

**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 J TAYLOR

V

THE MUSICIANS' UNION

Date of Decision:

15 October 2002

DECISION

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

1. I refuse to make the declaration sought that the Musicians' Union breached section 48(6) of the 1992 Act in the election of Mr Heslop to the Executive Committee of the Union in 2001.
2. I refuse to make the declaration sought that the Musicians' Union breached rule V.7 of the rules of the Union by not providing to the Applicant a copy of Mr Heslop's amended election address before circulating that amended election address with the ballot papers.
3. I refuse to make the declaration sought that the Musicians' Union breached rule XXI section B(1) of its rules by not processing the disciplinary complaint brought by the Applicant against Mr Heslop by his letter of 28 November 2001.

REASONS

1. By an application dated 9 January 2002, the Applicant made a number of complaints against his Union, the Musicians' Union ("the Union"), only three of which were pursued at the hearing. The three complaints that were pursued are that:-
 - 1.1 the Union breached section 48(6) of the 1992 Act in the election to the Executive Committee 2002/2003, in that by allowing Mr I Heslop to amend his election address whilst not affording the same opportunity to the Applicant, the Union failed to ensure that it secured the same facilities and restrictions with regard to the preparation, submission, length or modification of an election address was applied equally to each candidate.
 - 1.2 the Union breached its rule V.7 in the election to the Executive Committee 2002/2003, in that the election address of Mr I Heslop was not circulated to all other members standing within the District before being circulated with the ballot papers.
 - 1.3 the Union breached its rule XXI.B.I in that it failed to process the Applicant's complaint against Mr Heslop, that Mr Heslop brought the Applicant's name into disrepute and discriminated against him in contravention of clause XXI section A 1 (b) and (c) of the rules of the Union.
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 Friday 27 September 2002. Mr Taylor was represented by his solicitor, Mr Hows. Mr Taylor was not present at the hearing but a written witness statement was produced on his behalf. The Union was represented by Mr Ford of counsel. Mr Smith, an Assistant General Secretary, gave evidence on behalf of the Union. A bundle of documents was prepared for the hearing by my Office which consisted of the documents submitted by the parties. This decision has been reached on the basis of the

representations made by the Applicant and the Union, together with such documents as were provided by them.

Findings of Fact

3. In 2001 the Musicians' Union held elections for seats on its Executive Committee ("the EC") for the electoral period January 2002 /December 2003. Each year one half of the seats on the EC are subject to election, the successful candidates then being in post for two years. This application concerns the election of the EC member for the North East District. There were two candidates, the Applicant and Mr Heslop. The Applicant had been a member of the Union since 1949 and a member of the EC for the past 31 years.
4. In September 2001 Mr Knight, the Union's then Deputy General Secretary, wrote to all candidates in the election inviting them to submit their election addresses. He advised them that the EC had made a provision that the election addresses must not exceed 150 words and further advised them that their election addresses must be returned to the Union by Thursday 11 October. The letter also states;

"In order to avoid any difficulties the EC has established a policy that all election addresses submitted will be circulated, in advance of printing, to all other candidates within the District so as to allow for any candidate who considers another candidate's election address to be actionable in law, to take legal advice and/or action prior to the ballot forms being posted to the membership."

The policy to which Mr Knight referred is reflected in the second sentence of rule V.7. Rule V.7 states:-

"Candidates nominated may submit a written election address for the information and consideration of members as determined by the EC taking account of the prevailing legal provisions concerning the conduct of such ballots. The election address will be circulated to all other members standing within the District before being circulated with the ballot papers."

