

D/26-32/25-26

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

(1) Blake

(2) McGaughey

(Applicants)

and

University and College Union

(Respondent)

Date of Decision:

25 March 2026

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Decision

1. Upon applications by Ms Vicky Blake and Professor Ewan McGaughey under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), I make the following declarations:

I do not uphold the Applicants’ application for the declaration sought in Complaint 1 for the reasons given in paragraphs 25.1.1-25.1.3.

I do not uphold the Applicants’ application for the declaration sought in Complaint 2 for the reasons given in paragraphs 25.2.1-25.2.3.

I uphold, in part, the Applicants’ application for the declaration sought in Complaint 3 for the reasons given in paragraphs 25.3.1-25.3.3.

I do not uphold the Applicants’ application for the declaration sought in Complaint 4 for the reasons given in paragraphs 25.4.1-25.4.6.

I do not uphold the Applicants’ application for the declaration sought in Complaint 5 for the reasons given in paragraphs 25.5.1-25.5.3.

I do not uphold the Applicants’ application for the declaration sought in Complaint 7 for the reasons given in paragraphs 25.6.1-25.6.3.

I do not uphold the Applicants’ application for the declaration sought in Complaint 8 for the reasons given in paragraphs 25.7.1-25.7.3.

2. Where I make a declaration upholding a complaint, I may, under Section 108 B (3) of the 1992 Act, make an enforcement order, that is, an order imposing on the Respondent union one or both of the following requirements:

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;

(b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

3. In the circumstances of this case, I decline to make an enforcement order for the reasons given in paragraphs 26-28.

Background

4. Ms Vicky Blake and Professor Ewan McGaughey (“the Applicants”) were members of University and College Union (“UCU” or “the Union”) at the time of the events referred to in his complaint.

5. The Applicants submitted a joint application to make complaints on 11 July 2024.

6. Following correspondence with my office, the Applicants confirmed their complaints as follows (complaint 6 was withdrawn by the Applicants in advance of the hearing):

(1) Union office misuse

On 3 November 2023, the union breached rule 7, which prevents a candidate to use union funds or resources for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to film a campaign video from inside the union’s offices, probably using union camera equipment. This was an advantage other candidates did not have and helped sway the election result.

(2) UCU staff making campaign videos

On 6 December 2023, and probably on several other occasions, the union breached rule 7, which prevents a candidate to use union funds or resources (including staff) for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to use a paid UCU member of staff (Mx D), to make campaign videos for the incumbent. This was

an advantage other candidates did not have and helped sway the election result.

(3) Union software misuse

On 12 January 2024, the union breached rule 7, which prevents a candidate to use union funds or resources for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to use union software, Stream Yard, which is paid for by UCU, for a campaign broadcast for the incumbent gathering thousands of views on social media. This was an advantage other candidates did not have and helped sway the election result.

(4) Threats to UCU staff jobs to support the incumbent

On the dates of October 2022, January 2023, and until February 2024, the union breached rule 7, which prevents a candidate to use union funds or resources (including staff) for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to pressure union employees to work for the incumbent's re-election, to the exclusion of other candidates, particularly by making threats that if the incumbent did not win UCU staff were at risk of losing their jobs. This helped sway the election result.

(5) Misuse of social media for campaigning

On 17 November 2023, the union breached rule 7, which prevents a candidate to use union funds or resources for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to pressure the Head of Democratic Services into changing the ban on use UCU social media accounts to 'raise the profile of the general secretary' to allowing union accounts to do that, following which UCU social accounts were flooded with 'good news stories' during the election campaign period for the benefit of the incumbent, but not other candidates. This helped sway the election result.

(7) Misuse of mass emails

On the dates of 1 December 2023 to 20 February 2024, the union breached rule 8 of the election guidelines, which forbids using union emails ‘for campaigning’. This rule was breached in that the union enabled the incumbent general secretary to send multiple emails to all members on essentially contested issues in the election, calculated to raise the incumbent’s profile, for campaigning, where the other candidates had no similar chance to communicate their positions on the same issues. This helped sway the election result.

(8) Solo hustings

On the dates of 11 December to 26 February, the union breached rules 8 and 13, which require email lists are not used for campaigning, and for equal opportunity for all candidates to appear at hustings. These rules were breached in that the incumbent general secretary was invited to perform (in effect) solo hustings on issues directly contested in the election, when the other candidates were given no similar opportunity (breaching rule 13), and invitations were sent to members of branches advertising the incumbent, to the exclusion of other candidates, using official email lists held by the union (breaching rule 8). This helped sway the election result.

7. A Case Management Meeting (CMM) took place by Video Conference on 11 November 2025. The CMM was attended by the Applicants. Attending for the Respondent union were Sarah Fraser Butlin KC of Counsel, instructed by Abigail Oprey, UCU Head of Legal Services and Membership and Hamish Park, UCU Legal Team.
8. Prior to the CMM, the Respondent union provided written and signed witness statements from Jo Grady (UCU General Secretary), Catherine Wilkinson (UCU Head of Democratic Services), Jenny Sherrard (UCU’s former Head of Equality and Policy) and Mx D (a freelance videographer).

