

**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 ADAMS**

**V**

**PRISON OFFICERS ASSOCIATION**

**Date of Decision:  
2002**

**2 May**

**DECISION**

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

Declarations

1) I declare that the Prison Officers Association (“the Association” or “the POA”) breached rule 29.1 of the rules of the Association by its National Executive Committee (the “NEC”) treating as a rule of the Association an interpretation of the rules that it reached outside the scope of its authority.

2) I declare that the Association breached section 47(1) of the 1992 Act by unreasonably excluding the Applicant from standing as a candidate in the election for the position of National Chair in 2001.

Enforcement Order

3) I order that a further election be held for the position of National Chair of the Association to be conducted in accordance with the requirements of Chapter IV of the Trade Union and Labour Relations (Consolidation) Act 1992. The result of this election

shall be declared no later than Friday 9 August 2002.

### **REASONS**

1. By an application dated 24 October 2001, the Applicant made two complaints against his Association, the Prison Officers Association. The two complaints were that: -
  - 1.1 the Association by the ruling of its NEC on 20 October 2001 that Mr Adams was ineligible to stand for the position of National Chair of the Association in the election for that position in 2001, breached its rule 29.1 by making a rule change amendment to the present Rules and Constitution without the two-thirds majority of votes cast at Conference.
  - 1.2 the Association acted in breach of section 47(1) of the 1992 Act by excluding the Applicant from standing for election as the National Chair in the election for that position in 2001.
2. I investigated these matters in correspondence. As required by sections 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 10 April 2002. The Association was represented by its General Secretary, Mr B Caton, who gave evidence on behalf of the Association. Mr Adams acted in person and also gave evidence. A bundle of documents was prepared for the hearing by my Office which consisted of documents submitted by the parties. This decision has been reached on the basis of the representations made by the Applicant and the Association, together with such documents as were provided by them.

### **Findings of Fact**

3. Having heard the witnesses and considered the documents I find the following facts: -
4. The Applicant was first elected as a Vice-Chair of the Association in 1995 when he was elected to serve the unexpired period of office vacated by Mr McLaren. He was

subsequently re-elected to hold office between May 1997 and May 2001. The Applicant stood for further re-election in the autumn of 2000. On 9 November 2000 he was declared elected as Vice-Chair for a further four year term to commence at the end of Annual Conference in May 2001.

5. Arising out of the Applicant's election, a dispute arose between the Applicant and certain members of the NEC. The Deputy General Secretary instigated disciplinary charges against the Applicant and the Applicant was suspended from the NEC on 20 December 2000. It is not necessary for the purposes of this decision to examine the nature of that dispute, which was considered at a Special Delegate Conference on 27 February 2001. The Special Delegate Conference decided that the NEC did not have the authority to suspend the Applicant from office but that the allegations should be reported to the Association's Disciplinary Committee.
6. The Applicant addressed the Special Delegate Conference in February 2001 and commented, *"If I walk away now, I will be banned from holding office for nine years"*. This was a reference to rule 11.9 of the Association rules which is in the following terms:

*"Any National Executive Committee member who resigns that post during the period of office shall be automatically disqualified from holding any National Executive Committee post until 5 years after the date when he/she was due for re-election."*

At the time of making his contribution to the Special Delegate Conference the Applicant considered that if he resigned as Vice-Chair he would be barred from office for the remainder of his current term of office to 27 May 2001, for the entirety of his next term of office to May 2005 and for a further five years thereafter. A delegate intervened from the floor of Conference with a point of order to correct the Applicant's statement. This delegate asked the Chairman whether it was correct that, if the Applicant resigned from his current office, he would only be barred until May 2005. The Chair of the Special Delegate Conference agreed. This exchange gave the Applicant cause to consider the precise meaning of rule 11.9 and the distinction that might be made between resigning from a post during the period of office and not taking up a post to which one is elected.