5. The Applicant and Mr Heslop submitted their election addresses to the Union and on 16 October 2001 Mr Knight provided them each with a copy of the other's election address. There were two passages in Mr Heslop's election address to which the Applicant took exception. These were passages which the Applicant considered were critical of him because of his age. The passages were, "*With the constant, almost daily, changes in the business of making music - age and service count for nothing if you cannot keep up with these changes*" and "*Longevity breeds contempt and stifles fresh ideas*". The Applicant considered these passages to be ageist and contrary to rule I(3)(l). Rule I(2) sets out the objects of the Union and rule I(3) sets out its powers. Rule I(3)(l) gives the Union the power to "... ensure that, in all the objects defined in this Rule, equality of opportunity shall be pursued regardless of age, colour, creed, disability, marital status, race, religion, sex or sexual orientation".
6. On Wednesday 24 October 2001 the Applicant telephoned the National Office of the Union to complain about Mr Heslop's election address. He spoke with Mr Smith, an Assistant General Secretary with industrial responsibilities. Mr Knight was not available. The Applicant stated his complaint and sought an explanation of why the rules of the Union provide for election addresses to be exchanged before publication. He also sought clarification as to whether it was possible for Mr Heslop's election address to be changed and told Mr Smith that, as matters stood, he felt that he would have to charge Mr Heslop under the Union rules. Mr Smith explained that the Union could not unilaterally change Mr Heslop's election address, that any amendment would require Mr Heslop's consent and that the Union must publish whatever Mr Heslop wished. Against this background Mr Smith said that he would see what could be done.
7. Mr Smith spoke to the Union's legal officer. They considered they were in a novel situation about which there were no pre-existing Union policies or practice. Mr Smith had been active in the Union for over 20 years throughout the whole of which rule V.7 had required the exchange of election addresses. However, never in his experience, had anyone made such a complaint. Mr Smith decided to put the complaint to Mr Heslop and leave it up to him whether he wished to amend his statement to satisfy the Applicant's

complaint. Mr Smith telephoned the local full time official, Elaine Rogers, and explained both the nature of the Applicant's complaint and the fact that he was threatening to press charges against Mr Heslop. Ms Rogers reminded Mr Smith that the Applicant had brought charges against Mr Heslop under rule XXI only a few months earlier but that these had been subsequently withdrawn.

8. Later that day Ms Rogers was able to contact Mr Heslop on his mobile phone. He was driving to Scotland with other musicians. Ms Rogers explained the situation and Mr Heslop asked for a little time to think what he should do. He later phoned Ms Rogers and said that he would reluctantly consider withdrawing the words "*Longevity breeds contempt*" but that he wished to discuss the matter with his band before making a final decision. Ms Rogers advised him to notify Lorna Jones, a senior administrative assistant at National Office, of any amendment he wished to make. After being brought up to date by Ms Rogers, Mr Smith telephoned the Applicant and left an answer-phone message in which he said that he believed that the "*Longevity breeds contempt*" passage would be amended and that Lorna Jones would then send the Applicant an amended copy. Mr Smith's message continued, "*I am not sure about that to tell you the truth*". Later that day Mr Heslop telephoned Lorna Jones and told her that he was prepared to replace the words "*Longevity breeds contempt*" with the words "*Inertia breeds staleness*". Ms Jones told Mr Heslop that he would need to confirm this in writing.

9. On Friday 26 October 2001, Electoral Reform Services ("ERS"), the independent scrutineer for this election, received from the Union two versions of Mr Heslop's election address, the original version and an amended version. The ERS was told that Mr Heslop had not yet confirmed his amendment in writing and that, depending upon whether he did so, the Union would inform ERS which election address to use. The voting papers were scheduled to be printed on 26 October, with the election addresses on the reverse of each voting paper. It was agreed that the printing of the voting papers could be postponed to Monday 29 October, if necessary. On Monday 29 October ERS received a fax from Mr Heslop confirming the amendment to his election address and, on this basis, the Union

authorised the amended election address to be used and the process of printing the ballot papers began.

10. The voting papers were distributed to members by ERS on Wednesday 31 October 2001 and the Applicant received his on Saturday 3 November. A copy of Mr Heslop's amended election address had not been sent to the Applicant before the ballot papers had been circulated to members. On Monday 5 November the Applicant telephoned ERS to discuss Mr Heslop's amended election address. On 18 November the Applicant wrote to ERS asking if a different election address would have been accepted if provided before printing. ERS responded to the effect that this was not a matter for them.
11. The result of the election was announced on 20 November 2001. Mr Heslop received 365 votes and the Applicant 342 votes. Mr Heslop was declared duly elected.
12. On 28 November 2001 the Applicant wrote to Mr Knight charging Mr Heslop "...with bringing my name into disrepute and engaged in discrimination statement (sic) on age and disability under rule XXI section A1.b and 1.c during the recent EC elections". The Applicant complained in particular about the sentence "*With the constant changes in the business of making music - age and service count for nothing if you cannot keep up with these changes*". By a separate letter of the same date the Applicant sought to have Mr Heslop disqualified for having been elected on a statement which was contrary to rule I.3(l). Mr Knight replied to the Applicant's letters on 10 December. He declined to process the Applicant's rule XXI charge against Mr Heslop on the basis that it had not been reported within 4 weeks of the alleged offence. Mr Knight commented that the Applicant had been aware of the text of which he was complaining on 24 October at the latest and that accordingly a charge reported on 28 November was out of time. The EC subsequently endorsed Mr Knight's decision.

