nature of the allegation(s).

3.5 Depending upon the nature and complexity of the complaint, the Investigation Team will normally be expected to complete its investigation within 28 calendar days of its appointment. In the event that the Investigation Team believes that more time is needed to complete its work, the General Secretary or person delegated to act on their behalf, in consultation with the Chair of the Staffing Committee, shall have the power to extend the investigation period for a further period as appropriate.

3.6 Where there appear to be reasonable grounds to believe that a member of UNISON or any other person can give relevant evidence, or has witnessed the alleged misconduct, the Investigation Team shall request an interview with that member or person. The member or person will be invited to produce any evidence including but not limited to any document, printed material, recording or photographic image that he/she or the Investigation Team considers might be relevant to the inquiries of the Investigation Team. A friend or fellow UNISON member may be present at the interview for the purposes of accompanying the member or person but may not answer questions on their behalf.

4.0 Disciplinary procedure

4.1 In the event that the Investigation Team's conclusion is that the matter proceeds to a disciplinary hearing, a Disciplinary Panel shall be established by the officer responsible for constitutional issues in consultation with the Chair of the Staffing Committee.

Findings and Conclusions

Background

94. Mr Sartin's complaint is that when the Union imposed a sanction on him, on or around 30 March 2024, it did so in breach of Rule I(8).

95. In the written particulars to his complaint, which can be found at Appendix 1, Mr Sartin identified a series of actions undertaken by the union. Mr Sartin alleges that each action constituted a breach of an implied rule relating to natural justice. In most cases, he also alleges that the action undertaken by the Union constituted a breach of either Appendix 2, paragraph 3.3, 3.5, 3.6, or 4.1.

96. Mr Sartin has structured his written particulars by grouping the actions under headings relating to implied rules of natural justice. Within each action, he has identified explicit rules that he alleges have been breached, where he believes this to be the case.

97. The effect of Mr Sartin's approach is that the alleged breaches of explicit rules are found at various points throughout his written particulars relating to various independent actions of the Union.

98. At the CMM, the parties agreed that in order to determine Mr Sartin's complaint, the issues I need to resolve are:

i. Has there been a breach of Rule I(8) on the basis that procedural breaches prior to the imposition of a sanction meant that a disciplinary charge could not be "proved" against the applicant?

ii. Has there been a breach of Rule I(8) on the basis that breaches of the principles of natural justice prior to the imposition of a sanction meant that a disciplinary charge could not be "proved" against the applicant?

Time limits

99. For the avoidance of doubt, it is important to note that while Mr Sartin's complaint requires me to consider alleged breaches leading up to the imposition of a sanction, I have no power to issue an enforcement order in relation to any earlier alleged breaches in isolation, should I find them to have occurred. This is because the only complaint Mr Sartin made that arrived in my office within the statutory time limit, was his complaint about a breach of Rule I(8) and an associated overarching breach of the principles of natural justice.

100. The Certification Officer has no jurisdiction to vary the time limits specified in the 1992 Act, and so while I have needed to reach findings and conclusions on each of the actions complained about by Mr Sartin, I must take a holistic view about whether any of those actions, taken individually or collectively, mean that a disciplinary charge could not be proven against Mr Sartin, and in turn whether that means either that Rule I(8) was breached or that an implied rule of natural justice was breached.

Structure of my findings and conclusions

101. In these findings and conclusions, I have mirrored the structure of Mr Sartin's written particulars. It is my hope that by doing so, the parties will be able to understand my findings on each individual allegation made by Mr Sartin, in order to understand my overall decision.

102. I believe this approach reflects the thrust of Mr Sartin's complaint, which is that one action may engage multiple rules (or parts of rules), and that understanding each

action individually is necessary for me to determine whether the disciplinary charge against him was proven within the rules of the Union.

103. The bundle of evidence for this hearing was substantial, running to over 1,000 pages. Inevitably, this decision does not refer to absolutely everything in the bundle, but I have taken account of everything that was available to me.

104. In addition to the agreed facts, I have reached further findings of fact based on the available evidence and the balance of probabilities. I have been careful to restrict my findings to those necessary to determine the complaint before me.

A. On the question of whether the Union acted honestly and in good faith, and without bias

105. In the written particulars to his complaint, Mr Sartin argued that the Union breached several explicit Rules and failed to act honestly, in good faith, and without bias in the following actions:

i. The choice of investigators

ii. The choice of interviewees

iii. Multiple changes of allegations

iv. The panel selected to conduct the disciplinary hearing.

The choice of investigators

106. There was no dispute that, when Ms Loughlin and Mr Roberts were appointed by the General Secretary as the Investigation Team, they were line managed by Stephanie Thomas, one of the Union's Assistant General Secretaries and one of the people who had complained about Mr Sartin's behaviour at the FRMC meeting on 26 January 2022.

107. Mr Sartin argued that this is a breach of Appendix 2, paragraph 3.3, because it breaches Acas guidance, and NEC guidance (specifically a document titled

"Appendix to the D & O minutes".) Mr Sartin also argued that the choice of investigators meets the test for apparent bias and therefore breaches an implied rule of natural justice.

108. The Union argued that Acas guidance does not prohibit an employer from appointing an investigator who knows the complainant or has dealings with the complainant. Further, the Union argued that all that Acas requires is that:

> The employer should get somebody who's not involved in the case to carry out the investigation, for example another manager or someone from HR

109. Ms Ferncombe told me that between June 2021 and October 2024, she was the Director of the Executive Office, a role that included supervision of disciplinary procedures in relation to members. She told me that the Union's typical approach to investigations is to appoint either a Regional Manager or a Regional Secretary as investigator and that those individuals are required to attend appropriate training courses to keep abreast of best practice. I asked Ms Ferncombe what those training courses might be and was told that training is provided by an external law firm and includes the conduct of investigations. She also told me that the General Secretary would have taken time to consider who the appropriate investigators should be, given the unprecedented nature of a complaint of such seriousness, and the seniority of the complainants. Ms Ferncombe also told me that while the investigators were line managed by one of the complainants in their day-to-day role, they reported directly to the General Secretary for the purposes of their investigation. I accept Ms Ferncombe's evidence on these points.

110. Ms Loughlin told me that neither she nor Mr Roberts had had prior dealings with Mr Sartin or with the FRMC, and that they were both trained in conducting such investigations. Mr Sartin agreed or conceded these points.

111. Ms Loughlin also told me that she placed a high value in acting with integrity in such matters and believed she was appointed as a professional in her own right to investigate the evidence. I accept her evidence on these points.

112. Ms Loughlin also told me that following Ms Thomas' retirement, nothing changed in the approach to the investigation. In his evidence, Mr Sartin agreed with this point, telling me that the approach was consistent before and after Ms Thomas' retirement.

113. I need to decide if the Union's choice of investigators amounts to a breach of Appendix 2, paragraph 3.3, either through breaching Acas guidance, NEC guidance, or an implied rule of natural justice relating to apparent bias.

114. Appendix 2, paragraph 3.3 says:

> Subject to any guidance produced by the National Executive Committee, ACAS guidance […] and good practice, the Investigation Team shall be able to conduct its investigation in whatever way it considers is appropriate, given the nature of the allegations.

115. My reading of the rule is that it sets a general framing for the conduct of the Investigation Team, it is not engaged in the action of appointing that Investigation Team. Therefore, I find that for the purposes of this strand of Mr Sartin's complaint, I do not need to decide whether Acas guidance was breached, or whether a breach of Acas guidance would amount to a breach of Appendix 2, Rule 3.3, and I do not need to decide whether NEC guidance was breached, or whether a breach of the document titled "Appendix to the D & O minutes" would amount to a breach of Appendix 2, Rule 3.3.

116. Turning to a breach of an implied rule of natural justice relating to apparent bias, Mr Sartin referred me to the case of Porter v Magill [2001] UKHL 67 and argued that the fair-minded and informed observer would conclude, on the facts of his

complaint, that there was a real possibility that the investigators appointed to investigate complaints made against him would be biased.

117. The Union argued that the principles of natural justice do not apply to investigations. Alternatively, that they do not apply to the same extent as they do in relation to the conduct of a disciplinary hearing.

118. I had before me the case of Helow v Home Secretary [2008] 1 WLR 2416, in which Lord Hope considered the attributes of the fair-minded and informed observer:

> [1] My Lords, the fair-minded and informed observer is a relative newcomer among the select group of personalities who inhabit our legal village and are available to be called upon when a problem arises that needs to be solved objectively. Like the reasonable man whose attributes have been explored so often in the context of the law of negligence, the fair-minded observer is a creature of fiction. Gender-neutral (as this is a case where the complainer and the person complained about are both women, I shall avoid using the word 'he'), she has attributes which many of us might struggle to attain to.
>
> [2] The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in Johnson v Johnson (2000) 174 ALR 655, (2000) 201 CLR 488 (para 53). Her approach must not be confused with that of the person who has brought the complaint. The 'real possibility' test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not

> shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.
>
> [3] Then there is the attribute that the observer is 'informed'. It makes the point that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment.

119. The fair-minded and informed observer described by Lord Hope is aware of the context recorded above in paragraphs 109-112, and she forms her conclusions about apparent bias within that context. She knows that the Union's typical practice is to appoint appropriately trained senior members of staff to conduct investigations. She is aware that Mr Roberts and Ms Loughlin had completed that training. She also knows that neither had had prior dealings with either Mr Sartin or the FRMC. While they are line managed by one of the complainants, she understands that they report directly to the General Secretary for the purposes of their investigation.

