

**DECISION OF THE CERTIFICATION OFFICER ON APPLICATIONS  
MADE UNDER SECTIONS 55(1) AND 108A(1) OF THE TRADE UNION AND  
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**MR R STOKES**

**v**

**GMB**

**Date of Decision:**

**26 September 2003**

**DECISION**

Upon applications by the Applicant under sections 55(1) and 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):-

1. I declare that the GMB (“the Union”) acted in breach of section 47(1) of the 1992 Act in unreasonably excluding the Applicant from standing as a candidate in the election for the position of Deputy General Secretary of the Union conducted in 2003.
2. I refuse to make the declaration sought that the GMB breached rule 10(4) of its rules on or about 6 February 2003 by the National Returning Officer of the Union excluding the Applicant from standing as a candidate in the election for the position of Deputy General Secretary of the Union conducted in 2003.
3. I declare that the GMB breached rule 15(3) of its rules on or about 6 February 2003 by the National Returning Officer of the Union disqualifying the Applicant from standing as a candidate in the election for the position of Deputy General Secretary of the Union conducted in 2003.

4. I refuse to make the declaration sought that the GMB breached rule 15(4) of its rules on or about the 3 December 2002, by issuing by-laws containing qualifications for candidates in the Union's elections in 2003 not otherwise contained in the Union's rules.
  
5. I consider that it would be appropriate to make an enforcement order. I order that:-
  - 5.1 subject as hereafter, the election to the position of Deputy General Secretary of the Union, the result of which was declared on 15 April 2003 ("the disputed election"), be treated as void and of no effect. The person elected in that election, Ms Coulter, shall cease forthwith to hold office as Deputy General Secretary.
  
  - 5.2 the Union shall conduct a further election for the position of Deputy General Secretary, such election to be conducted so as to be in accordance with the rules of the Union and Chapter IV of the 1992 Act.
  
  - 5.3 the implied rule of the Union, referred to in the reasons to this decision as the Precursor Provision, shall apply to all nominees in the further election as if the term of office of the Deputy General Secretary were to have begun on 15 April 2003.
  
  - 5.4 the further election shall be conducted so that its result is declared no later than 31 March 2004. The Union is given liberty to apply in the event of the Union being unable to comply with the requirement to declare the result of the election by the specified date.
  
  - 5.5 the Union shall not be required to proceed with the further election and the result of the disputed election shall stand should the Applicant and any member of the Union who would have been

excluded from being a candidate in the disputed election by reason only of the Impending Retirement Provision not be nominated in the further election or should all such nominees subsequently either withdraw or be lawfully excluded from standing prior to the date of distribution of the voting papers.

## REASONS

1. By an application received on 12 March 2003, the Applicant made a number of complaints against his union, the GMB (“the Union”), alleging a breach of the 1992 Act in respect of its election processes and also breaches of the rules of the Union in relation to those election processes. Following correspondence with my Office the complaints were identified in the following terms:-
  - 1.1 *In breach of section 47(1) of the 1992 Act, on or about 6 February 2003, Mr Stokes was unreasonably excluded from standing as a candidate in the union’s election for the post of Deputy General Secretary.*
  - 1.2 *That on or about 6 February 2003 the union’s National Returning Officer (not being a committee of the Union with delegated powers of the CEC) unreasonably excluded Mr Stokes from standing as a candidate in the union’s election for the post of Deputy General Secretary and that this was in breach of GMB rule 10(4).*
  - 1.3 *That on or about 6 February 2003, the National Returning Officer, without the authority of the Central Executive Council (CEC), disqualified Mr Stokes from standing as a candidate in the GMB election 2003 for the post of Deputy General Secretary and this was a breach of GMB rule 15(3).*
  - 1.4 *That, on or about the 3 December 2002, by issuing By-Laws containing qualifications for candidates in the union’s elections 2003 not otherwise contained within the union’s rules, the union breached its rule 15(4).*
2. I investigated these matters in correspondence. As required by section 55(2) and 108B(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 27 August 2003. The Union was represented by Mr T Coghlin of counsel. Mr J O’Hara, the Union’s National Legal Officer and former National Returning Officer, gave evidence. Mr S Short, the National Returning Officer in the disputed election, was in

attendance. Mr Stokes acted in person and called no witnesses. A bundle of documents in respect of the complaints was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties, together with their enclosures. Both parties provided skeleton arguments which were exchanged prior to the hearing. Subsequent to the hearing the Union submitted written representations on the enforcement order, if any, that I might make. The Applicant was offered the opportunity to comment on those representations but he declined to do so. This decision has been reached on the basis of the representations made by the parties, together with such documents as were provided by them.

### **Findings of Fact**

3. Having heard the parties and considered the documents provided by them, I find the facts to be as follows:-
4. The Union conducted postal ballots for the positions of General Secretary and Deputy General Secretary (the “Senior Officer Positions”) between 21 March and 14 April 2003, in anticipation of the retirement of the incumbents. The Applicant was nominated as a candidate in the election for the position of Deputy General Secretary (“DGS”). This complaint arises out of his disqualification from being such a candidate on grounds relating to the period of time he could serve in that capacity prior to compulsory retirement. The Applicant was born on 5 March 1947 and on the date the DGS ballot result was declared, 15 April 2003, he was 56 years of age. The age of compulsory retirement for the purposes of this case is 60.
5. Rule 15 of the rules of the Union has the sub-heading “*Election of General Secretary and Treasurer, and of Deputy General Secretary*” and provides as follows:-
  - 15(3) “No member shall be eligible to stand as a candidate in an election under this rule unless the Central Executive Council, on receiving his/her nomination, is satisfied that:
    - a he/she is qualified under these rules to stand for election to the office and
    - b he/she is capable of discharging efficiently the duties of the office, having

particular regard to his/her experience within the union including:

- (i) his/her length of service as an employee of the union  
and/or
- (ii) his/her period of office in an office or offices under these rules

Only candidates who have so satisfied the Central Executive Council as to their qualifications and capability shall be validly nominated.”