The Relevant Statutory Provisions

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

Section 48(6) “The trade union shall, so far as is reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address, and with respect to the incorporation of photographs or other matters not in words, are provided or applied equally to each of the candidates.”

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) disciplinary proceedings by the union (including expulsion);
- (c)
- (d)”

14. Section 108B(2) of the Act empowers me to make such enquiries as I think fit and, after giving the Applicant and the Union 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.

The Relevant Union Rules

15. The Union rules relevant to the Applicant’s complaints are as follows:-

Rule I(3) In furtherance of such objects the Union may:

- (1) Generally to promote the welfare and the interests of its members and to ensure that, in all of the objects defined in this Rule, equality of opportunity shall be pursued regardless of age, colour, creed, disability, marital status, race, religion, sex or sexual orientation.

Rule V.7 Candidates nominated may submit a written election address for the information and consideration of members as determined by the EC taking account of the prevailing legal provisions concerning the conduct of such ballots. The election address will be

circulated to all other members standing within the District before being circulated with the ballot papers.

Rule XXI.A.1 Any member shall have the right to invoke the Union's disciplinary procedures against any other member held to have committed any of the following actions:

- (a)
- (b) committed any action detrimental to the interests of the Union or otherwise brought or attempted to bring the Union, its members or officers into disrepute.
- (c) contravened the policies of the Union on equal opportunities or engaged in discrimination on the grounds of age, colour, creed, disability, marital status, race, religion, sex or sexual orientation.

Rule XXI.B.1 To facilitate the hearing of disputes between members amongst themselves which cannot be dealt with by any procedures provided elsewhere in these Rules as agreed by them, or when it appears that any member may be guilty of an offence under Section A above, the matter shall be reported within four weeks of the offence to the General Secretary who will place the allegation before the relevant District Disciplinary Committee established under 2 below for consideration in accordance with the procedures set out for conducting Disciplinary Hearings (Appendix A to these rules).

Rule XXI.B.3 The EC shall give effect to a decision of the Disciplinary Committee to penalise a member subject to a member's right of appeal to the Appeals Committee established under Rule XXI.C by imposing any of the following penalties as is held appropriate by the Disciplinary Committee as follows:

The Complaints

The Alleged Breach of Section 48(6) of the 1992 Act

The Submissions

16. Mr Hows, for the Applicant, submitted that Mr Heslop had been given the opportunity to modify his election address and that it was therefore a breach of section 48(6) of the 1992 Act not to give the Applicant a similar opportunity. Mr Hows submitted that it was reasonably practicable for the Union to have given the Applicant such an opportunity as Mr Heslop's amendment took place on 24 October and the ballot papers had not been sent to members until 31 October.

17. Mr Ford, for the Union, submitted that the word "*facilities*" in section 48(6) of the 1992 Act should be given a narrow meaning which would comprehend only something which is an advantage to the candidate and that, on the facts of this case, the modification that

was made by Mr Heslop was to suit the Applicant's wishes. In the alternative, it was argued that the facility afforded to Mr Heslop was in fact available to the Applicant but that it did not arise as no complaint was made about his election address nor was any request made by the Applicant to modify his election address. In the further alternative, it was argued that it was not reasonably practicable for the Union to provide the Applicant with the facility to modify his election address as the Union had no reason to suppose that he wished to do so.