120. On that basis, I am satisfied that the fair-minded and informed observer would conclude that there was no real possibility that the investigators appointed to investigate complaints made against Mr Sartin would be biased.

121. Since I have reached this finding, I do not need to decide whether the Union is correct that the principles of natural justice do not apply in investigations.

The choice of interviewees

122. The investigators interviewed 8 members of staff and 4 lay members of the Union.

123. Ms Loughlin told me that she and Mr Roberts chose the interviewees out of a wish to focus on those who were said to have been affected by the alleged conduct and who had raised concerns with Ms Thomas and/or Ms Oldknow after the meeting. She added that she considered it to be unnecessary to interview others at the meeting, because even if they said they had not witnessed the alleged behaviour, or if they regarded certain remarks as incidental, their testimony could not invalidate the experiences of those staff who had raised concerns.

124. Mr Sartin argued that the choice of interviewees is a breach of Appendix 2, paragraph 3.3, because it breaches Acas guidance, and NEC guidance, specifically the document titled “Appendix to the D & O minutes”. He also argued that it is a breach of Appendix 2, paragraph 3.6. Finally, Mr Sartin also argued that the choice of interviewees meets the test for actual bias and therefore breaches an implied rule of natural justice.

125. I find that the investigators’ choice of interviewees does engage Appendix 2, paragraph 3.3 and so I must consider if that rule has been breached. I will first consider the question of an alleged breach of Acas guidance, before turning to the question of an alleged breach of NEC guidance. I will then address the alleged breach of an implied rule of natural justice, relating this time to actual bias. Finally, I will turn to the alleged breach of Appendix 2, paragraph 3.6.

126. Mr Sartin drew my attention to an extract from the Acas Guide to Discipline and Grievances at Work that states:

> When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee’s case as well as evidence against.

127. For its part, the Union drew my attention to an extract from another Acas Guide, "Conducting Investigations in the Workplace" that states:

> If a large number of people witnessed the same incident, the person investigating should:
>
> - Talk to some of the witnesses
> - Check whether they're saying broadly the same thing
>
> The person investigating does not have to talk to all witnesses, unless either of the following apply:
>
> - They feel they're not getting enough information
> - There are significant differences in what the witnesses say.

128. Appendix 2, paragraph 3.3 states "Subject to […] ACAS guidance […] and good practice, the Investigation Team shall be able to conduct its investigation in whatever way it considers is appropriate."

129. The Acas Guide to Discipline and Grievances at Work begins with a statement that it "provides good practice advice for dealing with discipline and grievances in the workplace."

130. I find that the purpose of this opening statement is to make clear that the guidance is not intended to be a prescriptive set of rules. Therefore, I cannot agree with Mr Sartin that Appendix 2, paragraph 3.3 is automatically breached if an investigator deviates from an element of the guidance.

131. Should I be wrong about that, I find that the non-specificity of the reference to "Acas guidance" within Appendix 2, paragraph 3.3 suggests that the purpose of the Rule is not to grant a particular document produced by Acas the force of rule within the Union, but rather to recognise Acas' role in producing guidance and promoting best practice, and to require investigators to have due regard to this.

132. I am satisfied that it is generally well understood by those with experience of industrial relations that Acas produces two types of document: Codes of Practice, which are binding and statutory, and guidance documents, which are non-statutory and expressly framed as providing guidance on good practice.

133. I have heard no argument to persuade me that the purpose of the reference to Acas guidance in Appendix 2, Rule 3.3 is to bind investigators to follow guidance on good practice explicitly in the same way as they might be bound to follow a statutory Code of Practice should a rule make an appropriate reference.

134. Finally, Mr Sartin relies here on the statement in Acas guidance that "it is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against.". For the avoidance of doubt, I find that the investigators' choice of interviewees is not evidence that they paid no regard to Acas guidance.

135. I will now turn to the alleged breach of Appendix 2, paragraph 3.3 through a breach of NEC Guidance.

136. The relevant paragraph of the guidance is found at the top of page 8 of the "Appendix to the D & O minutes":

> The primary role of the Investigation Team is to establish the facts relevant to the allegations being made. It is important that it does not simply consider evidence that supports the allegations. It must also consider evidence which undermines the allegations. Any investigation must be fair, balanced, and even-handed. The Investigation Team should not simply look for evidence to incriminate the member who is the subject of the complaint.

137. Before deciding if the facts support a finding that this paragraph was breached, I must decide if a breach of this paragraph would amount to a breach of Appendix 2, paragraph 3.3.

138. At his appeal hearing, Mr Sartin told the panel that he believed the Appendix to the D & O minutes had fallen into disrepute, either through oversight or negligence.

139. Ms Le Marinel told me that because the Appendix to the D & O minutes had a bearing on staff within the Union, it could only have been adopted with the endorsement of the Staffing Sub-Committee of the NEC. She also told me that at the relevant time, she was Chair of the Staffing Sub-Committee and had no recollection of seeing the document before. I accept her evidence in that regard.

140. Mr Sartin has provided no evidence that the Appendix to the D & O minutes was ratified and adopted. Evidence might have been minutes of a NEC meeting, or a statement from a colleague on the NEC agreeing that it had been adopted.

141. Therefore, on the balance of probabilities and on the basis of the evidence available to me, I find that the Appendix to the D & O minutes has not been adopted by the Union. Therefore, I do not agree with Mr Sartin that a failure to adhere to any of the principles contained within it could amount to a breach of Appendix 2, paragraph 3.3.

142. Should I be wrong about that, I have seen no evidence in the investigators' choice of interviewees to suggest that the relevant extract recorded at paragraph 136 was breached.

143. Turning to a breach of an implied rule of natural justice relating to actual bias, Mr Sartin argued that the choice of interviewees was clear evidence of demonstrable bias against him.

144. The notes of the investigation meeting held on 27 May 2022 show Mr Sartin's representative, Mr Walter, asking if NEC members were being asked to contribute as witnesses. Ms Loughlin is recorded as saying "They can if you think they should be", before confirming that Mr Sartin would have the opportunity to suggest witnesses. At the hearing, Ms Loughlin told me that subsequent to this meeting, Mr Sartin did not suggest any witnesses. I accept her evidence on this point. On that basis, I find that the investigators' choice of witnesses should properly be described

as consisting of those who were interviewed, plus those Mr Sartin wished to suggest. That Mr Sartin chose not to suggest further witnesses, cannot be evidence that the investigators did not wish to include his choices in their pool of witnesses.

145. Therefore, I find that the choice of interviewees by the investigators was not evidence of actual bias.

146. For the avoidance of doubt, I have not reached a finding about whether actual bias at this stage of the investigation could have amounted to a breach of an implied rule relating to natural justice when a sanction was imposed on Mr Sartin.

147. Finally in this section, I will turn to the alleged breach of Appendix 2, paragraph 3.6. Paragraph 3.6 states:

> Where there appear to be reasonable grounds to believe that a member of UNISON or any other person can give relevant evidence, or has witnessed the alleged misconduct, the Investigation Team shall request an interview with that member or person. […]

148. Mr Sartin argued that the words "shall request an interview" places a requirement on the investigators to interview all those who witnessed the alleged misconduct.

149. The Union argued that this reading of the Rule would result in absurd consequences. As an illustration of an absurd consequence, the Union suggested that under Mr Sartin's reading of the Rule, if someone addressed Annual Delegates' Conference and made an allegedly inappropriate statement, it would result in a requirement that approximately 2,000 interviews would need to be conducted. Instead, the Union argued that the Rule needed to be read in accordance with the Acas guidance quoted above at paragraph 132, and the overarching principle contained in Appendix 2, paragraph 3.3, that "the Investigation Team shall be able to conduct its investigation in whatever way it considers is appropriate, given the nature of the allegations."

150. In his submissions, Mr Toms accepted or conceded that a common sense approach must be taken when reading Appendix 2, paragraph 3.6. He argued however, that the common sense reading of Appendix 2, paragraph 3.6 did not mean the investigators should selectively pick interviewees such as to find against the subject of a complaint. I have already found, at paragraphs 144-145, that this was not the case.

151. On that basis, I find that the Investigators' choice of interviewees did not breach Appendix 2, Rule 3.6.

Multiple changes of allegation

152. In the particulars of his complaint, Mr Sartin argued that because the allegations against him changed as the investigation progressed, I should find that the investigation breached Appendix 2, paragraph 3.3 because the act of changing the allegations was "so far removed" from the NEC guidance and Acas guidance, and because changing the allegations breached an implied rule of natural justice relating to actual bias.

153. In describing the changes of allegation, Mr Sartin referred both to the retention of amended allegations and the removal of other allegations. Mr Sartin highlighted that certain allegations were made by some interviewees which were not put to him but were nonetheless included in the records of those interviews which were included in the investigation report put before the disciplinary panel. He argued that these were included in order to generate prejudice against him at the disciplinary hearing and that the changes of allegation are therefore evidence of actual bias.

154. I am satisfied that it is to be expected that during a lengthy investigation, allegations may change. During interviews, new allegations may be raised, some of which may be supported by enough evidence to require further investigation or possibly lead to disciplinary charges, and others may not be pursued in the absence of sufficient evidence.