Rule 18 has the sub-heading “*Qualifications for Office and Definition of Officers*” and provides as follows:-

18(1) “The first qualification of any member seeking election to any of the offices named in this Rule shall be that s/he has paid 53 consecutive weekly contributions and is fully financial (as defined in Rule 47.5) at the date of nomination and election.”

The remaining qualifications contained in rule 18 are not material for the purposes of this application.

6. In addition to the rules contained in the rule book itself, rule 15(4) provides for electoral by-laws. It is in the following terms:-

15(4) “The organisation and conduct of elections under this Rule shall be in accordance with by-laws issued by the Central Executive Council. by-laws made under this rule may specify whether failure to comply with any and if so which by-laws shall disqualify a candidate from standing for election. The Central Executive Council may amend or withdraw any by-law as it thinks fit.”

The by-laws approved by the Central Executive Council (“the CEC”) for the elections in question dealt with such matters as the date by which nomination forms were to be returned by the branches, the personal details to be provided by nominees (to include the person’s age as at 31 December 2002), the date by which those details were to be provided, the date by which an election address was to be provided, the restrictions on canvassing, the date for assessing financial membership and the date by which all ballot papers had to be returned. The by-laws stated expressly that failure to comply with certain by-laws would result in the nominee being disqualified.

7. Since at least 1985 to the time of these elections there had been a further requirement upon nominees. This requirement had been expressed in various documents in the following terms:-

“No member should be nominated for the position of Deputy General Secretary who, because of impending retirement, would be unable to serve a sufficient time of office in that capacity.”

Such a requirement had appeared in the election material used for the election of General Secretary in 1985, 1990 and 1995. It also had appeared in the similar material used in the election of the DGS in 1990 and 1996. For reasons which will become obvious, I will refer to this requirement as the “Precursor Provision”.

8. Rule 15(2) provides that in all such elections there shall be a National Returning Officer (“NRO”) appointed by the CEC. The NRO’s only function under the rules is to receive nominations from the branches. In practice, however, the NRO has a much wider role. He or she is responsible for the general administration of the election, including the enforcement of the by-laws and the disqualification of nominees where appropriate. Although rule 15(3)(a) provides that it is the responsibility of the CEC to satisfy itself that a nominee is “... qualified under these rules to stand for election to the office..”, it was in practice the job of the NRO to carry out this task. The NRO enforced rule 18(1) by disqualifying any nominee who was not ‘fully financial’ or who had not paid appropriate contributions for the requisite period. Mr O’Hara gave evidence that in practice the NRO made all decisions to disqualify nominees under the rules and by-laws if those decisions were mechanical ones, taken by reference to ascertainable facts. Any decision to disqualify which involved the exercise of a discretion was taken by the CEC. Accordingly, a decision to disqualify a candidate on the grounds that he or she would be unable to serve “a sufficient time” in office before retirement, under the Precursor Provision, was to be taken by the CEC.
  
9. Sometime before December 2002 a draft pack of the pro forma documents to be used in the elections in question was prepared. A meeting then took place between the retiring General Secretary and Mr O’Hara in the presence of Mr Short to discuss the entire pack of papers and to make sure that everything was, in the evidence of Mr O’Hara, “neat and tidy”. The General Secretary identified that there was a weakness in the Precursor Provision. He considered that the requirement to serve “a sufficient time” was too vague and might give rise to difficulties in its application. He proposed, and it was agreed, that this expression should be amended so that the corresponding requirement for these

elections should be expressed as follows:-

“No member should be nominated for the offices of General Secretary and Treasurer, or Deputy General Secretary who, because of impending retirement, would be unable to serve a full term of 5 years in office.”

I shall refer to this requirement as the “Impending Retirement Provision”.

10. At its meeting on Tuesday 3 December 2002, the CEC adopted the timetable and by-laws for the elections and appointed Steve Short as the NRO. The by-laws contain no reference to the Impending Retirement Provision.
11. Later that week a circular was sent to all branches inviting nominations for the two positions. This letter informed branches of the requirement of the CEC under rule 15.3 to satisfy itself that each candidate was qualified to stand for election, as required by rule 18, and capable of discharging efficiently the duties of the office. In addition, under the heading of “*Other Matters*”, the circular set out the Impending Retirement Provision.
12. The Union wrote to the Applicant on 16 December 2002 informing him that he had been nominated as a candidate for the position of DGS and enclosing three documents; a document headed “*Information for Nominees*”, the timetable for the election and the by-laws. The “*Information for Nominees*” document set out the terms of rule 15.3 in full and referred to the financial requirements contained in rule 18. It also set out the Impending Retirement Provision. The Applicant did not receive this letter and a duplicate was sent to him on 20 January 2003. On 5 February, the Applicant submitted his personal details form to the NRO on which he gave his age as 55, as at the required date of 31 December 2002.
13. On 6 February 2003 the NRO wrote to the Applicant stating that he had disqualified the Applicant from standing in this election. The NRO set out rule

15.1 in full, so bringing to the Applicant's attention the words that the General Secretary and the DGS, "...shall hold office for a period of five years from taking up office". He also referred to the Impending Retirement Provision as having appeared in both the circular letter sent to branches seeking nominations and in the "*Information to Nominees*" document.

14. On 13 February 2003 the Applicant protested to the NRO about his disqualification. This protest was rejected by Mr Short in a letter of the same date. On 14 February the Applicant protested similarly to the General Secretary. This protest was rejected by a letter of that same date, which letter also informed the Applicant of his right to raise a complaint under rule 63. By a further letter of 14 February the Applicant made a complaint under rule 63 to his Regional Secretary for consideration by the Regional Elections Committee.
15. In the meantime the election process was continuing. On 18 February 2003 the CEC met to discharge its functions under rule 15.3, namely to satisfy itself whether the candidates were 'qualified' and 'capable'. The members of the CEC had before them a briefing paper setting out their responsibilities and the procedures to be adopted. These were also outlined orally to them by the General Secretary. The Impending Retirement Provision was set out in the briefing paper but it was not specifically brought to the CEC's attention nor was there any specific discussion of it by the CEC. In accordance with past practice the CEC considered only those nominees who had not already been sifted out by the NRO. Accordingly, the CEC did not consider the Applicant's nomination. The General Secretary reported to the CEC that a disqualified nominee had lodged an appeal but neither the name of the Applicant nor the circumstances of his disqualification were disclosed.
16. By a letter dated 24 February 2003 the clerk to the Regional Elections Committee informed the Applicant that the Committee had considered his complaint and had recommended that he be disqualified from standing for election but that the NRO had not had the authority to do so. It referred the matter to a committee of the CEC for a final decision.