7. On 3 March 2001 there was a discussion between the Applicant and the then Chair of the Association, Mr Healy, at which it was agreed the Applicant would not attend the next meeting of the NEC in order to let the dust settle. At that time, the Disciplinary Committee was still to investigate the charges against the Applicant.
  
8. On 17 March 2001 the Applicant wrote to Mr Healy to state his intentions following the Special Delegate Conference. The Applicant stated that he recognised that the differences between himself and the current NEC appeared to be beyond reconciliation and that he intended to put right the neglect of his family during the years that the POA had dominated his life. At the hearing before me the Applicant also referred to his failing health. The Applicant's letter goes on, "*To this end it is my intention to return to the Service to resume my career. It is not my intention to resign from office as I see no compelling reason as to why I should; and that would not do justice to all who have supported me, not just over the last six months but the whole of my period of office ... I have to inform you however that I will not be taking up my new office as Vice-Chair which was due to commence at the end of Annual Conference 2001.*" The Applicant made two further points in this letter. He stated that the continuing disciplinary proceedings against him were not "*to the good of either myself, or the POA*" and he asked to be excused attendance at all NEC meetings for the remainder of his term of office.
  
9. Mr Healy responded to the Applicant by a letter dated 20 March 2001. He agreed that the Applicant could be "*excused from NEC duties until the end of May when (his) current term of office expires*". He also noted that the Applicant had made it clear that he would not be "*taking up (his) new term of office*". Mr Healy thereby appears to accept that there was a distinction between the Applicant's "*current term of office*" and his "*new term of office*". He went on to comment, "*... it is my intention now to ask to see both the Chair and Secretary of the Disciplinary Committee and ask them to suspend their investigation into the complaint about you made by the Deputy General Secretary. I will further ask that once Conference has past, that the complaint against you is withdrawn.*"

10. The Applicant's term of office as Vice-Chair to which he was elected in May 1997 ended on 27 May 2001. It was accepted by the Association that the Applicant did not resign from that post prior to the expiration of that period of office. It was also accepted by the Association that between February and May 2001 the Applicant was excused from attendance at meetings of the NEC and from the other duties that might be expected of a Vice-Chair.
11. An election was held to fill the post of Vice-Chair that the Applicant had not taken up and the successful candidate was announced on 12 July 2001.
12. On 12 October 2001 the Association called for nominations for the post of National Chair, following the resignation of Mr Healy during his period of office. Mrs Lord took over as Acting National Chair until such time as an election could be held. The Applicant was nominated as a candidate in this election.
13. The General Secretary, Mr Caton, gave evidence that the Applicant's decision to contest this election was very controversial and that, after consultation with the Acting National Chair, it was decided to call a Special Meeting of the NEC to discuss the eligibility of the Applicant to be a candidate in the election for National Chair.
14. The Special Meeting of the NEC was held on 20 October 2001. At this meeting there was discussion about the Applicant's decision to stand for National Chair only a few months after stating that it was his intention to resume his career in the prison service and spend more time with his family. It was felt that the Applicant's action was a breach of the spirit of rule 11.9 the purpose of which, according to the evidence, was to prevent members of the NEC from opting in and out of the NEC at will. The NEC considered the terms of rule 11.9 and found that it did not deal in express terms with the facts of the Applicant's case. The NEC considered that, in these circumstances, rule 11.9 was ambiguous and that the NEC was entitled to reach "*an interpretation*" of that rule which was in accordance with its spirit. The power of the NEC to interpret the rules of the Association is contained in rule 29.4, which states: -

*“The interpretation of these rules is vested in:*

- (a) Conference when it is in session;*
- (b) The National Executive Committee when it is in session and Conference is not; and*
- (c) The Chairman and General Secretary (acting together) when neither Conference nor the National Executive Committee is in session.”*

Purporting to act on its powers of interpretation in rule 29.4, the NEC had regard to the dictionary definition of the word “*resign*”, the position of others who had resigned during their period of office and the provisions of rules 11.15 and 11.16, which provide for there being a deemed resignation if a member of the NEC fails to attend two consecutive NEC meetings without adequate reason. The NEC resolved “... *that where a member does not take up an elected position, following an election, they will be deemed as having resigned in accordance with rule 11.9*”.