155. I have already found, at paragraphs 141 that an alleged breach of the NEC guidance referred to, cannot amount to a breach of Appendix 2, paragraph 3.3.

156. I heard no argument to support a finding that Appendix 2, paragraph 3.3 was breached as the result of a breach of Acas guidance with relation to changes to the allegations.

157. Beyond the assertions of Mr Sartin, I have heard insufficient evidence to substantiate his claim that the changes of allegation were evidence of actual bias against him on the part of the Union. Accordingly, I reject the allegation of actual bias based on changes to the allegations made against Mr Sartin.

The panel selected by the Union to conduct the disciplinary hearing

158. Mr Sartin argued that when the Union selected the panel to conduct his disciplinary hearing, it breached Appendix 2, paragraph 4.1 and an implied rule of natural justice relating to actual bias.

159. Mr Sartin argued that two of the three panel members were biased against him and should have recused themselves. He referred specifically to a social media posting on 29 January 2022 from an account titled “Unison Unity”. The posting read:

> A statement from NEC Members on the reports of bullying at an NEC Sub Committee meeting this week.
>
> Statement following the UNISON Finance and Resource Management Committee 26th January 2022.
>
> You may have heard that meetings of the NEC committees have been postponed this week. Incredibly disappointingly this is due to threatening and bullying behaviour towards UNISON staff at a meeting of the finance and resource management committee.
>
> Our General Secretary, who was elected by a ballot of all members, has rightly stepped in to withdraw UNISON staff and therefore postponing meetings so she can meet with the President and Chair

> of the Staffing Committee to try and resolve these issues and this has been supported by the UNISON staff's trade unions.
>
> As trade unionists, it's essential that we put our values into practice with our own staff. We stand by our staff and their trade unions and our elected General Secretary.
>
> Our union only works when we all work together, members and staff, in the interests of our members.
>
> We urge the President and Chair of the Staffing Committee to work with the General Secretary to ensure this never happens again.

160. The statement records the names of 23 NEC members as signatories, including Maureen Le Marinel and Alastair Long.

161. On the same date, Ms Le Marinel reposted the statement and list of signatories under her own name.

162. Mr Sartin referred me to several other social media postings. For the avoidance of doubt, although I have not referred directly to each of them here, I have taken all of them into consideration.

163. Mr Sartin argued that the social media postings indicate that Ms Le Marinel already had a firm view about the matters she was asked to consider before the disciplinary hearing. Therefore, her appointment to the disciplinary panel breached an implied rule relating to natural justice because she was biased against him.

164. The Union argued that none of the postings referred to named Mr Sartin, and although Ms Le Marinel voiced criticism of a faction to which Mr Sartin is associated (Time for Real Change), she did not criticise Mr Sartin on a personal or individual basis. Further, the Union argued that even if she had, the bar for identifying apparent or actual bias in a trade union is lower than in a judicial setting.

165. Within the evidence bundle, email correspondence shows Ms Ferncombe explaining the process she had applied in selecting the panel, to Mr North, as Chair

of the Staffing Committee. Her longlist began with all members of the NEC, before being shortlisted by discounting those who had not received training, those who had been on the FRMC at the relevant meeting, those members who had recently concluded a disciplinary panel, and those members who were already allocated to a disciplinary panel. In recognition of Mr Sartin's seniority in the Union, and the seniority of the complainant, she also discounted those who had no experience of being on a panel.

166. Ms Ferncombe's decision matrix was challenged by Mr North, who, after several back-and-forth emails, expressed a concern that Ms Le Marinel had a "documented hostility towards Time for Real Change, which Dan Sartin is associated with".

167. For reasons I need not go into here, Christina McAnea, UNISON's General Secretary, took over the correspondence with Mr North, stating,

> As you know the NEC comprises individuals who profess support for a group or faction. This does not provide grounds to debar them from sitting on a panel. If it were grounds to do so, by the same reasoning, this would operate to disqualify anyone who supported TFRC from acting as a panel member – they too would be debarred on grounds of lack of impartiality. This is not how UNISON has ever operated in deciding who will sit on panels. Every panel member is required to act in good faith and to make any decision based on the evidence and arguments that are put in front of them.

168. In his witness statement, Mr Sartin told me that "there are two different groups on the NEC in reality". In his oral evidence, he stated that the vast majority of NEC members belong to one or the other of the two groups.

169. In her evidence, Ms Ferncombe told me that political factions are never taken into consideration when selecting panel members, instead all NEC members are treated as being capable of meeting the responsibility of making an independent judgement on the evidence available to them.

170. Mr Sartin became aware of the identity of the panel at the start of the disciplinary hearing, and Ms Le Marinel's notes record that he raised concerns about bias and asked her to recuse herself. The notes also record that Ms Le Marinel sought advice from Ms Ferncombe before deciding to remain on the panel. Her notes state:

> I confirm and reiterate that I have made no pre-determined views or decisions on the outcomes or potential outcomes of this hearing. As I have said previously, I act with honesty and integrity and will make decisions based on the evidence presented and on the balance of probabilities. I will only be considering the evidence against the allegations brought to the panel today.

171. During her witness evidence, I asked Ms Le Marinel to take me through the questions she had asked herself in reaching the decision not to recuse herself. She told me she asked herself whether she could be fair and look only at the evidence before her, whether she could take a fair and balanced approach in reaching conclusions and in identifying appropriate questions to ask of all participants in the hearing. She told me that if the answer to these questions had been negative, she would have recused herself. She also heavily emphasised that as a member of Police Staff, she is held to high standards of professional behaviour, both inside and outside of the workplace, including acting with honesty and integrity. I accept Ms Le Marinel's evidence on these points.

172. I must decide if the previous social media postings made by Ms Le Marinel amount to either apparent or actual bias. In reaching my decision, I have been mindful of several relevant authorities which were referred to during the hearing.

173. Mr Brittenden, for the Union, drew my attention to the following passages from White v Kuzych [1951] AC 585, which concerns the case of a union member who publicly opposed the closed-shop principle, and was charged with discrediting the union. The member applied for a declaration that the decision to expel him was contrary to natural justice and the result of bias. Viscount Simon said:

> Whatever the correct details may be, their Lordships are bound to conclude that there was, before and after the trial, strong and widespread resentment felt against the respondent by many in the union and that Clark, amongst others, formed and expressed adverse views about him. If the so-called "trial" and the general meeting which followed had to be conducted by persons previously free from all bias and prejudice, this condition was certainly not fulfilled. It would, indeed, be an error to demand from those who took part the strict impartiality of mind with which a judge should approach and decide an issue between two litigants – that 'icy impartiality of a Rhadamanthus[1]'.
>
> […]
>
> What those who considered the charges against the respondent and decided whether he was guilty ought to bring to their task was a will to reach an honest conclusion after hearing what was urged on either side, and a resolve not to make up their minds beforehand on his personal guilt, however firmly they held their conviction as to union policy and however strongly they had shared in previous adverse criticism of the respondent's conduct.

174. Mr Brittenden also drew my attention to a more recent decision, that of Dooley v UCATT (UKEAT/0523/12/SM). The case was an appeal from a decision of the Certification Officer which concerned a complaint from a Union member who had been disciplined by the union's executive council. The member argued that the decision to discipline him was taken in breach of the rules of natural justice and was tarnished by actual or apparent bias on the part of the executive council. The Certification Officer did not uphold the complaint, and the subsequent appeal was

[1] In Greek mythology, a son of Zeus and Europa. He reigned with so much justice and impartiality, that the ancients have said he became one of the judges of hell. (Lempriere's Classical Dictionary)

dismissed. At the Employment Appeals Tribunal, Counsel for the member referred to a case in which it was held that a financial interest in the shares of a party, barred a Judge from hearing the case. Judge Richardson rejected the submission:

> 24. I have no hesitation in rejecting this submission. The cases upon which Mr Atkinson relies concern the association of a judge with a party in litigation, criminal or civil. There is no useful parallel with the position of members of an executive council concerned to determine charges brought against a union member. […]
>
> […]
>
> 33. This, to my mind, is an example in the context of trade union rules of the application of the principle that natural justice must be viewed in context.[…]

175. Finally, Mr Brittenden drew my attention to the previous Certification Officer's decision in Simpson v Unite the Union (D/1/23-24) (on remission). Again, the case concerned allegations of actual and apparent bias in trade union disciplinary proceedings. At paragraph 28 of the decision, the Certification Officer set out her conclusions relating to political affiliations within a trade union:

> In my experience it is not uncommon for Union Members and staff to also be a part of movements or organisations which are affiliated to, or linked with, the Union. I do not think, however, that this can be sufficient for the fair-minded observer described at paragraph 81 above to believe that real or perceived bias could exist.

176. In response to the emphasis Mr Brittenden urged me to place on these cases, Mr Toms submitted that White was an extremely old case, that Dooley was an extreme case, and that it was important that I be mindful again of the fair-minded and informed observer test as set out by Lord Hope and quoted at paragraph 118 above.

177. I agree with Mr Toms that I must consider the fair-minded and informed observer test, including that the facts must be seen in their overall context. The context in this case is that of a disciplinary process within a trade union, and I find that the fair-minded and informed observer would be aware of that, and therefore aware of the context of applying the principles of natural justice into trade union rules as set out in White, Dooley, and Simpson.