17. On the following day, 25 February, the Applicant appealed to the CEC. This appeal was heard by the Appeals Committee of the CEC on 4 March and was dismissed.
18. The Applicant's complaint to my Office was received on 12 March 2003.
19. The voting in the elections took place between 21 March and 14 April 2003 and the result was declared on 15 April. There were six candidates for the position of DGS. The four candidates with the highest number of votes received 20,630, 19,042, 17,847 and 15,913 votes respectively. There was a recount of the votes for the two candidates with the highest number of votes. The successful candidate took up office on 18 May 2003.

### **The Relevant Statutory Provisions**

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

#### Section 46

- (1) A trade union shall secure -
  - (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and
  - (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.
- (2) The positions to which this Chapter applies (subject as mentioned below) are -
  - (a) member of the executive
  - (b) any position by virtue of which a person is a member of the executive
  - (c) president, and
  - (d) general secretaryand the requirements referred to above are those set out in sections 47 to 52 below.
- (3) In this Chapter "member of the executive" includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

#### Section 47

- (1) No member of the trade union shall be unreasonably excluded from standing as a candidate.
- (2) ...
- (3) A member of a trade union shall not be taken to be unreasonably excluded from standing as candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

#### Section 55

- (1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.
- (2) ...
- (3) ...
- (4) ...
- (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.
- (5A) 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 more of the following requirements –
  - (a) to secure the holding of an election in accordance with the order;
  - (b) to take such other steps to remedy the declared failure as may be specified in the order;
  - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

#### Section 108A

- (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) ...
  - (c) the balloting of members on any issue other than industrial action;
  - (d) ...
  - (e) ...

## Section 108B

- (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 Union Rules

21. The Union rules most relevant to the Applicant's complaint are:-

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

- 2 ... The General Secretary and Treasurer, and the Deputy General Secretary shall also be voting members of the Central Executive Council.

- 4 For the transaction of any part of its business, the Central Executive Council may appoint committees. It may delegate to any such committee such of its functions and powers as it may think fit, and in the exercise of such functions and powers the committee shall act in place of the Central Executive Council and shall be subject to the relevant provisions of these rules as if any reference therein to the Central Executive Council were a reference to the committee. The decisions of the committees shall be made on behalf of the Central Executive Council and, except where the Central Executive Council otherwise directs, be subject to its approval. The committees shall comprise at least one member of each Section, at least one women elected to a Women's Reserved Seat, and at least one representative elected to a Race Reserved Seat with regard being had as far as possible to reflect the proportional strength of each Section, Women's Reserved Seats and Race Reserved Seats on the Central Executive Council, and shall in any event comprise of representatives from each Region. The representatives shall be appointed in whatever manner the Central Executive Council may deem necessary. The committees shall meet at such time and places as the Central Executive Council may determine."

5-6 ...

- 7 The Central Executive Council may exercise all and any such powers and perform all such acts, duties and obligations as may be necessary to attain or are incidental to or conducive to the attainment of the objects and general interests of the Union whether such powers, duties and obligations are specifically mentioned in these rules or not. It shall protect the funds of the Union against extravagance and misappropriation and shall, through the General Secretary or any other officer appointed by him/her prosecute or take any other appropriate action against any officer or member for misappropriation of or withholding any monies or property belonging to the Union.

### **Rule 15 Election of General Secretary and Treasurer, and of Deputy General Secretary**

- 1 This rule shall apply to the election of the General Secretary and Treasurer, and to the election of the Deputy General Secretary, each of whom shall hold office for a period of five years from taking up office.
- 2 Nominations shall be sought from the Branches of the Union by the Central Executive

Council six months before the term of office expires, or forthwith in the event of a vacancy. Nominations shall be sent by Branches to a Returning Officer appointed by the Central Executive Council.

- 3 No member shall be eligible to stand as a candidate in an election under this rule unless the Central Executive Council, on receiving his/her nomination, is satisfied that:
  - a he/she is qualified under these rules to stand for election to the office and
  - b he/she is capable of discharging efficiently the duties of the office, having particular regard to his/her experience within the union including:
    - (i) his/her length of service as an employee of the union and/or
    - (ii) his/her period of office in an office or offices under these rules

Only candidates who have so satisfied the Central Executive Council as to their qualifications and capability shall be validly nominated.

- 4 The organisation and conduct of elections under this Rule shall be in accordance with by-laws issued by the Central Executive Council. by-laws made under this rule may specify whether failure to comply with any and if so which by-laws shall disqualify a candidate from standing for election. The Central Executive Council may amend or withdraw any by-laws as it thinks fit.
- 5 Nothing in this rule shall require an election to take place if the holder of the office
  - a having been elected to that office under this rule or its predecessor, and
  - b having been a full-time employee of the Union for a period of at least ten years

would otherwise reach retirement age within five years from the expiry of his/her current term of office.

6. ...

#### **Rule 18 Qualifications for Office and Definition of Officers**

- 1 The first qualification of any member seeking election to any of the offices named in this Rule shall be that s/he has paid 53 consecutive weekly contributions and is fully financial (as defined in Rule 47.5) at the date of nomination and election.
- 2 The second qualification shall be that during the whole tenure of any office herein specified the holder shall pay the full amount of his/her appropriate Union contributions in accordance with Rules 47 and 48: President, Vice-President, Central Executive Council Members, General Secretary and Treasurer, Deputy General Secretary, Congress Delegates, General Member Auditors, General Trustees, Regional Organisers, Regional President, Regional Council Members, Regional Member Auditors, Regional Trustees, District Officers, Branch Presidents, Branch Secretaries, Branch Equality Officers, Branch Youth Officers, Branch Member Auditors, Collecting Stewards, Delegates to authorised conferences, and Candidates for Public Bodies.
- 3 The third qualification for any member seeking election to the Central Executive Council under Rule 11 shall be that at the date of nomination and election s/he is a member of his/her Regional Council. This qualification shall not apply to any member seeking election to the post of General Secretary and Treasurer or Deputy General Secretary.
- 4 Except that members of new Branches shall, within the said new Branches, be eligible for the offices of Branch President, Branch Secretary, Branch Equality Officer, Branch

Youth Officer, Branch Member Auditor or Collecting Steward.