15. By a letter dated 22 October 2001 Mr Caton wrote to the Applicant informing him of the resolution approved at the Special Meeting of the NEC and stating, “*When this is applied to yourself you are disqualified from holding any NEC post until 1 June 2006*”. The Applicant was thereby removed as a candidate in the election for the post of National Chair in 2001.
16. On 20 December 2001, Mr Darken was elected as the National Chair and still holds that position.
17. By a letter dated 24 October 2001 the Applicant made a complaint to the Certification Office that he had been excluded from being a candidate in the election for the post of National Chair in 2001 in breach of both the rules of the Association and the 1992 Act.

### **The Relevant Statutory Provisions**

18. The provisions of the 1992 Act which are relevant for the purpose of these applications are as follows: -

- Section 47(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.
- Section 47(3) 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 ground that he belongs to a class of which all the members are excluded by the rules of the union.
- 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) .....
  - (d) the constitution or proceedings of any executive committee or of any decision-making meeting.

19. Sections 55(2) and 108B(2) of the Act empower me to make such enquiries as I think fit and, after giving the applicant and the Association an opportunity to be heard, to make or refuse to make the declarations asked for. I am required, whether I make or refuse the declarations sought, to give reasons for my decision in writing.

20. By section 55(4) and section 108B(3) of the 1992 Act, I am required to make an enforcement order where I make a declaration unless I consider that to do so would be inappropriate. An enforcement order 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 (section 55(5A))
- (b) to take such steps to remedy the failure/breach as may be specified in the order (sections 55(5A) and 108B(3)(a))
- (c) to abstain from such acts as may be so specified with a view to securing that the failure/breach of the same or similar kind does not occur in the future (sections 55(5A) and 108B(3)(b)).

### **The Relevant Association Rules**

21. The Association rules relevant to the Applicant's complaint are as follows: -

## **Rule 11 National Executive Committee**

### **Membership**

#### **Rule 11.3**

If a vacancy occurs between elections:

- (a) the members will elect a replacement; and
- (b) the person elected will serve the balance of the term of the person replaced, but if the vacancy occurs within six months before the normal date the National Executive Committee may postpone the election until the normal date.

### **Eligibility**

#### **Rule 11.9**

Any National Executive Committee member who resigns that post during the period of office shall be automatically disqualified from holding any National Executive Committee post until 5 years after the date when he/she was due for re-election.

### **Proceedings**

#### **Rule 11.15**

Any National Executive Committee member absent from a National Executive Committee meeting must explain the absence in writing to the General Secretary.

#### **Rule 11.16**

Any National Executive Committee member absent from two consecutive National Executive Committee meetings without a reason which the National Executive Committee considers to be adequate will be deemed to have resigned from office on the date the National Executive Committee decides there is no adequate reason for the repeated absence.

## **Rule 29 Constitution**

### **Amendments to Rules**

#### **Rule 29.1**

These rules may only be amended by a two-thirds majority of votes cast at Conference.

#### **Rule 29.2**

Motions for the amendment of rules will only be considered at the Annual Conference in 2001 and every 5 years after that, unless the National Executive Committee decide otherwise on grounds of urgency or expediency.

### **Interpretation of Rules**

#### **Rule 29.4**

The interpretation of these rules is vested in:

- (a) Conference when it is in session;
- (b) the National Executive Committee when it is in session and Conference is not; and
- (c) the Chairman and General Secretary (acting together) when neither Conference nor the National Executive Committee is in session.