9. The Applicants provided 3 anonymous witness statements from 4 people (one statement being a joint statement by two people). The Applicants chose not to provide their own witness statements.
10. Both the parties also provided skeleton arguments on 30 October 2025.
11. At the CMM, as well as explaining the usual format of the hearing, I dealt with two main issues that had arisen in submissions from the parties. These concerned the Applicants' request to include the anonymous witness statements and also, their application to include two sets of additional documents in the hearing bundle. Having considered both parties' views, I issued directions permitting the anonymous witness statements to be added to the hearing bundle as additional documentary evidence only.
12. Following the CMM, in accordance with my directions, redacted WhatsApp messages dated 11 January 2023, provided by the Applicants, were also added to the bundle of documents. Consequently, the hearing that was originally listed for 18 November 2025 was postponed affording the Respondent union an opportunity to respond to the additional documentation by way of additional witness evidence, if necessary and for both parties to provide supplemental arguments in response to issues arising as they felt fit. Consequently, the Respondent provided second witness statements from Jo Grady and Catherine Wilkinson and a new witness statement from Greg Barnett (the Union's Head of Bargaining and Representation). The Respondent also provided additional documentation for inclusion in the bundle.
13. Both parties provided supplemental arguments to be read alongside their original skeleton arguments, dated 3 February 2026 (Applicants) and 19 January 2026 (Respondent), respectively.
14. My directions, following the CMM, also invited the parties to provide an agreed list of issues and agreed facts relevant to the complaints. The parties notified my office that they had been unable to reach agreement and each party provided their own version of those issues and facts. I have, therefore,

set out the relevant facts and issues in the decision based upon the relevant evidence and argument presented by the parties at the hearing.

15. A hearing took place by Video Conference on 10 February 2026 and 3 March 2026. The Applicants represented themselves and the Respondent union was represented by Sarah Fraser Butlin KC.
16. As noted above, the Applicants did not provide written witness statements. However, at the hearing, both parties presented a summary of their case and I permitted each of the applicants to be cross-examined by the Respondent union's leading Counsel, as if they had provided oral evidence.
17. For the Respondent, Jenny Sherrard, Jo Grady, Catherine Wilkinson and Greg Barnett provided oral evidence.
18. There was in evidence a bundle of documents (HB) consisting of 570 pages.
19. Before the hearing, the Applicants applied to include an additional document in the bundle. The Respondent wrote to object to the inclusion of this document ahead of the hearing. Having considered both the Applicants' and the Respondent union's applications, I determined not to allow the inclusion of this document.

The Relevant Statutory Provisions

20. 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).

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.

108B Declarations and orders

- (3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—
 - (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
 - (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.
- (4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement.

The Relevant Rules of the Union

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

GENERAL SECRETARY AND NEC ELECTIONS 2023-24

GUIDANCE NOTES

1. Candidates are asked to take note of the Union's wish that their campaign materials and comments, although vigorous and critical, will not be gratuitously offensive, abusive or defamatory, nor refer in a derogatory way to the race, religion, sexual orientation, age or other personal characteristic of candidates.
2. It is expected that particular care will be taken not to make any such remarks about members of UCU staff who may not be in a position to reply.
3. Candidates are encouraged to campaign through the positive promotion of their candidacy, rather than through negative campaigning about other candidates.
4. Points 1, 2 and 3 do not in any way infringe the right of a candidate to write an election address with the content they wish, recognising that all liability for ALL remarks in a candidate's election address rests with the candidate and not the Union.
5. The Union will distribute election addresses of candidates as part of the ballot material for any ballot held. The Union will make available on its website the election addresses of candidates.
6. For candidates for the post of General Secretary, equal access will be allowed to the UCU members' email list for the purpose of giving all candidates the opportunity of making four electronic communications to all members on this list in the period between the close of nominations and the close of the ballot. The returning officer will issue advice to all candidates on the timing, word limit and other features of any such communications. A candidate may decline all or any such opportunity to make an electronic communication. This will not affect the opportunity of other candidates to make such communications.
7. Other than the specific provision made in paragraphs 5 and 6 above, candidates are not permitted the use of UCU funds or resources for the purposes of campaigning. Except as permitted by UCU, use by candidates

of sensitive personal data held by UCU or any of its officials and/or officers (elected or paid) is not permitted under any circumstances.

8. Email lists which are held by UCU's head offices and regional offices are a resource of the union and cannot be used for campaigning by General Secretary or NEC candidates. Candidates must not approach UCU staff in relation to campaigning in General Secretary or NEC elections. Candidates should not use member email discussion lists administered by UCU for election campaigning. Candidates may have in their possession email lists based on their personal contacts. Such email lists are a matter for the individual.

9. The use of email lists held by branches, for contacting all branch members, is a matter for branches. Use of them (or not) for election campaigning must be a decision of the branch, not of an individual who has access to such a list because of their role within the branch.

10. A branch may wish to promote a particular candidate, and it can do so. However, the NEC recommends and encourages branches to circulate information about all candidates standing in any one election. This allows members, as voters, to make better informed decisions, and reduces the likelihood of complaints (whether justified or unjustified) or accusations of unfairness.

The language of any communication should be measured. Any opinions expressed about candidates and their suitability for election should be fair and grounded in fact. Branches should note that they are liable for any defamatory statements made about candidates in their communications.

Branches should deal with any emails relating to NEC elections in the usual way that they administer emails to members, and must not release contact details of members, including email lists, directly to candidates.

11. The principles of 8 and 9 apply equally to any circulations made in hard copy by the branch, such as local newsletters.

12. In accordance with rule 15.9 (appended), candidates in General Secretary and Officer elections will be invited to participate in centrally organised hustings between 7 and 14 days after the ballot has opened.

13. In accordance with UCU rule 15.11 any branch organising a hustings event will provide candidates with 30 days' notice, making every effort to make the event accessible to all candidates, including facilitating electronic attendance. Reasonable traveling and subsistence expenses will be made available to candidates, paid from branch funds, on the basis that all candidates standing for a given position are invited to attend.