- 5 An elected official is one who has been elected to a whole-time permanent position by a vote of the members of the Branches within a Region, or by the votes of members of all the Branches of the Union.
- 6 No person who has, or who in the preceding five years has had, a written contract of employment with the Union, or who is in receipt of a pension from the Union shall be eligible for election as a delegate to Congress (Rule 8); as a delegate to a Regional Council (Rule 20 or Rule 21); or as a delegate to a National or Regional Delegate Conference (Rule 68) or Section Conference.

### **Rule 63 Senior Officers Electoral Appeals and Disputes**

- 6 Where a Regional Elections Committee upholds a complaint in whole or in part, it may recommend to the Central Executive Council but may not order that
  - a. any person be entitled to stand for election or be disqualified from so standing
  - b. ...
- 7 If any member or Branch is not satisfied with the decision or recommendation of the Regional Elections Committee s/he may appeal in writing within one month of the decision to the Central Executive Council. Any recommendation under paragraph 6 shall be referred by the Regional Secretary to the Central Executive Council. Paragraph 4 above shall apply to a hearing before the Central Executive Council as it does to the Regional Elections Committee. The Central Executive Council shall have all the powers of a Regional Elections Committee and in addition shall have the power to order that
  - a. any person be entitled to stand for election or be disqualified from so standing.
  - b. ...

### **Complaint One**

**In breach of section 47(1) of the 1992 Act, on or about 6 February 2003, Mr Stokes was unreasonably excluded from standing as a candidate in the union's election for the post of Deputy General Secretary.**

22. Section 47 of the 1992 Act provides as follows:-

“(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(1) ...

(2) A member of a trade union shall not be taken to be unreasonably excluded from standing as candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.”

## **Submissions**

23. The Applicant submitted that the new Impending Retirement Provision is not to be found in either the rule book of the Union nor the by-laws for this election. He submitted that the Precursor Provision was binding on members by custom and practice but that he was qualified as a candidate under that provision. He maintained that as at 31 December 2002, the date at which he had to declare his age, he was 55 years 9 months old which would have enabled him to serve in office for 4 years and 3 months and that this would have been, “sufficient time” under the terms of the Precursor Provision. The Applicant observed that there had been eight rules revision Congresses of the Union since 1988 at which this provision could have been amended but that the opportunity had not been taken. He submitted that the change that was made to the Precursor Provision prior to the 2003 election was unconstitutional. He noted that the change had not been specifically considered by the CEC and that there was no minuted decision that it had been changed. However the Applicant disputed the CEC’s authority to make changes to the eligibility criteria, even if there had been such a minute. In the Applicant’s submission the Impending Retirement Provision was unreasonable because it was unconstitutional. The Applicant further submitted that it was unreasonable to exclude someone who could serve all but nine months of his or her term of office. In any event, the Applicant contested that the retirement age for the DGS was necessarily sixty. He contended that it would have been considered by members generally to have been sixty five. He acknowledged that the retirement age of sixty was normal for employees of the Union but stated that there were exceptions and that the General Secretary and DGS should be exceptions. He noted that the persons in these positions were elected for a defined term, like members of the CEC, and that there was no compulsory retirement date for the President, Vice-President or members of the CEC. The Applicant also argued that the new Impending Retirement Provision was not necessary on grounds of stability, consistency or cost, drawing parallels with elections to the CEC. He pointed out that he would have been able to remain in office for about four years and the term of office of members of the

CEC is also four years. He further pointed out that casual vacancies on the CEC were filled by by-elections, with there being no apparent problem with cost. In the Applicant's submission regard should also be had to the proposed legislation on age discrimination when considering the issue of reasonableness. As to section 47(3) of the 1992 Act, the Applicant argued that this had no application to him as he did not belong to a class of members all of which were excluded by the rules of the Union. He relied on the decision of the Certification Officer in **Re NATFHE** (D/6/94, 11 July 1994).

24. Mr Coghlin, for the Union, stated at the outset of the hearing that the Union was not relying on section 47(3) of the 1992 Act. However, during the course of argument, Mr Coghlin gave notice that the Union had changed its position and now wished to do so. In Mr Coghlin's submission the Impending Retirement Provision was a rule of the Union for one or both of two reasons. First, the provision had been ratified by the CEC. In this connection he relied mainly upon the consideration of the provision by the Appeal Committee of the CEC on 4 March 2003, when dismissing the Applicant's appeal, and also upon the presence of the provision in the briefing document which was before the CEC at its rule 15.3 meeting on 18 February 2003. Secondly, Mr Coghlin submitted that the Precursor Provision had clearly become a rule of the Union by custom and practice and that the Impending Retirement Provision was merely an evolution, an improvement, of that rule. Accordingly, he argued that the Impending Retirement Provision was a rule of the Union, enjoying the same status as the Precursor Provision. Mr Coghlin did not seek to argue that the Impending Retirement Provision had the effect of a rule by virtue of the words in rule 15(1), "*...shall hold office for a period of five years from taking up office*". Mr Coghlin went on to argue that the class to which the Applicant belonged was all those members within five years of the compulsory retirement date of sixty and that the five year period began to run from the date the person took up office. Accordingly, the Applicant would have been 56 years and 2 months on 18 May 2003 and would have only had 3 years and 10 months to serve. In the alternative, Mr Coghlin submitted that, if section 47(3) did not apply, the Applicant was not unreasonably excluded from standing as a candidate. In his submission, the test

of reasonableness is whether the action taken by the Union fell within the range of reasonable responses which a Union acting reasonably could have taken. He relied for support for this proposition on **Re NATFHE**. Mr Coghlin argued that the Impending Retirement Provision was a reasonable criterion, being rational, fair and capable of objective application. He further submitted that it was reasonably applied in the Applicant's case. He noted that a similar exclusion had been held to be reasonable for the purposes of section 47(1) by the Certification Officer in **Re RMT** (D/2/93: 10 June 1993). He argued that it was reasonable for the Union to ensure that its most senior officers held office for a significant period in the interests of stability and continuity. He further argued that repeated elections were very expensive and that a DGS election might cost in the region of £240,000. He stated that this contrasted with the cost of about £30,000 in the case of a casual vacancy on the CEC, which election was held on a regional basis. Mr Coghlin further argued that the concept of an impending retirement provision had been known to members since at least 1985 and that the amendment of the Precursor Provision was to improve it, to make it less susceptible to capricious application. He further submitted that the Impending Retirement Provision had been communicated generally to branches and had been applied consistently to all nominees.