178. Applying those principles to the facts of Mr Sartin's complaint requires me to decide whether the social media postings made by Ms Le Marinel give rise to a real possibility of bias or to actual bias. Mr Toms argued that the postings cross a boundary, becoming evidence not only of apparent bias but actual bias. Mr Brittenden argued that Mr Sartin was not criticised or referred to in a personal or individual basis, and that even if I found the postings were implicitly aimed at Mr Sartin, they did not meet the higher bar set out in the case law for identifying apparent or actual bias in the context of a trade union.

179. The social media postings made by Ms Le Marinel express general concern about conduct within the Union. They do not name Mr Sartin, and nor do they assert that Mr Sartin was personally guilty of misconduct. In my view it was possible for Ms Le Marinel to hold the views expressed in the social media postings while still being able to approach Mr Sartin's disciplinary hearing without having prejudged the facts.

180. I am particularly mindful of the clarity with which Ms Le Marinel answered my question about how she approached reaching a decision about whether or not to recuse herself following Mr Sartin's application that she do so, and I have already indicated that I have accepted her evidence on these points.

181. I am also mindful that when Mr North raised the concerns referred to in paragraph 166, his concern was that Ms Le Marinel had a documented hostility towards Time for Real Change, not that she had a documented hostility towards Mr Sartin.

182. The fair-minded and informed observer would be aware of all of these contextual points, and I find that on that basis, they would not conclude that there was a real

possibility of bias. Going a step further, and for the avoidance of doubt, I find that I have seen no evidence of actual bias in Ms Le Marinel's appointment to the disciplinary panel.

183. In his particulars, Mr Sartin also argued that Mr Long's presence on the panel was further evidence of apparent or actual bias, however this was not pursued at the hearing.

184. In conclusion, I find that the Union's choice of panel members did not breach an implied rule of natural justice relating to either apparent or actual bias.

185. Mr Sartin has also argued that the choice of panel members breached Appendix 2, paragraph 4.1.

186. Appendix 2, paragraph 4.1 states:

> In the event that the Investigation Team's conclusion is that the matter proceeds to a disciplinary hearing, a Disciplinary Panel shall be established by the officer responsible for constitutional issues in consultation with the Chair of the Staffing Committee.

187. In the evidence bundle, I had before me 10 emails between Ms Ferncombe and Mr North discussing the composition of the disciplinary panel. Mr Sartin argued that the correspondence does not amount to consultation, because when Mr North challenged the composition of the panel, he was removed from the process by the General Secretary.

188. At the hearing, Ms Ferncombe told me that the reason for Mr North's removal from the process was not to do with his comments about the composition of the panel, but rather was related to an allegation the Union had received that Mr North had interfered with the investigation in other ways. For the avoidance of doubt, I reach no findings whatsoever on the reasons for Mr North's removal from the process, other than to say that I accept Ms Ferncombe's evidence that it was not because he had challenged the composition of the panel.

189. I asked Ms Ferncombe to explain to me what she understood the reference to "consultation" to require of her in the context of Appendix 2, paragraph 4.1. She told me that she understood it to mean she had to make a proposal and provide necessary accompanying information. She was clear that while consultation requires seeking views, it does not require seeking authorisation or agreement.

190. I find that this accords with the meaning of the word 'consultation', as well as with a common sense reading of the Rule, and I therefore find that the Union did not breach Appendix 2, paragraph 4.1 when the disciplinary panel was composed.

B. On the question of whether Mr Sartin was given an opportunity to state his case

191. The second group of complaints in Mr Sartin's particulars comes under the heading "My opportunity to state my case was compromised in significant ways".

192. Specifically, Mr Sartin argued that the Union breached several explicit Rules and an implied rule of natural justice relating to his opportunity to state his case with the following actions:

    i. The timeliness of the investigation

    ii. A lack of clarity on the hearing procedure prior to the hearing

    iii. A refusal of the member liaison unit to identify witnesses

    iv. The complainant's apparent lack of knowledge of the allegations.

193. Mr Sartin considers all the alleged breaches as breaches of an implied rule of natural justice, and variously as breaching Appendix 2, paragraph 3.3 and 3.5.

Timeliness of the investigation

194. In the particulars of his complaint, Mr Sartin argued that because the investigation was not concluded within 28 days, Appendix 2, paragraph 3.5 was breached.

Further, he argued that Acas guidance and NEC guidance were both breached, meaning that Appendix 2, paragraph 3.3 was breached.

195. Mr Sartin added that the delays compromised his ability to state his case as "memories were significantly impaired". He argued that this amounts to a breach of an implied rule of natural justice since it compromised his opportunity to state his case. I will consider the alleged breaches of explicit rules first, before turning to the alleged breach of an implied rule of natural justice relating to Mr Sartin's opportunity to state his case.

196. Appendix 2, paragraph 3.5 states:

> Depending upon the nature and complexity of the complaint, the Investigation Team will normally be expected to complete its investigation within 28 calendar days of its appointment. In the event that the Investigation Team believes that more time is needed to complete its work, the General Secretary or person delegated to act on their behalf, in consultation with the Chair of the Staffing Committee, shall have the power to extend the investigation period for a further period as appropriate.

197. It is clear from the evidence bundle and the agreed facts that the investigation took considerably longer than 28 days to be concluded. The Investigating Team was appointed on 21 March 2022, and their report is dated 7 December 2022.

198. There was general agreement from all those I heard from that the delays were regrettable and that it would have been preferrable if the investigation had been concluded more quickly.

199. In his skeleton argument, Mr Sartin argued that there is no evidence that the procedure required for extensions of the investigation period were followed.

200. The evidence bundle included a letter sent from Mr Roberts to Ms Samra (UNISON's Head of HR/Employment Relations), requesting an extension until 30

June. In her witness evidence, Ms Loughlin told me that following this letter, further extensions were agreed verbally between the Investigating Team and Ms Samra.

201. The evidence bundle also included an email sent from Mr North, as Chair of the Staffing Committee, to Mr Sartin, in which he writes

> […] while I have engaged in periodic discussions with the General Secretary and other officers regarding the progress of this investigation, I do not recall receiving any official communication to extend the investigation beyond the original 28 day period, nor do I recall engaging in any consultation around such an extension […]

202. In her witness statement, Ms Ferncombe stated that the "periodic discussions" referred to by Mr North amount to consultation. She adds that she has seen no evidence to suggest that Mr North raised any objections. Neither have I.

203. I am satisfied that I should take a pragmatic approach to considering the Union's compliance with Appendix 2, paragraph 3.5. While Mr North wrote that he does not recall engaging in a consultation, he also wrote that he engaged in periodic discussions regarding progress. He did not write that the extensions came as a surprise, nor that he raised objections or found the extensions unreasonable. On that basis, and on the balance of probabilities, I find that Mr North was generally aware of progress in the investigation and the reasons that it was taking longer than 28 days. From there, I find the Union did take steps to periodically consult him on the need for extensions to the investigation period.

204. Accordingly, I find that Appendix 2, Rule 3.5, was not breached.

205. With regard to a breach of Acas guidance, in the particulars to his complaint, Mr Sartin writes that Acas guidance requires that the investigation and hence the hearing should be conducted "without unreasonable delay". He argued that the delays were unreasonable, meaning that Acas guidance was breached, and therefore meaning that Appendix 2, paragraph 3.3 was breached.

206. I have already reached a finding at paragraph 131, that Appendix 2, paragraph 3.3 is not automatically breached in the event that an element of the procedure deviates from Acas guidance.

207. Therefore, I find that the timeliness of the investigation does not amount to a breach of Appendix 2, paragraph 3.3 on the basis of a deviation from Acas guidance.

208. Should I be wrong about that, I am satisfied that while the parties generally agreed that the delays were regrettable, I do not consider the delays to have been unreasonable in the circumstances of a situation that was described to me as unprecedented within the Union. The reasons given for delays included periods of annual leave, periods of sickness, competing time pressures both on the Investigating Team and those being interviewed, and challenges triangulating availability for multiple participants. I find these reasons to be legitimate reasons, and I am mindful that I neither heard nor saw any evidence to suggest that there were any attempts to deliberately delay the process. Therefore, I find that Acas guidance was appropriately followed in relation to the timeliness of the investigation.

209. With regard to a breach of NEC guidance, I have already found, at paragraph 141, that the relevant NEC guidance has not been adopted by the Union. Therefore, I do not agree with Mr Sartin that a failure to adhere to any of the principles contained within it could amount to a breach of Appendix 2, paragraph 3.3.

210. In the written particulars to his complaint, Mr Sartin also argued that the timeliness of the investigation meant that an implied rule of natural justice, relating to his opportunity to state his case, was compromised.

211. Mr Sartin highlighted several examples within the evidence bundle that he argued demonstrate witnesses' memories being impaired by the passage of time.

212. The Union argued that this element of Mr Sartin's complaint is an abstract challenge without substance, since none of those interviewed expressed any difficulty remembering what had been discussed at the FRMC meeting.

213. I do not agree with the Union on this point. Mr Sartin has highlighted several examples of witnesses expressing challenges in regard to the passage of time. One example could be seen in the notes of the interview held with Tim Bertuchi, Operations Manager in the Union's Finance Department. Mr Bertuchi stated, "I am being interviewed in August about a meeting that took place in January so I may be a little limited in what I can actually remember about what took place."