Guidance note: appendix – UCU rule 15.9

15.9 Between 7-14 days after a ballot for General Secretary or Officers of the Union has opened, a UK-wide hustings event will be held to ensure that all members and candidates have access to a fully accessible hustings event. This event will be videorecorded and edited before distribution to all members. Reasonable traveling and subsistence expenses will be made available to candidates, paid from union funds.

15.9.1 The location of this event may not occur at the home branch of any participating candidate, and the location will rotate to a different region from the previous year, with due consideration to accessibility depending on candidates' locations.

15.9.2 If it is not possible to hold the event physically for any reason, it will be held online.

15.9.3 All members eligible to vote in the relevant election will have the opportunity to submit questions in advance of this event.

15.10 The date for the event will be chosen in consultation with all candidates, and will

be finalised no later than one month before the beginning of the ballot period.

15.10.1 If a candidate prefers to attend electronically rather than in person, or to prerecord a statement and answers to questions, this will be facilitated. Candidates who are disabled, impaired or have a long term health condition will be able to make this known and have their adjustment needs accommodated to avoid any disadvantage by reason of disability.

15.10.2 If a candidate cannot make the session due to illness or emergency, they will be given an opportunity to record their responses on another date, to be included in the recording for members.

15.10.3 Candidates may choose not to attend.

15.11 During the relevant ballot period, any other branch organising a hustings event will provide candidates with 30 days notice, making every effort to make the event accessible to all candidates, including facilitating electronic attendance. Reasonable traveling and subsistence expenses will be made available to candidates, paid from branch funds, on the basis that all candidates standing for a given position are invited to attend.

Findings of Fact

22. Having considered the oral evidence alongside the documentary evidence contained in the hearing bundle (HB), my findings are as follows:

22.1. Both Applicants are active members of the Respondent union.

22.2. Vicky Blake is a former UCU President and works in widening participation at the University of Leeds where she is UCU branch's Honorary Secretary and its former branch President.

22.3. Ewan McGaughey is a Professor of Law at Kings College London and UCU Activist, having been the lead litigant in the USS pensions litigation.

22.4. Both Applicants were two of four candidates who contested the 2024 election for General Secretary of the Respondent union.

22.5. The incumbent General Secretary, Jo Grady, was seeking re-election, in the 2024 election for General .

22.6. On 1 March 2024, the election results for the Respondent Union's General Secretary were declared, showing a margin in final preferences of 182 votes between first and second placed candidates.

23. The parties to proceedings summarise their contentions as follows:

23.1. In summary, the Applicants complain that during the election campaign period of around three months, the Respondent union's incumbent General Secretary, Jo Grady, misused UCU property, contractors and software for her campaign. This included using union property to film her first election campaign video, which was viewed over 29,200 times; using a paid union contractor (Mx D), on at least one occasion, to film her election campaign video which was viewed over 13,000 times; using union software, Stream Yard, to broadcast her election videos, which was viewed over 2,041 times on the first day, and over 7,000 times thereafter. In addition, the Applicant's submit that Jo Grady also used the Respondent union's Senior Management Team to focus on her campaign members, as well as threatened union staff to work towards her re-election, including prioritising her election campaign. Further, the Applicants complain that during the election, the Respondent union's social media channels, including X (formerly Twitter), highlighted the incumbent's work and reposted her views, to a following across the country of over 70,000, garnering hundreds of thousands of impressions. Moreover, the Applicants allege that the incumbent General Secretary used official email lists of UCU's 114,310 members on a weekly basis to promote her own work, on core issues of dispute during the campaign, in excess of the four official campaign messages that all candidates could send. Finally, the Applicants contend that the

incumbent appeared at Bristol, Northumbria and Aberdeen UCU branches during the election, without other candidates, and these events were promoted using official UCU email lists. In summary, the Applicants assert that the incumbent breached the election rules on seven counts.

23.2. In contrast, in summary the Respondent responds that the breaches of “Rules 7, 8 and 13”, complained of by the Applicants are not Rules of the union, they are “Guidance Notes” (HB @ p.306) only. The Respondent relies on Barron v UCU D/40-48/17-18 (@ para 97). Yet, the Respondent acknowledges that Rules can be incorporated from other documents by way of an implied term (cf. Rawlins v The British Medical Association D/1-5/07; and, Heaton’s Transport (St Helens) Ltd v TGWU [1973] AC 15). However, the Applicants would have to establish that it was “reasonable, certain and notorious” that the Guidance Notes constituted a contractually binding rule of the union (Sagar v H Ridehalgh and Sons Ltd [1931] 1 Ch 310). In addition, the Respondent submits that this application under s.180A(1) is of ‘a breach or threatened breach of the rules of a trade union’. Therefore, time runs from the date of the breach of rule; it does not start running from the election result. Consequently, any complaints about breaches of the ‘Guidance Notes’ that pre-date 12 January 2024 are out of time, that is, the Respondent contends are complaints 1, 2 and 5, and parts of 4, 7 and 8. Furthermore, the Respondent contends that when the detail of all the complaints are considered, it is apparent that they are complaints about the conduct of the General Secretary. They are framed as being that the “union enabled the incumbent General Secretary to ...”. However, how the Respondent union enabled the General Secretary to do this is left unexplained. Finally, that there is a separate process for complaints about a General Secretary which the Applicants have not followed. In summary, the Respondent requests that I should refuse the applications because the Applicants have not taken all reasonable steps to resolve the claim by using the relevant internal complaints procedure.