Conclusions

18. The issue to be determined in this application is whether the Union, so far as reasonably practicable, secured that the same facilities and restrictions with respect to the modification of an election address were provided or applied equally to each member. This requires a careful identification of the facilities and restrictions which were provided or applied.
19. I reject the Union's contention that the word "*facilities*" in section 48(6) of the 1992 Act has the limited meaning suggested by Mr Ford. In the context of section 48 as a whole I find that the word "*facilities*" carries a broader meaning which is more accurately captured by the meaning given to it in the Shorter Oxford Dictionary of "*unimpeded opportunity*" or "*an amenity or service which enables something to be done*".
20. Mr Hows contends that the facility given to Mr Heslop, which was not given to the Applicant, was the opportunity to modify his election address. I find that this is too simplistic a view of what occurred in this case. The Union had no pre-existing policy or practice to deal with the situation which emerged when a complaint was made by one candidate against the election address of another. Nevertheless, the ability of a candidate to complain about an opponents election address and the requirement for it to be seriously considered by the Union is implicit from rule V.7, which imposes an obligation on the Union to exchange the election addresses of the candidates before circulation of the voting papers. Furthermore, on the facts of this case, the Applicant was threatening to

bring a rule XXI charge against Mr Heslop arising out of the contents of Mr Heslop's election address. It was against this background that a restricted right of modification was given to Mr Heslop. It was Mr Smith's evidence that Mr Heslop was only given the opportunity to amend because of the Applicant's complaint and that even then he would only be permitted to amend his election address to deal with the Applicant's complaint. He was not given a general opportunity to amend. In my judgement, the precise nature of the facility decided upon by Mr Smith was that when one candidate complained against the election address of another candidate, the author of that election address would have an opportunity to modify his or her election address so as to remove or to attenuate the cause for complaint. Expressed in this way, I find that the Union did provide the same facilities equally to each of the candidates. If Mr Heslop had complained about the Applicant's election address, a similar offer would have been made to him to modify his election address. The making of the complaint by the Applicant was an essential ingredient of the facility provided to Mr Heslop.

21. There was no evidence before me about any general restrictions applied by the Union with respect to the modification of an election address. I find that this is a matter which did not arise on the facts of this case as the Applicant made no application to amend his election address.

22. For the above reasons, I refuse to make the declaration sought by the Applicant that the Musicians' Union breached section 48(6) of the 1992 Act in the election of Mr Heslop to the Executive Committee of the Union in 2001. If I had reached the opposite conclusion, I would have considered it inappropriate to make an enforcement order, having regard to the circumstances of the alleged breach, its nature and its potential consequences.

The Alleged Breach of Rule V.7

The Submissions

23. Mr Hows submitted that rule V.7 requires that the election address which is circulated with the ballot papers must be the same as that which had previously been circulated to the other candidates standing in the District. As it was common ground that the Applicant had not seen Mr Heslop's amended election address before it had been distributed with the ballot papers, Mr Hows submitted that there had been a breach of rule V.7.
24. For the Union, Mr Ford argued that rule V.7 is concerned with the initial circulation of election addresses and is silent as to what should occur when an election address is modified, following a complaint from another candidate. He submitted that what the Union did was reasonable and complied with the spirit of the rule.

Conclusions

25. A literal application of rule V.7 to the facts of this case would suggest that the rule had been breached. However, it is well known that the rule books of trade unions may need to be interpreted in accordance with different principles to statutes. In *Heatons Transport (St Helens) Ltd v TGWU (1972) IRLR 25* Lord Wilberforce stated:-

“Trade union rule books are not drafted by parliamentary draftsmen. Courts of law must resist the temptation to construe them as if they were; for that is not how they would be understood by the members who are the parties to the agreement of which the terms, or some of them, are set out in the rule book ...”

A more recent statement of the same principle is to be found in the judgement of Warner J in the case of *Jacques v AUEW (1983) ICR 683*, adopted by Morison J in *Douglas v GPMU (1995) IRLR 426* and Chadwick J in *Wise v USDAW (1996) IRLR 609*. Warner J said this:-

“The effect of the authorities may, I think, be summarised by saying that the rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the courts view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed.”

In accordance with these authorities, it is permissible to adopt a more purposive approach to the interpretation and application of union rules where a literal approach would result in the relevant provisions being unworkable or otherwise outside the manifest intention of those who drafted them.

26. All union elections work to a timetable and it is usually important that the timetable is adhered to in general terms. The literal application of rule V.7 might put any such timetable at potential risk of disruption, either in good faith or by malicious intent. A candidate might complain about an opponents election address. This might lead to a counter complaint by the other candidate. Both might then take time to consider their position and amend their election addresses. The amended election addresses would then need to be circulated but they could also be the subject of complaint. In a strongly contested election, it is not unforeseeable that candidates will take whatever action most benefits their prospects of election and the election timetable might well suffer. I find that the literal application of rule V.7 could lead to requests being made for consequential amendments which could make the election timetable unworkable and that such a result is unlikely to have been the intention of those who drafted the rules.