214. Later in the interview, when asked about Chair's Actions, Mr Bertuchi stated, "I think there were 5 or 6 points, I am struggling to remember."

215. It is not surprising that memories would be dimmed with the passage of time. However, that is not what I must decide. I must decide if the delays to the investigation, when considered in the context of the whole disciplinary process, amount to a breach of an implied rule of natural justice, because they compromised Mr Sartin's opportunity to state his case.

216. Mr Sartin was given an opportunity to state his case at a disciplinary hearing. He was given as much time as he felt he needed to state his case, and he had an opportunity to raise concerns, including about the impact of the delay and about memories being dimmed. For me to find that the delay meant that Mr Sartin was unable to state his case, he needed to demonstrate to me that the delay caused him prejudice, for example because key evidence he needed to rely on was lost. Mr Sartin did not demonstrate this to me, and therefore I find that the delays to the investigation did not breach an implied rule relating to natural justice with regard to Mr Sartin being given an opportunity to state his case.

Lack of clarity on procedure prior to the hearing

217. In the particulars to his complaint, Mr Sartin argued that the procedures contained within Appendix 2 are ambiguous. He argued that when he sought clarity on these ambiguities prior to his disciplinary hearing, including on whether Schedule D of the Union's Rules (disciplinary procedures) would apply, his questions were not answered. He argued that this shows a disregard for natural justice.

218. Mr Sartin argued that he had not known that the Schedule D procedure would apply in full to the disciplinary hearing, and as such, it was a surprise that points such as paragraph 8 would apply. Paragraph 8 states:

> The member or the member's representative shall have the opportunity to ask questions of the Union Representative and the witnesses.

219. Mr Walter told me that he and Mr Sartin had intended to share the task of presenting Mr Sartin's case, and so had to make adjustments on the day when they were told that only one of them could present. Mr Sartin argued that this breached an implied rule of natural justice, because it impeded his opportunity to state his case.

220. However, Mr Walter told me that when he and Mr Sartin learnt that only one of them would be able to present and ask questions, Ms Le Marinel gave them time to make adjustments. Mr Walter told me they were able to go to a side room, and take the time they needed, which was just under an hour. Importantly, Mr Walter told me that if they had used more time, he didn't believe it would have meant they were better prepared. I accept Mr Walter's evidence on these points.

221. The Union argued that the panel was under no obligation whatsoever to prescribe a precise format for the hearing in advance, by virtue of Appendix 2, paragraph 4.8, which states:

> […] The Disciplinary Panel shall have absolute discretion to decide the procedures to be used during the hearing in line with National Executive Council guidance

222. For me to find that an implied rule of natural justice was breached in relation to Mr Sartin's opportunity to state his case, Mr Sartin needed to show me that the lack of procedural clarity in advance of the hearing prejudiced that opportunity. I have seen no evidence of such prejudice. In his written particulars, Mr Sartin argued that because of the lack of clarity, "we had to adapt on the fly." The evidence indicates that they were able to adapt, and they did adapt.

223. Therefore, I find that the lack of clarity on procedure prior to the hearing did not breach an implied rule relating to natural justice with regard to Mr Sartin being given an opportunity to state his case.

224. Mr Sartin also refers to various alleged breaches of NEC guidance, which he argued amounts to a breach of Appendix 2, paragraph 3.3. Specifically, Mr Sartin argued that the NEC guidance includes a requirement that notes be taken at the disciplinary hearing.

225. I have already found, at paragraph 141 that an alleged breach of the NEC guidance referred to, cannot amount to a breach of Appendix 2, paragraph 3.3.

226. Should I be wrong about that, the specific wording Mr Sartin argued had been breached appears under section 9 of the NEC guidance, in which the roles of key participants are explained. One of the participants is 'Secretary', whose role includes, "Take notes at the hearing where there is no note taker". The evidence bundle includes copious handwritten notes, made by Ms Le Marinel during the disciplinary hearing. I find that Ms Le Marinel's note taking meant that the Secretary did not need to perform this role, and as such no requirement was breached.

Refusal of member liaison unit to identify witnesses

227. In the particulars to his complaint, Mr Sartin argued that Mr Walter asked the Member Liaison Unit to identify the witnesses the Union would be calling. Mr Sartin argued that he needed this information so that he could consider whether to call witnesses himself.

228. This information was not provided to Mr Sartin or Mr Walter, and Mr Sartin argued that this breached an implied rule of natural justice because it impeded his opportunity to state his case.

229. In its skeleton argument, the Union argued that there was no breach of an implied rule of natural justice relating to Mr Sartin's opportunity to state his case, because

the rules allowed him to call any witnesses he wished. The rule the Union refers to for this purpose is Appendix 2, paragraph 4.5, which states:

> The member must submit, not later than seven working days prior to the hearing, any material in support of his/her case including any witness statement of any witness that the member wishes to call to give evidence at the hearing.

230. Further, at the hearing, the Union drew my attention to Schedule D, paragraph 11, which states:

> The member or her/his representative shall put her/his case in the presence of the Union Representative, may call witnesses, and may produce any document she/he wishes that is relevant to the charge.

231. The evidence bundle also shows that when Ms Ferncombe wrote to Mr Sartin on 16 November 2023, advising him that a disciplinary hearing would be taking place, she stated:

> You are advised that in accordance with Section 4 of the policy you are entitled to submit, no later than seven days prior to the hearing, any written material in support of your case including any witness statement of any witness that you wish to call to give evidence at the hearing.

232. On the basis of the above, I find that Mr Sartin had the opportunity to call any witnesses he considered appropriate, and that he chose not to do so. Prior to the hearing, Mr Sartin knew what the charges were, and he knew what the allegations were. I find that his opportunity to state his case was not compromised by any lack of knowledge as to the identity of witnesses called by the Union. Since he was aware of the charges, he was in a position to call witnesses, had he chosen to do so.

233. Therefore, I find that the refusal of the member liaison unit to identify witnesses in advance of the hearing did not breach an implied rule relating to natural justice.

The complainants lack of knowledge of the allegations

234. In the written particulars to his complaint, Mr Sartin argued that during the disciplinary hearing on 13 December 2023, Ms Oldknow, did not know what the allegations were against him. Mr Sartin argued, "based on a complaint Emilie Oldknow made against me, I faced a single charge that I committed an act of misconduct." He added that when he attempted to question Ms Oldknow, she often responded that she did not know the answer, which Mr Sartin argued compromised his ability to state his case. Mr Sartin argued that this means an implied rule relating to natural justice was breached because it impeded his opportunity to state his case.

235. The Union argued that Appendix 2, paragraphs 3.8 and 4.9 both require that strict confidentiality is maintained around all aspects of the investigation and any evidence received.

236. In Ms Le Marinel's witness statement, she states:

> It is normal procedure that a complainant, in this case (Emilie Oldknow) is not provided with the allegations that the individual is facing. This is because the original complaint may be added to by the evidence that the investigators collate. When the matter proceeds to the disciplinary hearing it is UNISON who takes over the process and presents the disciplinary allegations. It is not the complainant.

237. I place importance in Ms Le Marinel's final two sentences here. Mr Sartin's complaint about Ms Oldknow's lack of knowledge of the allegations being made against him appears to proceed on the basis that the disciplinary process was an adversarial process, between himself and Ms Oldknow.

238. Ms Le Marinel's point is supported by the opening statement of the letter sent by Ms Ferncombe to Mr Sartin on 16 November 2023, in which she informed him "I am writing to advise you that the Union is bringing charges against you."

239. Bringing these points together, I find that the Union brought charges against Mr Sartin and invited Ms Oldknow to give witness evidence to the disciplinary panel. Ms Oldknow's role in the procedure was as a witness. In this context, the fact that in her capacity as a witness, Ms Oldknow was not able to answer Mr Sartin's questions cannot amount to a breach of an implied rule relating to natural justice.

240. Therefore, I find that Mr Sartin's complaint that an implied rule relating to natural justice in relation to his opportunity to state his case was not breached through Ms Oldknow's lack of knowledge of the allegations.

C. On the question of whether Mr Sartin was given notice of charges against him

Denial of sight of allegations

241. Mr Sartin also argued that, prior to his first interview, he had repeatedly requested sight of the allegations that had been made against him. He argued that because his requests were denied, he was unable to present a meaningful case at the interview. Mr Sartin argued that this breaches an implied rule of natural justice relating to his right to be given notice of the charges against him.

242. The Union argued that the principles of natural justice are not operative at the investigation stage, and that, in any event, it is inappropriate to evaluate compliance with natural justice in a segmented or compartmentalised way. The Union argued that I should find no breach of an implied rule relating to natural justice because Mr Sartin was given notice of the charges made against him - through the provision in writing on 15 and 28 July 2022, of detailed information concerning the allegations, before confirmation in writing of the allegations and charges ahead of the disciplinary hearing.

243. I asked Mr Toms and Mr Brittenden whether, for the purposes of implied rules of natural justice, there is a distinction between an allegation of misconduct and a disciplinary charge. Both agreed that an allegation is a preliminary assertion that misconduct has occurred, and a disciplinary charge is a formal accusation, and that the former may or may not give rise to the latter.

244. Regarding whether the distinction has implications for the engagement of implied rules of natural justice, Mr Toms told me that he did not place a significant reliance on Mr Sartin's argument that the denial of sight of the allegations during the early stages of the investigation constituted a breach of an implied rule of natural justice.