Reasons

24. The rules applicable to the 2024 election are set out in the ‘General Secretary and NEC Elections 2023-24 Guidance Notes’ (HB @ pp. 24-25). The relevant rules are:

“7 ... candidates are not permitted the use of UCU funds or resources for the purposes of campaigning. Except as permitted by UCU, use by candidates of sensitive personal data held by UCU or any of its officials and/or officers (elected or paid) is not permitted under any circumstances.

8 Email lists which are held by UCU’s head offices and regional offices are a resource of the union and **cannot be used for campaigning by General Secretary** or NEC candidates.

13 In accordance with UCU rule 15.11 **any branch organising a hustings event will provide candidates with 30 days’ notice, making every effort to make the event accessible to all candidates**, including facilitating electronic attendance. Reasonable traveling and subsistence expenses will be made available to candidates, paid from branch funds, on the basis that all candidates standing for a given position are invited to attend.”

(Emphasis added.)

The Respondent asserts that these are guidance not rules; as labelled by the Respondent union. However, as both parties to these proceedings remind me, Lord Wilberforce stated that because such ‘are not drafted by parliamentary draftsmen’, one should look at ‘how they would be understood by the members’ (Heatons Transport (St Helens) Ltd v TGWU [1972] ICR 308).

Therefore, what was understood by the Respondent union’s membership and the Applicants, as candidates, as well as the Respondent union’s incumbent General Secretary, was that this guidance was the Rules under which this election was to be conducted. Much evidence before me, lends itself to that understanding. Such amounts to positive evidence in the Morley sense (Morley v UNISON D/1/2025-26; [2024] EAT 143),); that is, more likely than not this guidance was to be and actually were treated as the material electoral

rules. In fact, both parties in these proceedings have been at pains to emphasise their compliance with such guidance; thereby, evidencing their treatment as rules to be complied with rather than guidance. In any event, this guidance can be incorporated, as it is reasonable, certain and notorious so to do (as per Rawlins v. BMA D/1-5/07), as they were intended to be a contractually binding rule, as evidenced by the concerns regarding the communication of the guidance to staff (cf. Sagar v. Ridehalgh (1931) 1 Ch 310)

25. Therefore, I now turn to each complaint and determine each in turn, as follows:

Complaint 1: Union office misuse

On 3 November 2023, the union breached rule 7, which prevents a candidate to use union funds or resources for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to film a campaign video from inside the union's offices, probably using union camera equipment. This was an advantage other candidates did not have and helped sway the election result.

25.1. This complaint is not upheld.

25.1.1. The Applicants contend that the Respondent union's incumbent General Secretary, Dr Jo Grady, used the UCU office at Carlow Street, London, to film her first campaign video (HB @ p.29). The Applicants opine that with regard to union property, a reasonable member would understand rule 7, that 'candidates are not permitted the use of UCU funds or resources for the purposes of campaigning', to not allow filming in union property.' The Applicants contend the attempt to justify and minimise such usage only seeks to highlight the incumbent's regular course of dealing, using union resources for her campaign in whatever way she felt like. Moreover, the Applicants submit that the video made on the Respondent union's premises is more likely than not to have swayed the election result, given that the incumbent's video was viewed 29,200 times.

25.1.2. The Respondent contends that this complaint is brought under paragraph 7 of the Guidance Notes which deals with ‘the use of UCU funds or resources for the purposes of campaigning’ (HB @ p.24). The Respondent accepts that on 3 November 2023, Dr Grady did film a campaign video in her office at the Union (HB @ pp.300 and 512). Yet, the Respondent argues that taking a campaign video, sat at your work desk, is not what a reasonable member of the Respondent union would understand to be a ‘use of UCU ... resources’. Namely, no resources have been used in this context. Furthermore, the Respondent contends that this is not what is intended by the Respondent union’s Guidance Notes. The point of paragraph 7 of the Guidance Notes is to prevent someone using UCU funds or resources to gain an advantage in their campaign. The Respondent submits that there is no advantage whatsoever in taking a campaign video which shows a generic, nondescript background: Dr Grady is sat at a desk, with a window behind her (HB @ p.29).

25.1.3. **Accordingly, did the Respondent union breach paragraph 7 of the Guidance Notes in that the Union “enabled the incumbent General Secretary” to use UCU funds or resources for the purposes of campaigning by reason of on 3 November 2023 the General Secretary filming a campaign video from inside the Union’s office?**

Whilst in evidence before me, it is agreed that the General Secretary filmed a campaign video from inside her office at the Respondent union’s HQ, it is not agreed that the Respondent enabled her to do so, nor that this entailed any use of UCU funds or resources. I do not accept that the Respondents union’s funds or resources were used, as the usage of her office was incidental and not recognisable as property of the Respondent union. There is nothing to show that it is a UCU office, no one would recognise it as the General Secretary’s office unless they had visited it and the majority of Union members have never been in the UCU building, still less the General

Secretary's office. In addition, there was nothing stopping any of the candidates from taking their campaign video outside of the UCU building with the very prominent signage. Further, this video was taken in November 2023 when nominations opened, many months before the ballot. It could not have had any effect on the election, as complained of. In any event, Dr Grady was the incumbent seeking re-election and therefore, would be expected and in fact she was, undertaking her role whilst campaigning for re-election. Further, for completeness, the Respondent's leading Counsel having raised the jurisdictional point regarding time. The Applicants having raised their complaints with the Respondent within 6 months, the time limit arguably would have been extended. In any event, for these reasons, this complaint is not upheld.