### **Conclusion - Complaint One**

25. Section 47 of the 1992 Act applies to elections to those positions provided for in section 46(2). Section 46(2)(b) refers to, "*...any position by virtue of which a person is a member of the executive*". Rule 10(2) of the rules of the Union provides, "*...The General Secretary and Treasurer, and the Deputy General Secretary shall also be voting members of the Central Executive Council*". Accordingly, the DGS is a person whose election is subject to section 47.
  
26. Section 47(1) of the 1992 Act provides that, "*No member of the trade union shall be unreasonably excluded from standing as a candidate*". However, section 47(3) provides that, "*A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the*

*grounds that he belongs to a class of which all the members are excluded by the rules of the union...*” It is therefore necessary to examine first whether the Union can claim the benefit of section 47(3), as it belatedly sought.

27. In order to claim the benefit of section 47(3) the Union must establish that there are rules of the Union which establish a class of which all the members are excluded from standing as a candidate by those rules. Both parties submitted that the Precursor Provision had become a rule of the Union by custom and practice on the basis that it had been operated consistently in Senior Officer elections since 1985, that it was well known and that it was regarded as binding by members. The terms of any rule which is to be implied through custom and practice need to be reasonable, notorious and certain; notorious in the sense of well known. I find that the Precursor Provision meets those criteria and, by the time of the election in question, had become a rule of the Union by custom and practice. However, I do not accept the Union’s submission that the Impending Retirement Provision was itself a rule of the Union on the basis that it was a mere evolution of the Precursor Provision. It cannot be said that the Impending Retirement Provision had, upon its first outing, become so notorious or well known as to have achieved the status of a rule implied by custom and practice. The amendment that was made to the Precursor Provision was not a mere technicality or tidying up exercise. It may have introduced more certainty but it did so by excluding more potential nominees than previously. For those who would have qualified under the Precursor Provision, the Impending Retirement Provision effectively introduced a new exclusion. I also reject the Union’s submission that the Impending Retirement Provision was ratified by the CEC. Neither the full CEC at its meeting on 18 February 2003 nor its Appeal Committee at the Applicant’s appeal on 4 March was convened for the purpose of considering the introduction of further qualifying criteria. In my judgement, the CEC cannot be taken to have ratified such an important new provision at its meeting of 18 February by merely not objecting to it during the course of a meeting convened to deal with other matters and at which the Impending Retirement Provision was not even discussed. Although the Appeals Committee had necessarily to consider the terms of the Impending Retirement Provision, it

did so as an Appeals Committee deciding a particular case. It was not a meeting of the full CEC called to consider the qualifying criteria for the election. Furthermore, evidence was given that decisions of the Appeals Committee are not put to the full CEC for endorsement or ratification. They are merely reported as a matter of information and noted. In any event, the CEC cannot make or amend the rules of the Union, unless expressly authorised by the rules themselves. This is a right which the rules generally reserve to Congress. I therefore find that the Impending Retirement Provision was not a rule of the Union and I reject the Union's submission that the exclusion of the Applicant fell within the terms of section 47(3) of the 1992 Act.

28. In determining whether the Applicant's exclusion from standing as a candidate was unreasonable for the purposes of section 47(1) of the 1992 Act, I accept the Union's submission that a Union can have a range of reasonable responses to a specific concern regarding the eligibility of candidates. Whilst this imports parallels with the law of unfair dismissal and the application of section 98(4) of the Employment Rights Act 1996, I note that section 47(1) of the 1992 Act is expressed differently and more broadly. The question I must ask myself in this case is simply whether the Applicant was unreasonably excluded from standing for office.
  
29. I also accept the Union's submission that the Impending Retirement Provision is a measure which could reasonably be adopted by the Union. The Union had a legitimate interest in considering whether a candidate would be able to serve his or her full term before compulsory retirement and the Union was entitled to devise an exclusion which reflected those concerns. Issues of stability and cost are matters which the Union is clearly entitled to take into consideration. Both the Precursor Provision and the Impending Retirement Provision were means of addressing this concern and in my judgement both were measures which were within the range of responses which a reasonable Union could have devised to meet its legitimate concerns. I also accept the Union's good faith in amending the Precursor Provision to remove the uncertainty and subjectivity of having to determine what is "sufficient time" and replacing it with a provision which is

capable of precise and objective determination. It cannot therefore be said that the Applicant's exclusion was arbitrary or not based on principle. Furthermore, I accept the Union's submission that the Impending Retirement Provision was applied to all nominees in the General Secretary and DGS elections. Whether such a provision amounts to discrimination on the grounds of age is a matter which the Union would be entitled to take into consideration as a matter of policy but there is currently no legislation prohibiting age discrimination.

30. I am however required by section 47(1) of the 1992 Act to consider the broad question of whether the Applicant was unreasonably excluded from standing as a candidate. In considering this issue I must have regard to all the relevant circumstances of the exclusion. These include the reasonable expectations of the members, the manner in which the excluding criterion was created and the relationship of the excluding criterion to the rules. None of these factors, taken individually or together, is necessarily decisive but each is relevant.
31. On the facts of this case, I find that prior to the circular to branches of early December 2002 inviting nominations, the members would have considered the relevant criterion to have been the Precursor Provision and would have been entitled to make plans or personal arrangements on that expectation. The Applicant could have legitimately expected that any further qualifying criteria would have been introduced through the Union's rule revision mechanisms. The publication of the revised criterion occurred without any opportunities for discussion or argument at the CEC, let alone at branch level or Congress.
32. Mr Coghlin described the revision as being, "*...an executive decision made legitimate by CEC ratification*". As I have already found, however, the Impending Retirement Provision was not ratified by the CEC in any formal sense. It was proposed by the then General Secretary and agreed by two senior colleagues. It was simply an executive decision; a decision taken at an informal meeting which had the effect of depriving a greater number of members than previously of their ability to stand for a Senior Officer Position.