27. On the facts of this case, the printing of the ballot papers had been delayed from Friday 26 October to Monday 29 October 2001, to await Mr Heslop’s written confirmation that he in fact wished to amend his election address. Mr Heslop’s confirmation was received on 29 October and the printing of the voting papers began that day. On the Applicant’s submission Mr Heslop’s amended address should have been sent to the Applicant on 29 October, with the prospect that a similar process of complaint and amendment would further delay the election timetable. I find that an interpretation which would have that result is unlikely to have been the intention of those who drafted the rules.

28. In my judgement rule V.7 is complied with if the original election address submitted by the candidate is circulated to the other candidates in the District and, should there be a complaint which leads to an amendment of an election address, the amended version of that election address is circulated with the voting papers. Rule V.7 deals with the straightforward situation of election addresses about which there has been no complaint but is silent on the question of amendments following complaints. I find that the purpose of the rule is to enable complaints to be made within or outside the Union and for solutions to be sought to those complaints before the ballot papers are distributed but, in order to be workable, the process cannot have been intended to be open ended, requiring each amended statement to be circulated to other candidates for possible further objection.
29. For the above reasons I refuse to make the declaration sought that the Musicians' Union breached rule V.7 of the rules of the Union by not providing the Applicant with a copy of Mr Heslop's amended election address before the amended election address was circulated with the ballot papers. If I had reached the opposite conclusion I would have considered it inappropriate to make an enforcement order, having regard to the circumstances of the alleged breach, its nature and potential consequences.

The Alleged Breach of Rule XXI Section B.1

The Submissions

30. Mr Hows submitted that the Union was in breach of rule XXI section B.1 by not processing the Applicant's charge against Mr Heslop on the ground that it had not been reported within four weeks of the offence. He asserts that the "offence" must be the publication of the election address, which was received by the Applicant on 3 November 2001 and that accordingly the Applicant's charge, reported by his letter of 28 November, was in time.
31. For the Union Mr Ford argued that I do not have jurisdiction to hear this complaint as the relevant words in section 108A(2)(b) refer to "disciplinary proceedings by the union

(including expulsion)”. He contrasts this with the present case in which the disciplinary proceedings were brought by the Applicant. In the alternative, Mr Ford argues that by 24 October 2001 at the latest the Applicant had knowledge of the words about which he now complains and that the time for bringing the charge under rule XXI section B.1 therefore began on that date at the latest. Mr Ford submits that on this basis the charge made by the Applicant’s letter of 28 November was out of time and that the Union properly refused to process it.

Conclusions

32. I do not accept Mr Ford’s submission that I do not have jurisdiction to consider this application by reason of the fact that section 108A(2)(b) refers to “disciplinary proceedings by the union (including expulsion)”. In my judgement these words comprehend the use made of a union’s disciplinary procedure by a member. I gain support for this conclusion from the broad words of section 108A(1) which enable a person to make an application where there has been a breach or threatened breach of a rule relating to any of the matters mentioned in subsection (2), (my emphasis). The expression “relating to” does not suggest such a restrictive approach to this provision. Further, section 108A(2)(b) contains the words “(including expulsion)”. This points to the subsection looking more at the sanction which is imposed than the person who originated the charge. Such an approach is consistent with the mischief common to the various matters listed in section 108A(2), which is the potential abuse by the union of the procedures that it is required to administer and that are under its control. Turning to the rules of the Union, it is apparent from rule XXI section A(1) that when a member initiates a charge, he or she is initiating the Union’s disciplinary procedures and from rule XXI section B(3) that the sanction which is imposed is that of the Union. The member initiates the complaint but in every practical sense thereafter the disciplinary procedures are those of the Union. In my judgement, section 108A(2)(b) gives jurisdiction to the Certification Officer in respect of claims that there has been a breach or threatened breach of rule relating to disciplinary proceedings conducted by a union under the provisions of its rule book.