Complaint 2: UCU staff making campaign videos

On 6 December 2023, and probably on several other occasions, the union breached rule 7, which prevents a candidate to use union funds or resources (including staff) for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to use a paid UCU member of staff (Mx D), to make campaign videos for the incumbent. This was an advantage other candidates did not have and helped sway the election result.

25.2. This complaint is not upheld.

25.2.1. The Applicants submit that a reasonable member would understand rule 7 to preclude using any paid UCU member of staff, including a UCU contractor (ie Mx D) (HB @ p.38). Since the contractor admits that she was paid £350 for the day's work, and on that day gave Dr Grady ostensibly 'free' service of filming and editing her campaign video (se. Mx D Witness Statement (WS) @ paras. 8-9). As the Applicants opine, such a service was not made available to other candidates and even if it had been, it would not be permitted under rule 7. Moreover, the Applicants submit that the Respondent's attempt to distinguish staff who are

freelancers from employees (see Grady WS 1 @ para. 9) is irrelevant to the fact that UCU resources were being used to make the campaign video. A video, filmed and edited by a union contractor, which was viewed 13,000 times.

25.2.2. The Respondent contends that there was no breach of paragraph 7 of the Guidance Notes: the use of UCU funds and resources (HB @ p.306). It accepts that a campaign video was made on 6 December 2023 in Oxford (HB @ p.38) and that it was made by Mx D. However, the Respondent contends that it was not made by her while working for and being paid by the UCU. It was done entirely voluntarily, free of charge and at a time when she would otherwise have been “standing around, waiting and chatting” (see WS Mx D @ para. 7), as corroborated by Dr Grady (see WS Dr Grady @ para. 13).

25.2.3. Accordingly, did the Respondent breach paragraph 7 of the Guidance Notes in that the Union “enabled the incumbent General Secretary” to use UCU funds or resources for the purposes of campaigning by reason of on 6 December 2023, the General Secretary using a paid UCU member of staff, Mx D to make a campaign video for her?

It is agreed that Mx D took footage of the General Secretary for a campaign video on 6 December 2023. In fact, in evidence before me, Dr Grady stated that she ‘regretted using her to make the video’. Regretful or otherwise, from the evidence before me I cannot see that the making of this video entailed any use of UCU funds or resources, since Mx D confirms that she acted as a freelancer, voluntarily, using her own equipment and in an unpaid capacity to undertake this particular video footage. For these reasons, this complaint is not upheld.

Complaint 3: Union software misuse

On 12 January 2024, the union breached rule 7, which prevents a candidate to use union funds or resources for purposes of campaigning. This rule was breached

in that the union enabled the incumbent general secretary to use union software, Stream Yard, which is paid for by UCU, for a campaign broadcast for the incumbent gathering thousands of views on social media. This was an advantage other candidates did not have and helped sway the election result.

25.3 This complaint is upheld, in part.

25.3.1. The Applicants contend that Dr Grady, as incumbent, used union software (ie Stream Yard) that she used a union contractor to film at least one campaign video (HB @ p.38), to stage a live, online campaign event (HB @ pp. 19-21). The other candidates, including the Applicants, were not allowed the usage of the same which the Applicants submit constitute the use of UCU resources. The video of this event was viewed 7,000 times. Consequently, the Applicants posit that if just 2.6% of the viewers of the union Stream Yard video were encouraged to vote for Grady, that would have swayed the election. The Applicants contend that the intention of Grady's campaign videos was 'campaigning' for people to vote. The Applicants pray in aid of their submissions in respect of this complaint that because the incumbent breached the rules it 'does not lie in the mouth of a [general secretary] of the union to complain' (cf. Cotter v National Union of Seamen [1929] 2 Ch 58, 77).

25.3.2. However, the Respondent accepts that the Stream Yard account was used by the incumbent, Dr Grady on 12 January 2024 (HB @ pp.19, 53-54 and 300). Though, the Respondent avers that it was a simple, human error. Moreover, the Respondent contends that this usage of UCU's Stream Yard account did not provide Dr Grady with any benefit that the other candidates could not access. Namely, that she did not use UCU social media accounts; she only used her own (Grady 1 WS @ para.15). In effect, the Respondent submits that Dr Grady did not benefit from any wider audience than if she had used her own Stream Yard account.

25.3.3. Accordingly, did the Union breach paragraph 7 of the Guidance Notes in that the Union “enabled the incumbent General Secretary” to use UCU funds or resources for the purposes of campaigning by reason of on 12 January 2024, the General Secretary used the UCU Stream Yard account for a campaign broadcast?

It is agreed that the General Secretary erroneously used the UCU Stream Yard account for a campaign broadcast. Yet, I do not accept that the Respondent union enabled her to do so. Nevertheless, such is a technical breach of paragraph 7 of the Guidance Notes, in so far as UCU resources were used on this occasion. Therefore, I uphold this complaint, since on the facts an admitted breach has occurred. Yet, I do not accept that such a breach swayed the election result. For instance, this broadcast was one of many that Dr Grady produced; it was also produced some two months before the election took place; and Dr Grady did not benefit from a wider audience than she would have done if she had used her own Stream Yard account. For these reasons, this complaint is partially upheld, as a technical breach.

Complaint 4: Threats to UCU staff jobs

On the dates of October 2022, January 2023, and until February 2024, the union breached rule 7, which prevents a candidate to use union funds or resources (including staff) for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to pressure union employees to work for the incumbent’s re-election, to the exclusion of other candidates, particularly by making threats that if the incumbent did not win UCU staff were at risk of losing their jobs. This helped sway the election result.