245. Addressing the same point for the Union, Mr Brittenden argued that implied rules of natural justice are concerned with seeking to ensure that the disciplinary process is followed with minimum standards of fairness. Those were minimum standards of fairness which, he argued, were met in respect of the disciplinary process Mr Sartin was subjected to.

246. Mr Toms did not withdraw reliance on the argument that denial of sight of the allegations constituted a breach of an implied rule of natural justice. However, no substantive argument was made as to how a breach of an implied rule of natural justice, relating to a member's right to be given notice of the charges against him, could be engaged before charges have been brought against that member.

247. I had before me conclusive evidence that Mr Sartin was given a clear account of the allegations that had been made against him before charges were brought, and before a disciplinary hearing was arranged. Therefore, I find that an implied rule of natural justice relating to his right to know the charges against him was not breached.

Conclusions

248. I have found no breaches of either explicit rules of the Union or implied rules of natural justice in the course of the disciplinary proceedings leading up to the imposition of a sanction under Rule I(8).

249. As such I find that when the Union imposed a sanction on Mr Sartin on or around 30 March 2024, Rule I(8) was not breached.

Enforcement

250. At the start of the hearing, Mr Sartin argued that if I were to reach a finding that Rule I(8) was not breached, but also found that elements of the disciplinary process were perhaps lacking, he would like me to make suggestions about how the Union might make improvements moving forward.

251. Mr Brittenden argued that section 108B(3) of the 1992 Act only empowers the Certification Officer to make an enforcement order where the declaration sought by the applicant is upheld, meaning that I would not have the power to meet Mr Sartin's request as outlined in paragraph 250.

252. I agree with Mr Brittenden. The Certification Officer has power under certain other sections of the 1992 Act, for example when determining applications that a trade union has failed to comply with any of the requirements relating to Chapter IV (Elections for certain positions) of the 1992 Act, to make written observations whether a declaration is made or not. However, Parliament has not granted that power to the Certification Officer in respect of applications made under section 108A.

Unjustifiable discipline

253. The parties made me aware that Mr Sartin has also made a complaint to the Employment Tribunal about unjustifiable discipline, relating to the same disciplinary sanction as is the subject of this complaint.

254. The purpose of the one-day hearing before the Certification Officer was to determine if the Union breached its rules when it imposed that sanction on Mr Sartin.

255. The Certification Officer does not have jurisdiction over the separate right of union members not to be subject to unjustifiable discipline, and I have reached findings only where necessary to determine Mr Sartin's complaint of a breach of rule.

256. For the avoidance of doubt, no findings relating to unjustifiable discipline should be inferred from this decision.

Michael Kidd

The Certification Officer

Appendix

COMPLAINT BY DAN SARTIN TO THE CERTIFICATION OFFICER

IMPOSITION OF THE DISCIPLINARY SANCTION OF CENSURE

The provisions of Appendix 2 were not complied with at or before the disciplinary hearing. There was procedural irregularity outside of the rules of the union, NEC guidance, ACAS guidelines, and the principles of natural justice.

The provisions for a fair hearing were not complied with, breaching the provisions of natural justice I am entitled to expect, and unions are expected to comply with.

It is implicit within the union's rules that in determining a sanction against me for misconduct as per Rule I.8 that the process must have followed both the rules of the union and the principles of natural justice. I contend in my complaint that it has not done either.

I wish to assert that the union has breached provisions of natural justice in the following fundamental ways:

A. The Union did not act honestly and in good faith, and without bias.

B. My opportunity to state my case was compromised.

C. I was not given notice of the charges against me during the investigation.

Please see the pages that follow where I set out how the union has breached natural justice in the above three ways in arriving at a determination to uphold a charge of misconduct against me and to issue a sanction.

I appealed to the union against its decision on 20 April 2024. My appeal was acknowledged but no date for an appeal meeting has been set at time of writing.

Dan Sartin

13 October 2024

A. The Union did not act honestly and in good faith, and without bias.

A.1 The Panel selected by the Union to hear the case was biased and was known to the union to be biased against me; the Union did not follow the rules of the union in how it went about selecting the panel to hear my case

A.1.1 Myself and my representative Brian Walter sought access to the names of the Panel hearing my case from the Member Liaison Unit prior to the commencement of the hearing. This basic information was refused on two occasions. If a process is to adhere to principles of natural justice, which it needs to do, the defendant is entitled to know the identities of those who are to sit in justice on them. This is a principle of natural justice and good practice. It is also essential in order that the defendant may satisfy themselves there is no bias or conflict of interest within the panel. I only discovered who the panel members were on the first day of the hearing on 13th December 2023.

A.1.2 Upon discovering the identity of the panel I made challenges which were unreasonably disregarded by the Panel. The Panel was advised by the Director of the Executive Office, Maggi Ferncombe. I believe that two of the Panel of three were conflicted and should have recused themselves. The Union should not have chosen them. The rules of Appendix 2 at paragraph 4.1 state that the Panel must be “established by the officer responsible for constitutional issues in consultation with the Chair of the Staffing Committee.” This is a specific clause to ensure that the selection of Panel members cannot be biased. I was not advised that any such consultation took place with the Chair of the Staffing Committee and, if it did, I should still like to know what discussion took place about such an obviously inappropriate panel. The process of consultation with the Chair of Staffing should have been used to avoid the appointment of conflicted panel members, but it was not. This had a direct impact on the outcome of the hearing, making it impossible for me to receive a fair hearing. I do not believe that the required consultation was used by Officers during the construction of the panel to the effect intended by rule. I would intend to call witnesses to this effect.

A.1.3 The chair of the panel, Maureen Le Marinel, another NEC member, had issued during April 2023 a direct tweet – not a retweet – of text that stated that the NEC had been taken over by a "gang of fringe, hard left political activists, [containing] members of [the] SWP, Socialist Alliance and Labour Party extremists", with the purpose of "gaining power and control over UNISON's finances and resources". The tweet went on to state, “[such activists are] "hopelessly inadequate to the task", "rule breaking", "discriminating against minority groups" and "treating our General Secretary and our staff (the union's 'civil service') with disdain and disrespect."

A.1.4 I emphasise the last reference. This panel chair who should be independent and impartial, had publicly expressed her belief that lay members, such as myself as the chair of the Finance and Resource Management Committee, who now had charge over the union’s finances were treating the staff with “disdain and disrespect”.

A.1.5 These statements were in the public domain until deleted, and they were prejudicial to me and indicate that Maureen Le Marinel had already got a very firm view on the matters she was asked to consider. In addition, this very tweet by Maureen Le Marinel was provided to the Certification Officer by the Union as part of its pack of documentary evidence to defend the complaint I brought against the Union for denying me access to the accounting records of the Union, which it subsequently lost.

A.1.6 Another panel member, Alistair Long, stood against me in an election for the position of Finance and Resource Management Committee (FRMC) chair as recently to the hearing date as 14th July 2023. If a sanction was applied to me which would remove me from the position of FRMC chair, Alistair Long may have stood to gain politically from this, if, as a former chair of FRMC himself, he decided to re-stand for the vacant position created. These are extremely serious examples of actual or, at the least, apparent bias, which were not taken into account by those charged with assembling a panel capable of considering the evidence in a fair and impartial manner.

A.1.7 Paragraph 4.1 of Appendix 2 was directly breached.

A.2 Choice of investigators to investigate the complaint

A.2.1 The investigators chosen by the General Secretary, Tim Roberts and Karen Loughlin, were line managed by Stephanie Thomas who was one of the two principal complainants at the outset of the process. Clearly, for this reason, the investigators were conflicted and disabled from conducting a fair, independent and impartial investigation as required by the rules of natural justice. The law stipulates that the rules of natural justice are implied into every trade union disciplinary procedure. Halsbury's Laws of England states:

A.2.2 A domestic body of a trade union purporting to discipline or expel a member for his conduct must comply with the rules of natural justice. While the requirements of the rules of natural justice may vary according to the circumstances, in the case of a decision to discipline or expel a trade union member it is settled that he must be given notice of the charges against him and have an opportunity to state his case, and that the domestic body taking the decision must act honestly and in good faith, and without bias.

A.2.3 The investigators' conduct of the investigation was tainted by 'apparent bias' as was the outcome of it. Apparent bias may exist where actual bias is not established. The test for apparent bias was established in the case Porter v Magill [2002], as being satisfied if 'the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased'. A close relationship between the investigator and a party is sufficient to constitute apparent bias. In my case, any fair minded and informed observer would obviously think that there was a real possibility of bias because the investigators were assessing the credibility of complaints made by the very person who line managed them. I challenged the appointment and continued involvement of these staff. Their appointment was clearly out with ACAS guidance and so in contravention of Appendix 2, paragraph 3.3. One of the complainants,

Stephanie Thomas, themselves recognised this was totally unacceptable and she said so forcefully on page 45 of the management pack. She said:

A.2.4 I want to say that it is really unhelpful to be interviewed by two staff who I line manage. It puts us all in a difficult position and it is wrong. I want to thank you for doing this but it is wrong. It's outside of any procedure, it's not personal but it is wrong.