## Brief Summary of Submissions

22. The Applicant submitted that rule 11.9 of the rules of the Association is clear and unambiguous. He contends that he made it abundantly plain on more than one occasion that he was not resigning from any office. He maintained that he remained in the office of Vice-Chair to which he was elected in May 1997 until the expiration of that term of office in May 2001 and that he gave notice to the Association in March 2001 that he would not be taking up the office of Vice-Chair in May 2001, pursuant to his re-election in November 2000. The Applicant argued that rule 11.9 only applies where a member of the NEC resigns his post during that period of office and that this did not apply on the facts of his case. He argued that as he never took up the office of Vice-Chair pursuant to the November 2000 election he could not therefore have resigned “*during the period of that office*”. He further contended that the interpretation by the NEC would give rise to the anomaly whereby a sitting member of the NEC could be excluded in these circumstances but a lay member, having been elected to the NEC for the first time could not be excluded as he or she would not at the time of the alleged resignation be a member of the NEC. The Applicant further argued that all the other members who had been disqualified under rule 11.9 (or its predecessor rule) had resigned during the period of the same office from which they were resigning and were not, therefore, appropriate comparators. He further contended that the Chair of the Special Delegate Conference on 27 February 2001 had made a ruling that he would not be taking up his further elected post until after the end of Conference 2001. On the basis of this ruling, the Applicant argued that there was nothing from which he could resign until the end of Conference in 2001 and that the ruling of the Chair of a Special Delegate Conference was binding on the NEC in this respect. The Applicant contended that his exclusion from being a candidate in the election for the post of National Chair was unreasonable and therefore in breach of Section 47(1) of the 1992 Act.
23. For the Association, Mr Caton contended that rule 11.9 was ambiguous in the sense that it did not deal expressly with the facts of the Applicant’s case even though his actions were clearly in breach of the spirit and intent of that rule. Mr Caton argued that other members of the NEC who had resigned had been disqualified and the Association feared

legal action from one or more of them if the Applicant was not also disqualified. The Association considered that it faced potential legal action whatever it did and that in these circumstances it had to take a view on the meaning of rule 11.9. Mr Caton considered that the view taken by the NEC was taken in good faith on the basis of what the NEC considered to be the intention of the rule. He argued that it was a reasonable interpretation and one which it was open to the Association to reach under rule 29(4)(b). Mr Caton accepted that if the interpretation reached by the NEC was not permissible under rule 29(4)(b) the effect of the decision of the NEC was to create a new rule which, by rule 29(1) could only be created by Conference. As to the complaint of a breach of section 47(1) of the 1992 Act, Mr Caton relied upon the case of **Prison Officers Association v McLaren** (Ch 1996 P. No. 6188) decided by Mr Justice Lloyd in the High Court on 18 December 1996. In that case it was found that a disqualification under the predecessor to rule 11.9 met the requirements of section 47(3) of the 1992 Act, in that those disqualified fell within a class, all of whom were excluded by the rules of the Association. However, Mr Caton argued that even if I were to find that the disqualification of the Applicant fell outside rule 11.9, the exclusion of the Applicant was still not unreasonable in all the circumstances.

## **Conclusion**

### **The Complaint that the Disqualification of the Applicant was a Breach of Rule**

24. The Applicant's complaint was made on the basis that the Association had breached rule 29(1) by, in effect, amending the rules and then excluding him as a candidate in the election in question on the basis of the rules as amended. The Association contended that the NEC did not purport to amend the rules but to interpret them in accordance with its powers under rule 29.4(b). I find that these are different sides of the same coin and that there was no confusion on the part of either the Applicant or the Association as to the real issues to which the complaint gave rise. This complaint might have been made as a breach of rule 11.9 or 29.4(b) but the Association did not take any technical point on the Applicant's reliance on rule 29.1. In my judgement the Association was correct in not doing so.