25.4 This complaint is not upheld.

25.4.1 The Applicants rely an informal SMT WhatsApp series of messages (HB @ pp. 538-539) and contend that the incumbent, Dr Grady, instructed at least three of her Senior Management Team members on 11 January 2023 that ‘every single decision

we make/we do has to be seen through the below lense [sic]... Re-elect GS.' In this series of WhatsApp messages a member of the Senior Management Team says 'And hopefully has been' in response. Further, the incumbent, Dr Grady, says 'we will destroy' her opponents within the union. Furthermore, the Applicants also rely on three anonymous witness statements, provided by 4 individuals, 2 of whom are former employees and 2 whom remain current employees who attest that Dr Grady told staff that 'everything we are doing here is for my re-election' and that 'their jobs were dependent on her being re-elected'. These witnesses also report that senior managers of UCU told staff 'the reality was [they] would have to focus on areas that the GS wanted to prioritise as part of her election campaign.' (Anonymous WSs 1, 2 and joint 3 & 4, HB @ pp. 534-537). The Applicants assert that these witnesses remain anonymous because they fear victimisation, yet they separately offer a consistent picture of Dr Grady's style of management which is indicative, they claim, of her 'culture of fear' among her staff.

25.4.2 The Respondent submits the evidence produced by the Applicants is vague, unparticularised and made by anonymous witnesses which cannot be relied on. In any event, the Respondent contends that there is not a threat to anyone's job. Instead, the Respondent asserts that the screenshot of the group WhatsApp (HB @ p. 538) had nothing to do with the General Secretary election, as they were written long before the election took place. Moreover, there is no threat to staff and no complaints have been made through the relevant whistleblowing policies or as grievances of the Respondent union about any of these acts. The Respondent submits that the suggestion that threats were made to UCU staff is scurrilous and firmly denied (see WS Grady 2 @ paras. 16-17; WS Wilkinson @ paras. 10-13; and, WS Sherrard @ para. 5). In any event, the Respondent contends that it is unclear how any of this would be a breach of

paragraph 7 of the Guidance notes in that no Union resources have been used. This is fundamentally a complaint against the General Secretary that should have been addressed through the proper procedures.

25.4.3 Accordingly, did the Union breach paragraph 7 of the Guidance Notes in that the Union “enabled the incumbent General Secretary” to use UCU funds or resources for the purposes of campaigning by reason of pressuring union employees to work for the incumbent’s re-election to the exclusion of other candidates; and/or, by making threats that if the incumbent did not win UCU staff were at risk of losing their jobs?

In the first instance, I am invited by the Applicants to determine whose version of events, I prefer. It is not as simplistic as that. Firstly, the burden of proof is on the Applicants as they must prove their complaints on the balance of probabilities. Notably, mere suspicion is not enough (Murphy v GMB (2002) D/34-41/02).

25.4.4 Moreover, in relation to the anonymous witness statements, whilst the Respondent union maintains its objection to their inclusion, as I stated at the CMM, it is a matter for me what weight and value I give to these. I reiterate that whilst I have seen signed versions of these witness statements, in no way am I able to verify or adjudge the credibility or authenticity of these witness statements solely by the production of a signature. There remains no statement of truth. Whilst the formalities of civil procedure do not apply before me, section 4 Civil Evidence Act 1995 provides a helpful non-exhaustive list of considerations that are relevant to weighing hearsay evidence. Applying the same, in my view it would have been reasonable and practicable for the Applicants to have produced the maker of the original statement as a witness, particularly since 2 of them were former employees

and the remaining witnesses would have the protection of whistleblower safeguards and/or prospective victimisation claims should the Respondent union resort to any action against them, in which case they could have been cross examined on their assertions which would have added more weight to their evidence. In addition, these statements were not made contemporaneously with the occurrence or existence of the matters stated. In fact, they were made after the event and at the same time. Moreover, these witness statements do involve multiple hearsay. In these circumstances, on the balance of probabilities I remain circumspect as to giving these witness statements any weight and value. Therefore, these witness statements will not be relied on. Anonymous hearsay evidence is unreliable as it cannot be tested. Therefore, motivations, biases, inconsistencies or different possibilities cannot be explored. Nor can any Court or Tribunal, or Certification Officer, gain an informed impression of the testimony if the witness is not prepared to attend the hearing and have their evidence tested. Consequently, I give little, if any, weight to the anonymous witness statements in the hearing bundle (cf. Boyd v Incommunities Ltd [2013] EWCA Civ 756).

25.4.5 However, in terms of the WhatsApp messaging, from the evidence given before me this was an informal SMT WhatsApp channel, used primarily for updates between SMT members of the Respondent union. Whilst I do not accept that Respondent's narrative that the messages, relied upon by the Applicant, were not about the General Secretary election; I do not view them as an instruction, as the recipients did not either. The latter was affirmed by Mr Barnett in his evidence before me. Furthermore, Mr Barnett asserted in evidence that he and his colleagues saw no threat contained within this informal messaging.

25.4.6 For these reasons, I do not uphold this complaint.

Complaint 5: Misuse of social media for campaigning

On 17 November 2023, the union breached rule 7, which prevents a candidate to use union funds or resources for purposes of campaigning. This rule was breached in that the union enabled the incumbent general secretary to pressure the Head of Democratic Services into changing the ban on use UCU social media accounts to 'raise the profile of the general secretary' to allowing union accounts to do that, following which UCU social accounts were flooded with 'good news stories' during the election campaign period for the benefit of the incumbent, but not other candidates. This helped sway the election result.