33. It is common ground that this application turns upon when the alleged offence took place. If the offence occurred on 3 November 2001 the Applicant succeeds. If it occurred on or before 24 October, as the Union contends, the Applicant fails.
34. The offences alleged by the Applicant are breaches of rule XXI section A(1)(b) and (c). The sub rules make it an offence to have:-
- “(b) committed any action detrimental to the interests of the Union or otherwise brought or attempted to bring the Union, its members or officers into disrepute.
 - (c) contravened the policies of the Union on equal opportunities or engaged in discrimination on the grounds of age, colour, creed, disability, marital status, race, religion, sex or sexual orientation.”

The evidence against Mr Heslop that he had breached these provisions was that in his election address he had used the words, “*With the constant, almost daily, changes in the business of making music - age and service count for nothing if you cannot keep up with these changes*”. The Applicant was aware that Mr Heslop had included these words in his election address on 24 October 2001 at the latest. He was also aware by 24 October that the election address had been sent to the Union’s National Office and had been received by staff there. Significantly, the Applicant told Mr Smith on 24 October that he would have to pursue a charge under the Union rules. Despite considering that there were grounds to pursue a disciplinary charge against Mr Heslop on 24 October he chose not to do so but to see what resulted from the complaint he had made to Mr Smith. By 3 November at the latest the Applicant knew that Mr Heslop had amended only part of his election address. The words about which he now complains, and which were present on 24 October, were not amended. He still chose not to report the offence under the Union rules but to await the election result. The Applicant eventually reported the alleged offences after he had been informed that he had lost the election.

35. In my judgement all the ingredients of the alleged offences were in place on 24 October 2001. Mr Hows argues that the offence only occurred when the election addresses were published with the ballot papers. I disagree. The alleged offence is one committed by Mr Heslop. The act of publishing the election addresses was that of the Union. If Mr Heslop

committed an offence at all, about which I express no opinion, it can only have occurred when he published the offending words to the Union for the purposes of wider circulation. In ascertaining the date of the offence it may be relevant to consider the actual or constructive knowledge of the Applicant, where the offence would otherwise be concealed. However, on the facts of this case I find that the Applicant had actual knowledge of the alleged offence on 24 October at the latest and there is therefore no issue about the precise date upon which the alleged offence was committed. The Applicant knew by 24 October at the latest that he had a cause of action but chose not to pursue it either at that stage or immediately after publication of the election address with the ballot papers. The time limit set by the rules of the Union of one month from the offence is short but it can be understood why this might be so having regard to the possibility of the process being overwhelmed by charges being brought on spurious grounds or for factional advantage. I do not suggest that this is one such case but I do take into account that a short limitation period was deliberately chosen and must therefore be observed.

36. For the above reasons I refuse to make the declaration sought that the Musicians' Union breached rule XXI section B.1 of its rules by not processing the disciplinary complaint brought by the Applicant against Mr Heslop by his letter of 28 November 2001.

Observations

37. In his decision D/1-3/96 the then Certification Officer considered the application of section 48(3) of the 1992 Act and noted that it gave a discretion to unions to "provide" that election addresses must not exceed a certain length and may incorporate only such material not in words as the Union may determine. It was found that such a provision may be express or implied through custom and practice. Underpinning this decision is the principle that in order for there to be a provision it is necessary that members must know at the time of preparing and before submitting an election address the ground rules relating to election addresses that will be applied by the Union. Section 48(6) of the 1992 Act is differently constructed but the same principle is relevant. In most circumstances

it would be expected that, in order for a facility or restriction to be provided or applied equally, that facility or restriction would be made known to the candidates at the time of preparing and before submitting an election address. For the Union to decide such matters on an ad hoc basis may or may not result in the Union acting unlawfully but the perception of unequal treatment is more likely. In this case, the Union would have been on stronger ground if it had adopted an express policy on modifications following the exchange of election addresses between candidates. As it happens, on the facts of this case, there was no lack of equality between the candidates as neither candidate sought nor was given the right to initiate an amendment. The limited facility to modify that was provided to Mr Heslop was conditional upon a complaint being made by a fellow candidate and no such complaint was made about the Applicant's election address. Neither candidate was disadvantaged by being unaware that this facility would be provided, as neither candidate was able to take advantage of this facility of his own volition. To this extent the present case might be regarded as unusual.

D Cockburn
Certification Officer