33. The ability to stand as a candidate in an election for any of the positions in a union which are subject to a statutory election is an important aspect of membership. In many unions it will be an express or implied term of the rules. However, any such implied term may be subject to qualification by an express term or a prevailing implied term. The rules of this Union do not contain an express term giving members a right to stand as a candidate in Senior Officer elections. They do, however, contain provisions restricting eligibility and imposing qualifying criteria. These provisions would not be necessary if members did not otherwise have the right to stand for election. More fundamentally, having regard to the nature of the Union as a democratic membership organisation, I find that the rules of the Union would have been understood by its members to have included such a right. Applying the language of one of the traditional tests of an implied term, I find that an officious bystander who suggested to those drafting the rules that it was necessary to have an express rule to this effect would have been firmly suppressed and told that members of course had the right to stand as a candidate. Accordingly I find that the members of the Union have an implied right under the rules to stand as a candidate for those positions which are subject to statutory election, subject to any legitimate qualification of that right.
34. The rules of the Union provide qualifications to the right to stand for a Senior Officer Position in rule 15.3, rule 18, the by-laws created in accordance with rule 15.4 and the Precursor Provision created by custom and practice. As I have found, the executive decision to impose the Impending Retirement Provision did not create a further rule qualifying the right to stand for election. Mr Coghlin submitted that the CEC had reserve powers in rule 10(7) to amend, so as to improve, a rule which existed by custom and practice. I reject this argument not only because of my finding that the Impending Retirement Provision was not ratified by the CEC but also because the power to make or amend rules rests with Congress, not the CEC, subject to any particular rule to the contrary. In my judgement, the rules and by-laws of the Union provide a code which stipulates

the qualifications for standing for the Senior Officer Positions and the circumstances in which members can be disqualified. This code had been supplemented at some time after 1985 by the Precursor Provision taking effect by custom and practice. By denying the Applicant his right to stand as a candidate in the 2003 elections for the position of DGS on the grounds of a further criterion decided upon by executive action the Union denied him a right of membership.

35. It does not follow automatically from this proposition that the Applicant was unreasonably excluded from standing as a candidate. There may be circumstances in which a member is reasonably excluded from standing as a candidate other than in accordance with the express or implied rules. Returning to the analogy with unfair dismissal, an employee may be fairly dismissed even though the dismissal is in breach of the contract of employment. However, no evidence has been adduced which would support such a conclusion. There was, for example, no evidence that the Precursor Provision had previously created problems and needed urgent revision by executive action. The evidence was more to the effect that it was considered desirable that the Precursor Provision be “tidied up”. No evidence was given as to why this tidying up could not have been done in accordance with the rules revision procedures set out in the rules, even though it was too late to make such an amendment for these elections. Accordingly, in my judgement the Union has not established that there was any sufficient reason for denying the Applicant his membership rights on this occasion.

36. I have balanced those factors which point to the exclusion of the Applicant being reasonable against those factors that point the other way. In my judgement the balance falls clearly on the side of the Applicant having been unreasonably excluded as a candidate in the DGS election. On the facts of this case, I find that it was not reasonable to exclude the applicant on the basis of an executive decision taken at an informal meeting which had the effect of excluding him and no doubt other members from standing for election for a Senior Officer Position, contrary to the commonly understood qualifying criteria and in breach of rule.

37. Accordingly, I find that the Union acted in breach of section 47(1) of the 1992 Act in unreasonably excluding the Applicant from standing as a candidate in the election for the position of DGS of the Union conducted in 2003.

### **Complaint Two**

**That on or about 6 February 2003 the union's National Returning Officer (not being a committee of the Union with delegated powers of the CEC) unreasonably excluded Mr Stokes from standing as a candidate in the union's election for the post of Deputy General Secretary and that this was in breach of GMB rule 10(4).**

38. Rule 10(4) provides as follows:-

“For the transaction of any part of its business, the Central Executive Council may appoint committees. It may delegate to any such committee such of its functions and powers as it may think fit, and in the exercise of such functions and powers the committee shall act in place of the Central Executive Council and shall be subject to the relevant provisions of these rules as if any reference therein to the Central Executive Council were a reference to the committee. The decisions of the committees shall be made on behalf of the Central Executive Council and, except where the Central Executive Council otherwise directs, be subject to its approval. The committees shall comprise at least one member of each Section, at least one woman elected to a Women's Reserved Seat, and at least one representative elected a Race Reserved Seat with regard being had as far as possible to reflect the proportional strength of each Section, Women's Reserved Seats and Race Reserved Seats on the Central Executive Council, and shall in any event comprise of representatives from each Region. The representatives shall be appointed in whatever manner the Central Executive Council may deem necessary. The committees shall meet at such time and places as the Central Executive Council may determine.”

### **Submissions**

39. The Applicant submitted that in as much as the CEC delegated the authority to disqualify him to the NRO, it did so in breach of rule 10(4). He observed that Rule 10(4) authorises the Union to appoint committees and to delegate to those committees such of its powers as it may think fit. It also regulates to a limited extent the composition of such committees. In the Applicant's submission, rule 10(4) only authorised the delegation of powers to committees. It did not authorise the delegation of powers to an individual and in particular it did not authorise the delegation of power to the NRO to disqualify him as a candidate in the election for the position of DGS.