25.5 This complaint is not upheld.

25.5.1 The Applicants contend that UCU staff regularly reposted UCU posts on Twitter or X. In fact, the Applicants assert that UCU's account automatically repost the incumbent, Dr Grady's, personal account. Essentially, such reposting, in the Applicants' words, 'channelled' traffic to Dr Grady's personal account where all her re-election campaign materials would be viewed. Relying on 'Rule 7' which provides that 'candidates are not permitted the use of UCU funds or resources for the purposes of campaigning'; the Applicants contend that such channelling of social media traffic to the incumbent's personal campaign materials was unfair as it enabled another means of effective campaigning for the incumbent alone. As such it would have the effect of tipping the 'level playing field', envisioned by the Respondent union's guidance, in her favour. The Applicants highlight that throughout the campaign period, the incumbent's work was highlighted in a constant stream of UCU's social media posts (HB @ p. 146), but that of other candidates was not. The Applicants key accusation here is that the incumbent 'weaponised' UCU's social media for campaigning for her own ends not that of the union, giving her an unfair advantage by taking the union social media for her individual gain.

25.5.2 The Respondent submits that there appears to be two elements to this complaint, both of which are denied. The first element, it is said that on 17 November 2023, Dr Grady pressured Ms Wilkinson “into changing the ban on us[ing] UCU social media accounts” (HB @ p.8). The allegation is incorrect, avers the Respondent, since the email from Ms Wilkinson, dated 17 November 2023, was a “proposal” and expressly invites “any further comments” (HB @ p.35). Further, on 20 November 2023, Ms Wilkinson specifically told her colleagues that “there is no instruction in respect of this” i.e. it was a proposal that was still being discussed between the SMT (HB @ p.34) and further discussions took place between the SMT, not including Dr Grady (HB @ pp.44-46). The second element of this complaint, which the Respondent disputes, is that the Applicants allege that “UCU social accounts were flooded with ‘good news stories’ for the benefit of the incumbent, but not other candidates” (HB @ p.8).

25.5.3 Accordingly, did the Union breach paragraph 7 of the Guidance Notes in that the Union “enabled the incumbent General Secretary” to use UCU funds or resources for the purposes of campaigning by reason of on 17 November 2023, the General Secretary pressured the Head of Democratic Services to change the ban on use of UCU social media accounts to raise the profile of the General Secretary following which UCU social accounts were “flooded” with good news stories for the benefit of the incumbent, but not other candidates?

As Ms Wilkinson explained in her evidence before me, the final instruction to all UCU staff was after considerable debate amongst the SMT, excluding the incumbent. Furthermore, the incumbent General Secretary, Dr Grady, explained that she had to continue in her role and undertake her normal day to day duties on behalf of the Respondent union during the election period. There was no evidence of any pressure being applied by Dr Grady.

Moreover, the social media posts relied on by the Applicants were not adduced in evidence before me. In any event, according to Ms Sherrard (see WS Sherrard @ para. 9) there was no change in the volume, tone or content of the social media posts by the Respondent union during the election period. For these reasons, this complaint is not upheld.

Complaint 7: Misuse of mass emails

On the dates of 1 December 2023 to 20 February 2024, the union breached rule 8 of the election guidelines, which forbids using union emails ‘for campaigning’. This rule was breached in that the union enabled the incumbent general secretary to send multiple emails to all members on essentially contested issues in the election, calculated to raise the incumbent’s profile, for campaigning, where the other candidates had no similar chance to communicate their positions on the same issues. This helped sway the election result.

25.6 This complaint is not upheld.

25.6.1 The Applicants assert that 9 emails were sent to the entire membership of UCU in respect of the incumbent rather than the allotted 4 official emails for each candidate, contrary to ‘Rule 8’ which states that: ‘Email lists.... are a resource of the union and cannot be used for campaigning by General Secretary... candidates’. Consequently, the Applicants contend that the UCU membership (ie the UCU electorate for the purposes of General Secretary elections) were faced with the raising of the incumbent’s profile, unfairly. The Applicants rely on 5 examples of extra emails which, they assert, seek to ‘paint a picture of a supposedly untiring, fighting, campaigning, union leader, who brings people together, overcomes divisions and stands up for members’ in a ‘vote Grady’ campaigning sequence. The Applicants allege that the incumbent, Dr Grady, intended to flood members with her communications and that the sending of a single email to 114,310 UCU members could sway 182 votes and the election result.

25.6.2 The Respondent submits that this complaint covers the period of 1 December 2023 to 20 February 2024 and alleges a breach of

paragraph 8 of the Guidance Notes (HB @ p. 306). The Respondent disputes that the Respondent union enabled the incumbent to send multiple emails to all members on essentially contested issues in the election, calculated to raise the incumbent's profile, for campaigning where the other candidates had no similar chance to communicate their positions on the same issues. The Respondent contends that only 11 emails were sent during the election period of December 2023 to February 2024 and that 22 emails were sent in the three months prior to the election period (September to November 2023) and 10 emails were sent in March to May 2024 after the election (HB @ p.301). Furthermore, the Respondent asserts that the contents of these emails are all concerned with raising the profile of the union, not Dr Grady, and all relate to core union business.

25.6.3 Accordingly, did the Union breach paragraph 8 of the Guidance Notes in that the Union “enabled the incumbent General Secretary” to use email lists which are held by UCU’s head office for campaigning by reason of that from 1 December 2023 to 20 February 2024, the General Secretary sent “multiple emails to all members on essentially contested issues in the election” which was “calculated to raise” her profile?