A.2.5 The whole investigation was thus fatally flawed from the outset and cannot properly found the disciplinary outcome and sanction, being conducted outside Appendix 2, paragraph 3.3. The NEC's extant guidance for the process was not followed. The NEC's guidance states at paragraph 2.6, "The Investigation Team must recognise and avoid any conflict of interest on their part or on the part of any witnesses. If there is any doubt as to whether a conflict exists, the member of the Investigation Team concerned must immediately consult UNISON's Head of Legal Services before proceeding."

A.3 Choice of interviewees by the investigators during the investigation

A.3.1 The choice of interviewees by the Investigators goes further than apparent bias and demonstrates actual bias against me. That choice also breaks the rules of the union. Appendix 2 Paragraph 3.6 states,

A.3.2 Where there appear to be reasonable grounds to believe that a member of UNISON or any other person can give relevant evidence, or has witnessed the alleged misconduct, the Investigation Team shall request an interview with that member or person. The member or person will be invited to produce any evidence including but not limited to any document, printed material, recording or photographic image that he/she or the Investigation Team considers might be relevant to the inquiries of the Investigation Team. (my emphasis)

A.3.3 This imposes a mandatory requirement on the investigation team ("shall") to interview anyone who witnessed the "alleged misconduct" and to invite them to

produce evidence (“will”). In this case, that includes all those present at the FRMC meeting complained of.

A.3.4 As the ACAS Guide advises employers: “When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee’s case as well as evidence against.” (my emphasis)

A.3.5 As the extant NEC guidance makes clear (see 7.3 below), at page 8 “The primary role of the Investigation Team is to establish the facts relevant to the allegations being made. It is important that it does not simply consider evidence that supports the allegations. It must also consider evidence which undermines the allegations. Any investigation must be fair, balanced, and even-handed. The Investigation Team should not simply look for evidence to incriminate the member who is the subject of the complaint.”

A.3.6 In fact, the Investigators interviewed eight members of staff of the 13 present (see the minutes of the meeting held, at p.110 of the management pack). The members of staff were all junior to Emilie Oldknow and Stephanie Thomas who brought the complaint, and most were subject to line management of one or the other or were those in their chain of command.

A.3.7 The investigators chose to interview only three lay members of the committee of the 17 who were present. I was one of the lay members and it must be assumed that the other two were selected for interview because they voted with the minority against my recommendation as Chair in both of the two votes and might therefore be likely to give evidence against me.

A.3.8 This must be so since none of the nine other committee members who voted at the end of the meeting for the Chair’s recommendations were interviewed apart from myself. These other eight key witnesses could be expected to have had a

different view of the events than the staff present and lay members who voted against the recommendation, yet not a single one was interviewed.

A.3.9 Despite the clarity of the rule, 14 lay members and five staff were not invited to interview and so the Panel was deprived of their evidence on matters which were hotly contested and turn on credibility. This breach of the rulebook and the demonstrable bias against me in the selection of witnesses should have rendered the proceedings void. The panel could not reach a fair conclusion knowing that the witnesses were preselected on the basis of bias and in breach of the rules governing disciplinary procedures. Neither could it do so in the knowledge that there are witnesses who may be able to 'give relevant evidence, or [may have] witnessed the alleged misconduct' who have not been invited to interview so that their evidence is unknown.

3.10 These serious matters and breaches of Appendix 2 paragraphs 3.6 and 3.3 were brought to the attention of the union's Member Liaison Unit in my formal complaint to the union and subsequently the Hearing Panel ahead of the proceedings but were disregarded.

A.4 Multiple changes of allegation and setting aside of allegations which undermine the credibility of the complainant

A.4.1 The allegations when finally revealed to me in July 2022 were substantially different from the complaints originally made. I presume that the changes were permitted to build a case against me. For example, the allegation put to me during the first interview on 27th May 2022 was that I rolled my eyes in the meeting on 26 January 2022. This allegation had to be withdrawn when it became clear to the Investigators that it was not me who had acted disrespectfully in this way but it was in fact Emilie Oldknow, one of the two complainants (see page 89 from my own Investigation interview). The investigators ignored such misconduct on the part of the two Assistant General Secretaries present at the meeting and failed to seek evidence of it from witnesses. The investigators, unsurprisingly, sought to

protect the senior managers to whom they were subordinate, whilst fishing for evidence against me.

A.4.2 One allegation put to me in the two Investigation meetings with me was that I denied Stephanie Thomas the opportunity to speak at the meeting on 26 January 2022, which I answered honestly and satisfactorily (page 98, Appendix 17 of the management pack). Being untrue, this allegation was consequently abandoned but a new allegation substituted in its place that I prevented Emilie Oldknow from speaking. This invention was evidently not based on any complaint made at the time since it was never put to me in months of the Investigation. It is not to be found in the original complaint of Stephanie Thomas against me dated 26 January 2022 (page 16 of the management pack) nor in her later complaint of 22 July 2022 (page 19). Nor is it in the original complaint of Emilie Oldknow of 27 January 2022 (pages 17-18). Nor is it to be found in her lengthy interview on 25 July 2022 (pages 21-35).

A.4.3 ‘Using chair’s action incorrectly’ was an original allegation which was abandoned. Instead, an allegation was added for the purpose of the hearing that I bullied staff. ‘Setting deadlines for staff’ was an original allegation, subsequently abandoned. A fresh allegation was added that I ‘confirmed that the General Secretariat Group would be the staff who would receive the letter before action’.

A.4.4 A serious allegation made by Stephanie Thomas of victimisation of her (evident in Appendix 4, page 19) was never put to me in Investigation meetings and is about matters which are entirely unrelated to me and irrelevant to the charges against me. It was nevertheless included in the investigation report. It was presumably included in the papers to be put before the Panel in order to generate prejudice against me.

A.4.5 A further serious allegation was made by Emilie Oldknow during her interview with the investigators that I deliberately undermined her because her politics are ‘right wing’ (p33 of the management pack). This would be a very serious matter if true, but it is not. The allegation is an invention and was never even put to me in the Investigation meetings. Both Steve North and Alan Farmer were questioned about

this allegation, and both denied its veracity. Emilie Oldknow also alleged that Steve North, Alan Farmer and her had discussed me undermining Emilie Oldknow because of her politics in a meeting. Both Steve North and Alan Farmer flatly contradicted that there had been any such discussion. Emilie Oldknow's credibility was thus put into question and Emilie Oldknow was unable to offer any evidence that I had undermined her (for whatever reason). The Investigators decided not to investigate these allegations further clearly rejecting Emilie Oldknow's credibility without saying so.

A.4.6 The conduct of the investigation breaches rule because it is so far removed from guidance produced by the National Executive Committee, ACAS guidance and good practice required of it in Appendix 2 paragraph 3.3.

B. My opportunity to state my case was compromised in significant ways.

B.1 Timeliness of investigation and hearing process

B.1.1 The investigators failed to complete their investigation within 28 days of their appointment as required by Appendix 2, paragraph 3.5. It is not believed that any extensions of time were granted by the General Secretary or, if they were, such extensions were invalid since they were not preceded by consultation with the Chair of the Staffing Committee as required by Appendix 2, paragraph 3.5. The Chair of Staffing has made a statement confirming this to be the case. The Chair of Staffing was not consulted on extensions to the investigation period, thus rendering the investigation out with the rules of the union. See Appendix A.

B.1.2 In any event, it is implicit by the ACAS guidance and the good practice which were mandatory on the investigators pursuant to Appendix 2, paragraph 3.3 and in accordance with the rules of natural justice that the investigation and hence the hearing should be conducted 'without unreasonable delay' (as the ACAS guide puts it, page 45), in order firstly to ensure that memories should not be dimmed and, secondly, not to extend the stress on either the complainant or the defendant.

B.1.3 These rules were breached. In fact, the investigators delayed the interviews on which they subsequently rely so that memories were impaired, and the investigators consequently deprived themselves of the opportunity to conduct a fair and timely investigation. Some witnesses refer to this. A key protagonist and complainant, Emilie Oldknow, was interviewed only on 25th July 2022, a full six months after the events complained of. Her interview took place after my first interview thus allowing the investigators to interview her in the light of my interview rather than the other way round. This conflicts with the NEC's extant guidance (see 7.3 below), which states on page 6, "Wherever possible the person making the complaint should be interviewed first so that they can provide as much information as possible which is relevant to their complaint." It is not conceivable that the complainant was not available to interview for six months after they had submitted their complaint.

B.1.4 One interviewee was interviewed as late as 29th September 2022, a full eight months after the event complained of. The investigators were not appointed until 21st March 2022, nearly two months after the alleged incident and took 219 days to complete their investigation rather than the 28 days prescribed by the procedural rule. The investigation was in fact only completed on 7th December 2022 no less than 45 weeks (315 days) after the alleged conduct complained of. This is excessive and extravagant delay, which is outside of the rules of the union and has impacted negatively on the investigation. Witnesses repeatedly stated throughout the disciplinary process that their impaired memories of events were a hindrance to them.

B.1.5 The hearing itself did not start until 13 December 2023, when the investigation had concluded on 7 December 2022. This additional delay of a full year compromised my ability to state my case as memories were significantly impaired, as witnesses stated throughout the hearing.