25. In considering the scope of rule 11.9 I was not assisted by the ruling of the Chair of the Special Delegate Conference on 27 February 2001. I do not accept that the opinion expressed by the Chair upon which the Applicant relies was a decision of Conference on a question of interpretation in accordance with rule 29.4(a). The Chairman's comment was an immediate response to an argument raised during a short point of order. I find that the operation of rule 29.4(a) requires the decision of Conference following full and proper debate and is not a matter for a ruling by the Chair. Indeed, the Standing Orders agreed by the Annual Conference in 1999 restrict the significance of rulings by the Chairman. They state merely that "the Chairman's ruling on any questions under Standing Orders, or on points of order shall be final unless challenged." The rules of the Association do not give the rulings of the chair of conference any greater significance.
26. I find that rule 11.9 is not ambiguous either in its literal meaning or in its application to the facts of the Applicant's case. Rule 11.9 only applies to those members of the NEC who resign their post "*during the period of office*". I find that "*the period of office*" refers to the period of tenure of the post from which the member of the NEC has resigned. Accordingly, the Applicant's statement in March 2001 that he would not be taking up his re-elected post in May 2001 did not take place during the period of the office from which he was allegedly resigning. At that time he was still holding the office to which he had been elected in May 1997 and from which he expressly did not resign. The most that can be said of the Applicant's position after his re-election in November 2000 was that he was the "Vice-Chair elect" for the period commencing in May 2001. This was the status that he relinquished in March 2001 and whilst it might be said colloquially that he resigned from that status it cannot be said that his further period of office had begun whilst he was still "Vice- Chair elect". In my judgement, therefore, the Applicant was not disqualified from holding any NEC post by the application to him of rule 11.9.
27. The Association, however, does not purport to apply the literal meaning of rule 11.9 to the Applicant. It is argued that the NEC used its powers of interpretation to bring the facts of the Applicant's case within the scope of rule 11.9 by deeming any member who does not take up an elected position as having resigned in accordance with rule 11.9. In argument, Mr Caton went further to express his opinion that a lay member who has been

elected to the NEC for the first time would be similarly disqualified if he or she did not take that elected position. The approach of the Association to the powers of the NEC under rule 29(4)(b), as appears from this case, is that the NEC has a general power to vary the terms of a rule by interpretation if the literal meaning of that rule does not achieve its commonly understood purpose and the interpretation is a reasonable one.

28. I do not accept that the NEC's power of interpretation under rule 29(4)(b) can be expressed so broadly. Rule 29(1) is the rule which sets out the only mechanism for the rules of the Association to be amended. This applies not only to the creation of totally new rules but also to the extension of existing rules to cover factual situations which were not envisaged at the time the rules were adopted. The power of interpretation of the rules of a Union by the Principal Executive Committee or any body other than General Conference is to be approached with some caution. On the facts of this case I find that the power of interpretation applies only where the literal meaning of the rule is ambiguous. However, even in these circumstances, the NEC does not have the power to reach and apply an interpretation which is inconsistent with either the terms of that particular rule or the structure of those rules with which the particular rule must be read in context. Whilst the reasonableness of any interpretation is a relevant consideration in deciding whether the power to interpret has been exercised lawfully, it does not follow that any interpretation considered by the NEC to be reasonable is necessarily lawful. The interpretation must be within the scope of the rule being interpreted.
29. Accordingly, I find that the NEC acted in breach of rule 29.4(b) in purporting to interpret rule 11.9 in circumstances in which there was no ambiguity in the application of rule 11.9 to the Applicant's case. I also find that the effect of the decision of the NEC was to amend the rules and that in so doing the Association was in breach of rule 29.1. For the above reasons I declare that the Association breached rule 29.1 by its NEC treating as a rule of the Association an interpretation of the rules that it reached outside the scope of its authority.