40. For the Union, Mr Coghlin submitted that rule 10(4) is mainly permissive, in that it permits the CEC to delegate its powers to committees and as such was not capable of being breached in the circumstances of this case. He further argued that, in any event, rule 10(4) was never engaged as the CEC did not purport to appoint a committee. In Mr Coghlin's submission the NRO was appointed under rule 15(2) and his authority was derived from that appointment. Although the rules and by-laws are silent as to the authority of the NRO, Mr Coghlin argued that, by necessary implication, the NRO had the authority which he required to carry out his functions. He pointed out that the Applicant had accepted in correspondence that the NRO had the authority to disqualify a candidate who had breached the by-laws. Mr Coghlin also argued that, unless the NRO had the authority to exclude nominees from standing, there would be a tension between rule 15 and rule 63. He explained that rule 63 deals with electoral appeals in the case of Senior Officers. The first level of appeal is to a Regional Election Committee and the second level of appeal is to the CEC. In each case the adjudicating body can rule on whether a person is, "...entitled to stand for election or be disqualified from so standing". Mr Coghlin submitted that if the power to disqualify is limited to the CEC the first level of appeal would be to an inferior body and the second level of appeal would be to the body which made the original decision. He suggested that this difficulty is removed if the person entitled to make the initial decision to exclude is the NRO and that accordingly the NRO had such a power by necessary implication. Finally, Mr Coghlin stated that the Union had not relied upon the CEC's reserve powers in rule 10(7) in relation to any of the issues raised in this case.

### **Conclusion - Complaint Two**

41. I accept the Union's submission that it did not purport to use rule 10(4) in the appointment of the NRO, the granting of powers to the NRO or in the exclusion of the Applicant from standing for office. I find that rule 10(4) was not engaged on the facts of this case.

42. Accordingly, I refuse to make the declaration sought that the GMB breached rule 10(4) of its rules on or about 6 February 2003 by the National Returning Officer of the Union excluding the Applicant from standing as a candidate in the election for the position of Deputy General Secretary conducted in 2003.

### **Complaint Three**

**That on or about 6 February 2003, the National Returning Officer, without the authority of the Central Executive Council, disqualified Mr Stokes from standing as a candidate in the GMB election 2003 for the post of Deputy General Secretary and this was a breach of GMB rule 15(3).**

43. Rule 15.3 provides as follows:-

“No member shall be eligible to stand as a candidate in an election under this rule unless the Central Executive Council, on receiving his/her nomination, is satisfied that:

- a he/she is qualified under these rules to stand for election to the office and
- b he/she is capable of discharging efficiently the duties of the office, having particular regard to his/her experience within the union including:

- (i) his/her length of service as an employee of the union and/or
  - (ii) his/her period of office in an office or offices under these rules
- Only candidates who have so satisfied the Central Executive Council as to their qualifications and capability shall be validly nominated.”

### **Submissions**

44. The Applicant submitted that rule 15.3 dealt with eligibility to stand in an election for the position of a senior officer and that the authority to determine eligibility was given to the CEC. He argued that the Union breached this rule in delegating its authority to the NRO.
45. Mr Coghlin, for the Union, submitted that on its face rule 15.3 did not apply in this case and had not been breached. He argued that the Impending Retirement Provision was something set apart from the issue of qualification and capability to which rule 15.3 relates and that accordingly the Union never purported to disqualify the Applicant under that rule. He submitted that rule 15(3) was never engaged.

### **Conclusion - Complaint Three**

46. There is no express rule of the Union which provides unequivocally that a member within five years of retirement age is eligible to stand as a candidate. The Applicant was therefore unable to point to a particular rule which was patently breached by his exclusion. Nevertheless, he felt strongly that his treatment was unfair and ran counter to his understanding of the rules. The Applicant was faced with a situation in which there were known qualifying criteria for him to meet in order to stand as a candidate for the position of DGS. He considered that he met those criteria. Without prior warning or consultation, one of the hurdles he had to overcome was raised by executive decision, with the effect that he was no longer eligible to be a candidate in the election. The Applicant, who was unrepresented, claimed a breach of each of those rules under which he considers that his disqualification may have been carried out. The difficulty he now faces is that the Union argues that his disqualification was not carried out under any of the express rules and that those express rules are thereby not engaged. This gives rise to an odd situation in which, if the Union is correct, it can remove a member's right to stand for election by an administrative or executive decision and the member has no recourse through the rules.
47. In my judgement this odd situation does not arise. Qualification to stand as a candidate for the Senior Positions in one's union is an important aspect of membership and, as stated above, will often be an implied term of membership. Where the ability to stand as such a candidate is an implied right, as in this case, that right can only be removed or qualified by the rules themselves, either the express rules (including any by-laws which have the effect of rules) or by a prevailing implied term. In this case, rule 15.3 specifically addresses the issue of eligibility to stand as a candidate and rule 18 deals with qualifications for office. In addition, rule 15.4 permits there to be by-laws, the breach of which shall lead to disqualification. A further qualifying condition, the Precursor Provision, is now effectively a rule by

custom and practice. In my judgement these restrictions on the right to stand as a candidate are a complete code of the restrictions permissible under the rules. If further restrictions are considered appropriate the rules of the Union must be amended in accordance with the procedure provided for in the rules.

48. In my judgement the Impending Retirement Provision was an additional qualifying criterion and was in effect, if not in intent, an attempt to add to the qualifying conditions in rule 15.3 and rule 18, without going through the appropriate rule revision procedures. Mr O'Hara gave evidence that in practice the NRO decided whether candidates met the qualifying conditions in rule 18.1 and that he thereby effectively discharged the CEC's duty under rule 15.3(a). It was said that the NRO was authorised to do this as the task was an objective one which did not involve the exercise of any discretion. For the same reasons, the NRO decided whether the Impending Retirement Provision had been breached. In my judgement, the reality of what occurred in this election is that the Union added another qualifying condition to that contained in rule 15.3(a) without proper authority. Although I accept that the Precursor Provision had supplemented rule 15.3(a) by custom and practice, effectively adding a further qualifying condition, I do not accept that the Impending Retirement Provision had achieved the status of a rule by being introduced as a technical amendment or improvement of the Precursor Provision, as was alleged. The Impending Retirement Provision excluded more members than did the Precursor Provision. It was a substantial amendment of it, an amendment that would not have been regarded as an improvement by the additional members who were excluded. The Union asserted that the Applicant was not excluded by the application to him of rule 15.3 but Mr Coghlin was in some difficulty in explaining the constitutional basis for the Applicant's exclusion. He stated that the Impending Retirement Provision was either a rule or, "...*something akin to a rule*". I have already found that it was not a rule and I fail to understand the status of, "...*something akin to a rule*". It would appear that the Union is contending that the executive decision to add the additional qualifying criterion to those already contained in the rules was binding on the members but not as a rule. I reject any such