B.2 Lack of clarity on procedure prior to the hearing

B.2.1 Appendix 2 procedures have considerable ambiguity within them. The guidance states: “the procedure to be used by the Disciplinary Panel shall be guided but not bound by such provisions of Schedule D of UNISON Rules as appear to the Panel to be relevant…”. My rep, Brian Walter, asked the Member Liaison Unit to confirm prior to the hearing that all provisions of Schedule D applied, or alternatively to state which provisions would not. The Member Liaison Unit refused to answer this basic request, but still expected me and my rep to attend a disciplinary process in relation to which we would not know the applicable provisions. This shows serious disregard for natural justice. We faced a substantial disadvantage on the first day of the hearing as we had to adapt on the fly to the chair’s confirmation that Schedule D would apply in full and there was no prospect for variation.

B.2.2 The procedures within Appendix 2 refer a number of times to the NEC Guidance issued to complement the procedures (see paragraphs 3.3, 4.8 and 5.4). Given the ambiguity within the Appendix 2 procedures, I requested a number of times for the NEC guidance to be provided to me by the Investigators. No guidance whatsoever was provided to me. Instead, I was only able to access some time after my Investigation interviews a short precis of the NEC Guidance which appears at page 26 of the 2021-23 NEC Handbook. However, the much fuller and more useful document on NEC Guidance, which is 18 pages long, was not made available to me and I only came upon this by chance within NEC documentation after the Hearing had commenced. Not having this guidance hindered my ability to prepare for and conduct my defence.

B.2.3 I brought the existence of the full NEC Guidance to the attention of the Panel at the 28th February 2024 hearing date. In her summing up on the final day of the hearing on 15th March 2024 the chair dismissed the relevance and necessity of the 18-page Appendix 2 NEC guidance document on the grounds that it does not supersede Appendix 2 itself and had not been submitted by me to the Panel with my other documentation seven days before the start of the hearing on 13th December 2023. This was extant, detailed guidance solely created for the purpose of managing Appendix 2 processes, which it is apparent that neither the

panel, investigators or myself as the defendant were furnished with copies of. It was not for me, as the defendant, to have to supply this extant guidance to the panel. It is the union's guidance, not my own. It should have been provided for me as a matter of course, and it disadvantaged me not to have it. In addition, the 18-page guidance document sets out in greater detail how the provisions of Appendix 2 were not complied with by the investigators.

B.2.4 My rep and I had every expectation that a full record of the hearing would be kept for our and the Panel's information. This would be in line with the common expectations for how disciplinary procedures are conducted by the employers UNISON deals with. Our expectations were reinforced by the fact that the Panel had an appointed Secretary who continuously throughout each day of the hearing was observed writing notes of the proceedings.

B.2.5 It was however only half way through the fourth and final hearing day when I made a reference to a matter of contention (what a management witness had stated under questioning on day one of the hearing) being able to be clarified when the record of the hearing was available, that we were informed that there was to be no formal record kept of the hearing. On day one of the hearing on December 13th 2023, when I asserted a number of procedural failings and stated that I wished to see these failings placed on the record of this hearing, I was not corrected by the Panel chair at that opportunity that there would be no record made.

B.2.6 This lack of a formal record of a disciplinary hearing is a serious and disadvantaging omission of standard procedure, and one we could have been notified of in advance by Member Liaison Unit or the Panel, and we were not. Minutes had been recorded and provided in the Investigation meetings, and we had every reasonable expectation they would be provided for the hearing.

B.2.7 These practices and omissions within the disciplinary process therefore breach the NEC's guidance, at page 11, where the Panel Secretary's role is described: "Take notes at the hearing where there is no note taker."

B.3 Refusal of the Member Liaison Unit to identify witnesses to be called by the union

B.3.1 In advance of the first hearing date, the Member Liaison Unit was asked in writing by my rep Brian Walter to identify the witnesses to be called by the union and to indicate which charges each of them would be addressing. This was so that I could consider whether to call additional rebuttal witnesses and to make it possible to prepare for the hearing. The MLU refused to supply this information, making it impossible to prepare adequately for the hearing. This is a serious abuse of process and constitutes a significant disparity of arms. When I arrived on December 13th 2023 to the first hearing date, I did not know which witnesses I would be facing and had to put together questions on the spot. This further disadvantaged me and is contrary to the rules of Appendix 2, which require principles of natural justice and good practice to be applied.

B.3.2 The complaint heard by the disciplinary panel was only from one member of staff, Emilie Oldknow. No other staff wished to complain, and few existing staff came to act as witnesses for Emilie Oldknow. In fact, only one existing member of staff came to act as a witness for Emilie Oldknow, and that was Nita Patel who directly reports to Emilie Oldknow and was recently appointed to the Director of Finance role and is understood to be close to Emilie Oldknow. The lack of staff who acted as witnesses, or were prepared to act as witnesses, is telling when the allegations are about my behaviour on 26th January 2022 and the profound impact it was said to have had on staff. Critically, I did not know who the complainant would call as witnesses despite asking for this crucial information ahead of the process starting. I would have liked to call staff as witnesses myself if I had known that the complainant would only call one staff witness in prosecution of her complaint. Key witnesses were therefore not available to the hearing or myself as defendant, in breach of paragraph 3.3 of Appendix 2.

B.4 The complainant’s apparent lack of knowledge of the allegations

B.4.1 During the hearing on 13th December 2023, Emilie Oldknow said that she did not know what the allegations against me were. On this basis the single charge

against me should not have been allowed to stand. Based on a complaint Emilie Oldknow made [at page 17, Appendix 3 of the management pack] which does not identify me or make any allegation against me, I faced a single charge that I committed an act of misconduct in relation to her but Emilie Oldknow said in the hearing she did not know what the allegations against me were. If Emilie Oldknow did not know what the allegations against me were, then the case against me should not have continued as it could not be made out. The Panel proceeded on the basis that the sole complainant did not know what she was alleging against me.

B.4.2 When I attempted to question Emilie Oldknow on the first day of the hearing, she responded often that she did not know what I was asking her about, which compromised my ability to defend myself. The Member Liaison Unit and/or the Investigators should have made the bundle of documents available to Emilie Oldknow, but they did not. This breached paragraph 3.3 of Appendix 2.

C. I was not given notice of the charges against me during the investigation.

C.1 Denial of sight of the allegations

C.1.1 I repeatedly requested sight of the allegations prior to my first interview by the investigators which took place on 27th May 2022 but these requests were denied. Consequently, I was unable to present any meaningful case at that interview in which I was effectively ambushed. The interview was in the nature of a fishing expedition, and I stated so in the meeting (Appendix 16 of the management pack). The nature of the allegations were not supplied to me until several weeks later, in July of that year. This contravenes the fundamental principle of natural justice that a person against whom a complaint is made should know the case against them. It also contravenes the explicit principle of good practice required of investigations by Appendix 2 paragraph 3.3.

Note on the lack of response of the union to procedural failures I raised

i. I raised through a formal complaint to the Member Liaison Unit on 5th December 2023 numerous and egregious failures of procedure by the union during the Appendix 2 process.

ii. I raised this complaint on 5th December 2023 because, despite the investigation concluding on 7th December 2022, the union did not take a decision to proceed with disciplinary charges against me until 16th November 2023, very nearly a whole year later. I did not know if the union would decide to charge me with misconduct after the conclusion of the investigation, so until I knew that the union would do so, I did not raise a formal complaint about the process used to determine charges against me (though I had raised my concerns in various ways throughout the process, as can be evidenced).

iii. I received a response to my complaint on 24th January 2024 from the Head of the Executive Office stating that my complaint could not be investigated due to the confidentiality of the proceedings and that I should instead raise them within the Hearing. I do not find this response to be satisfactory, but I duly raised my procedural concerns within the Hearing. Following this the chair of the panel wrote to me on 17th January 2024, presumably having reviewed the procedural concerns I presented in writing, to tell me that the Hearing would proceed and I would receive a verbal response to the points I had made within the next Hearing meeting. Without receiving explicit confirmation, I nevertheless was given to conclude that my procedural concerns had been dismissed by the panel.

iv. I wrote to the chair of the panel on 29th January 2024 asking to be provided with the Panel's written decisions for dismissing my procedural concerns rather than only to receive a verbal update. The chair wrote back to me on 8th February 2024 to confirm she would only provide a response to me verbally. At the next hearing date of 27th February 2024, I was however provided with a short, written handout confirming the Panel's decisions in all but three of the areas of my procedural concerns. This written handout dismissed my procedural concerns, but did not set out the Panel's reasons for dismissing them, or give any further information about

what if any lessons might be learned from the management of the process, as you might expect if the Panel was taking over the function of complaint management from the MLU. The written handout went on to ask me to outline the three of my areas of procedural concerns that the Panel had not rejected within the Hearing. I duly complied with the request and at the hearing date of 28th February 2024 during my summing up, I outlined those three substantial areas of procedural concerns which had not been judged by the Panel.

v. Despite me doing so, the Panel never responded to me in regard to these areas of procedural concerns. It remains the case therefore that: 1. the MLU passed my complaint to the Panel when it refused to consider my procedural concerns; 2. the Panel if it did consider my procedural concerns, failed to give me any reasons for why it dismissed them; 3. the Panel left three substantial areas of my procedural concerns completely unaddressed. We must therefore conclude it is not possible for a lay member to make a complaint about the processes used by staff when staff make complaints about lay members. All of this is unacceptable and demonstrates that the process used was unsound, outside of rule, and unaccountable to lay members other than those appointed to the panel by the general secretary.