### **Complaint of Breach of Section 47(1) of the 1992 Act**

30. By section 47(1) of the 1992 Act no member of the Association shall be unreasonably excluded from standing as a candidate in an election for one of the positions set out in section 46(2) of that Act. By section 47(3) of the 1992 Act *“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 ground that he belongs to a class of which all the members are excluded by the rules of the union”*.
31. It was found by Lloyd J in **Prison Officers Association v McLaren and Others** that the predecessor provision to rule 11.9 described a class of members all of whom are excluded from being a candidate and that accordingly a member validly excluded by reason of that rule was deemed not to have been unreasonably excluded. However, section 47(3) only provides a defence to the Association if the Applicant has been validly excluded by the operation of rule 11.9. As I have found that the Applicant was not validly excluded by rule 11.9 the Association is unable to claim the protection of section 47(3) of the 1992 Act.
32. I must nevertheless consider whether the exclusion of the Applicant from being a candidate in the election in question was unreasonable in accordance with section 47(1) of the 1992 Act. In order for this argument to succeed the Association has to overcome the considerable hurdle of having excluded the Applicant in breach of rule. Whilst I accept that the Association acted in good faith and in a way considered by Mr Caton to be reasonable, I do not accept that the Applicant’s exclusion was reasonable. Even if the Association could overcome the hurdle of having acted in breach of its own rules, the Applicant was disqualified without the points of criticism of his conduct being put to him and without him being afforded an opportunity to state his case. In all the circumstances I find that the exclusion of the Applicant from standing for election as National Chair was unreasonable.
33. For the above reasons I declare that the Association acted in breach of section 47(1) of the 1992 Act in excluding the Applicant from standing as a candidate in the election for the position of National Chair in 2001.

## Enforcement Order

34. I invited written submissions from the parties as to whether an enforcement order should be made if I found for the Applicant and, if so, on what terms. The Applicant seeks an enforcement order that the election from which he was disqualified be declared null and void and that the election be re-run. The Association proposes that, if I was minded to make any enforcement order, I should require that there be a further election not only for the position of National Chair but also for the position of Vice-Chair, Finance Officer and certain members of the NEC. Mr Caton argues that if Mr Darken had not been elected as National Chair in 2001 he might have stood for any of the other positions and been successful. He would therefore be disadvantaged if the various elections were not held sequentially, as would be any member displaced by Mr Darken in any of those other elections. Mr Caton referred to the decision of **Prison Officers' Association v McFarlane and others** as providing an example of the need for sequential elections.
35. In my judgement this is not a case in which it would be appropriate to order the immediate removal of the present National Chair. I find that the NEC acted in a misguided manner in its purported interpretation of rule 11.9 but that it did not deliberately set out to flout its statutory or rule-book obligations. In **Prison Officers' Association v McLaren and Others**, Lloyd J observed that those whose elections had been successfully challenged continued to hold the positions in the union to which they were elected until those elections were set aside by the union or by the court. In deciding not to set aside the election of Mr Darken I have had regard to the fact that he was elected by the members, that there is no evidence that he played any role in the disqualification of the Applicant and that his continuation in office would be in the interests of stability and continuity for the union and its members pending the further election for the position of National Chair.
36. I do not accept the Association's submission that in the circumstances of this case it would be appropriate to require fresh elections to be held for positions other than that of National Chair. In the decision of **Prison Officers' Association v McLaren and Others** each of the elections which were re-run were subject to allegations of unlawfulness. Furthermore, the decision to set those elections aside was left to the Association, in

accordance with the decision of the court. In the present case none of the other elections are tainted with unlawfulness. Further, the unfairness that Mr Darken might feel by the requirement that the election for the position of National Chair be held again has to be balanced against the fact he benefited from the Applicant being excluded as a candidate and against the feeling of unfairness that those elected in the other elections would undoubtedly feel.

37. Accordingly, the enforcement order I make is that a fresh election be held for the position of National Chair, which election is to be conducted in accordance with the requirements of Chapter IV of the 1992 Act. The timetable for the election held in 2001 provided for nominations to open on 15 October and for the result to be declared on 20 December 2001, a period of about ten weeks. I order that the result of the fresh election shall be declared no later than 9 August 2002, a period of about 14 weeks from the date of this decision. In order that the election cycle should not be broken unnecessarily I have considered including in the order that the person elected should hold office for the unexpired term of Mr Darken, the present National Chair. However, I take the view that rule 11.3 of the rules of the Association deals with this situation, by providing a procedure in cases where a vacancy occurs between elections.

D Cockburn  
Certification Officer