contention. An implied right to stand as a candidate in an election can only be removed by a rule which has that effect. It cannot be removed by an executive decision. Having regard to the Union's primary contention that the Impending Retirement Provision was a rule, I find that the Applicant's disqualification was purportedly effected under rule 15.3, which requires a nominee to be, "...qualified under these rules". This is consistent with his disqualification being determined by the NRO in the same manner as a breach of the express terms of rule 15.3(a) was determined. I accordingly find that, by disqualifying the Applicant for having failed to qualify under the rules, the Union misapplied rule 15.3, exceeded its authority under that rule and thereby acted in breach of it.

49. For the above reasons, I declare that the GMB breached rule 15(3) of its rules on or about 6 February 2003 by the National Returning Officer of the Union disqualifying the Applicant from standing as a candidate in the election for the position of Deputy General Secretary conducted in 2003.

#### **Complaint Four**

**That, on or about the 3 December 2002, by issuing By-Laws containing qualifications for candidates in the union's elections 2003 not otherwise contained within the union's rules, the union breached its rule 15(4).**

50. Rule 15.4 provides as follows:-

"The organisation and conduct of elections under this Rule shall be in accordance with by-laws issued by the Central Executive Council. by-laws made under this rule may specify whether failure to comply with any and if so which by-laws shall disqualify a candidate from standing for election. The Central Executive Council may amend or withdraw any by-law as it thinks fit."

#### **Submissions**

51. The Applicant submitted that the Union's ability to issue by-laws is restricted to matters affecting, "*The organisation and conduct of elections*". In the Applicant's submission this restricts the by-laws to essentially procedural matters and does not entitle the Union to make by-laws which set criteria to establish whether members are qualified to stand as candidates.

52. Mr Coghlin, for the Union, submitted that the Impending Retirement Provision was not a by-law issued under rule 15.4 and that accordingly there could have been no breach of that rule. He argued that, on the facts of this case, rule 15.4 was not engaged.

#### **Conclusions - Complaint Four**

53. The structure of rule 15 is instructive in considering both this and the preceding complaint. Rule 15.3 deals with eligibility to stand as a candidate and provides no mechanism for by-laws or other means of adding to or detracting from the eligibility criteria. Rule 15.4 deals with the organisation and conduct of elections and does provide a mechanism for by-laws regulating those aspects of the process. This structure supports the proposition that there is no power to add additional eligibility criteria to those contained in (or referred to in) rule 15.3. The CEC has a power to issue by-laws in relation to the organisation and conduct of elections, the breach of which may result in the disqualification of a nominee. However, such by-laws must relate to the organisation and conduct of elections. Rule 15.4 does not permit by-laws which impose additional eligibility criteria.
54. I accept the Union's submission that the Impending Retirement Provision was not issued as, and was not intended to operate as, a by-law within the meaning of rule 15.4. The by-laws prepared for this election were expressly adopted by the CEC at its meeting on 3 December 2002, in accordance with the requirement that the by-laws are "issued" by the CEC. These by-laws contain no reference to the Impending Retirement Provision. They deal with matters effecting the organisation and conduct of the ballot. On these facts, I find that the Applicant's exclusion was not carried out so as to comply with a rule 15.4 by-law and that the Applicant's exclusion did not engage rule 15.4 so as to have been a possible breach of that rule.

55. For the above reasons I refuse to make the declaration sought that the GMB breached rule 15.4 of its rules on or about the 3 December 2002, by issuing by-laws containing qualifications for candidates in the Union's elections in 2003 not otherwise contained in the Union's rules.

### **Enforcement Order**

56. Where I make a declaration I am required by section 55(5A) and 108B(3) of the 1992 Act to make an enforcement order unless I consider that to do so would be inappropriate. On the facts of this case, I consider that it is appropriate to make an enforcement order. The Applicant has been unreasonably deprived of an important right of membership. It cannot reasonably be said that the Applicant had no prospect of being elected or that the result of the election would have been the same had he been allowed to stand. In my judgement the only appropriate order to remedy the breach is one which enables the Applicant to contest a further DGS election. There was no evidence as to whether there were other members in similar circumstances to the Applicant who may have wished to be nominated in the disputed election but who were not nominated because of the Impending Retirement Provision. However, in my judgment, it is appropriate that such members, if any, be enabled to stand in the further election.
57. The majority of the organisation of the disputed election took place between December 2002 and April 2003, a period of 5 months. I have accordingly set a period of 6 months for the result of the further election to be declared.
58. I have also had regard to the fact that the likely cost of a further election will be in the region on £240,000 and that the only apparent flaw in the disputed election related to the Impending Retirement Provision, which may have disadvantaged relatively few members. In these circumstances, I consider it appropriate that the result of the disputed election should stand if the Applicant and any other member disadvantaged by the Impending Retirement

Provision should not be nominated in the further election or should all such nominees subsequently either withdraw or be lawfully excluded from standing, prior to the date of distribution of voting papers. In this event the defects I have found there to have been in the disputed election would not have affected the result of that election. Fairness would not then require there to be a further election in order to remedy those defects, whilst there are strong practical reasons for not requiring there to be a further election.

59. In its written submission, the Union submitted that I should not make any enforcement order but that, if I did, I should give detailed directions as to how the election process should be conducted. I reject that submission. In my judgment, it is in the interests of consistency and transparency that the further election is conducted as would be any other such election, subject only to this decision. The further election is to be conducted so as to be in accordance with the rules of the Union and Chapter IV of the 1992 Act, except insofar as I have ordered differently in order to remedy the declared defects of the disputed election. For the avoidance of doubt, the rules of the Union for these purposes include the by-laws, if any, made under rule 15.4 and the Precursor Provision.

**David Cockburn**  
**Certification Officer**