In evidence before me, it became a recurrent theme that the Respondent union and its incumbent General Secretary had to continue ‘business as usual’ during any elections. Moreover, it was plain from the emails listed that the same issues were emailed about before and after the election (for examples, Gaza (HB @ p.70 before; p.106 after) and the USS pension scheme (HB @ p.47 before; p.118 after). From the questioning of this evidence before me, it became self-evident that these were not campaigning emails in their content or tone, as these emails provided information to members about work by the union and called members to action. Therefore, such multiple emails were sent to continue the union’s work and activities as opposed to raising the incumbent’s profile and/or her campaigning on election issues. Moreover, I remind myself that in Morley v UNISON D/10/2021-22;

[2024] EAT 143), where the Certification Officer held that the applicant had not shown why the content of emails by an incumbent Lancaster Branch Secretary's emails enhanced their campaign, or that the intent was to do so. This analogously applies to the instant application before me. For these reasons, this complaint is not upheld.

Complaint 8: Solo hustings

On the dates of 11 December to 26 February, the union breached rules 8 and 13, which require email lists are not used for campaigning, and for equal opportunity for all candidates to appear at hustings. These rules were breached in that the incumbent general secretary was invited to perform (in effect) solo hustings on issues directly contested in the election, when the other candidates were given no similar opportunity (breaching rule 13), and invitations were sent to members of branches advertising the incumbent, to the exclusion of other candidates, using official email lists held by the union (breaching rule 8). This helped sway the election result.

25.7 This complaint is not upheld.

25.7.1 The Applicants initially contended that the incumbent appeared at 3 events, alone, in breach of paragraphs 8 and 13 of the Respondent union's Guidance Notes. However, this was narrowed to an event at Bristol University, where the Applicants allege that the Bristol UCU branch President used the official mailing list and every Bristol member (around 1,500 UCU members) received this invitation (HB @ p.90). Consequently, the Applicants submit that official union lists were used to promote the incumbent's event. Such a breach, the Applicants contend, could have had the effect of swaying 182 or more votes at the election.

25.7.2 The Respondent submits that these 4 events (Aberdeen, 11 December 2023 and 26 February 2024; Northumbria, 22 February 2024; and, Bristol, 23 February 2024) were not 'solo hustings'. In fact, the Respondent submits that all of these

events evidenced the incumbent undertaking her role as the Respondent union's General Secretary, addressing industrial disputes and attending rallies to save jobs and programmes.

25.7.3 From the evidence before me, these events were not solo hustings. Therefore, no breach has occurred. For these reasons, this complaint is not upheld.

Remedy

26. If the Respondent did breach any of the paragraphs of the Guidance and this constitutes a breach of its union rules, by reason of the matters referred above:

(a) Should the Certification Officer ("CO") make a declaration pursuant to s.108B(2)(d) TULRCA 1992?

(b) If a declaration is made, should the CO also make an enforcement order under s.108B(3) TULRCA 1992?

If so, what should the terms of the enforcement order be?

(i) What steps would remedy any breaches found?

(ii) Abstaining from what acts would prevent such a breach occurring in future?

26.1 The Applicants seek a declaration "that the office of General Secretary is vacated until an election is properly conducted". In essence, they are seeking that the election is declared void. They also seek a declaration "that an election must be re-run according to the rulebook" and that this begins immediately and is completed within 3 months of the decision. Moreover, the Applicants seek "a declaration as a precaution to require a recount of existing ballots and that candidates may attend ballot counts".

26.2 The Respondent contends that no enforcement order should be made because even if breaches are found, the election was so

conducted to be substantially in accordance with the law. Moreover, any breaches did not “help sway the election result” and the costs and practicalities of re-running the Election are disproportionate to any breaches. The Applicants do not come to the CO with clean hands in that Professor McGaughey engaged in criticism of the General Secretary on social media and breached the Crowd Justice website rules during his campaign.

27. Section 108B(2)(d) TULRCA 1992 provides that I “may” make a declaration: it is not mandatory and is a matter for my discretion.

28. Having made that declaration, then pursuant to s.108B(3) TULRCA 1992 I must consider whether to make an enforcement order. Having done so, I am satisfied that it would be inappropriate to do so. This is because, in my view having heard the totality of the evidence, steps have already been taken to prevent usage of Stream Yard in future, particularly during General Secretary elections, where an incumbent is seeking re-election. Above all, I am satisfied that the election complained of was so conducted to be substantially in accordance with the law as to elections that the act or omission did not affect its result. Notably, I remain unconvinced that the election outcome was swayed in any way; given that the incumbent, Dr Grady, had a clear winning margin in the first round of voting. In any event, the incumbent’s erroneous usage of Stream Yard would not substantially impact the election outcome.

Conclusion

29. In conclusion, on balance of probabilities any breach of the rules and/or guidance was not of such substantial significance as to sway the votes and/or cause disequilibrium of the level playing field; so as to cause me to order a re-run of the 2024 General Secretary elections. In fact, it was apparent from the totality of the evidence before me that some candidates were more social media savvy than others. Furthermore, a close election result was coincidental in those circumstances. In fact, such a close election result diminished the Applicants’ core contention that there was a sway and that a level playing field had been disrupted.

30. Accordingly, all the Applicants' complaints, save for complaint 3 which is upheld in part, as a technical breach, are dismissed.

S T Hardy

STEPHEN HARDY

The Certification Officer