

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 55 OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

**IN THE MATTER OF A COMPLAINT MADE AGAINST THE
GMB**

APPLICANT MRS J TRAVIS

Date of Decision:

18 January 2001

DECISION

- 1.1 Under section 55 of the Trade Union and Labour Relations (Consolidation) Act (“the 1992 Act”) a person having sufficient interest who claims that a trade union has failed to comply with any of the requirements of Chapter IV of Part I of the 1992 Act concerning the need for, and conduct of, elections to certain positions may apply to me for a declaration to that effect.
- 1.2 Section 55(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 declaration asked for. Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing.
- 1.3 In making a declaration I am required to specify the provisions with which the trade union has failed to comply. Where I make a declaration I am required, unless I consider to do so would be inappropriate, to impose an enforcement order on the union. Under section 55(5A) my enforcement order should impose one or more of the following requirements on the union-
 - (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.

1.4 On 7 February 2000, I received a complaint from Mrs Travis a member of the GMB (the union). Mrs Travis was the Branch President of the Rover Longbridge Branch of the union. Mrs Travis complained that the union, “... *in May/June 1999.*”, had breached its rules and by-law in relation to the union’s regional elections for seats on its Birmingham and West Midlands Region, Regional Council. Mrs Travis complained that the Regional Secretary of the Region, “*contrary to GMB By-Law, did attempt and succeeded to influence election results by displaying ballot papers which should be secret until counting day.*”.

1.5 On 8 February 2000, my Office wrote to Mrs Travis explaining that I did not have the jurisdiction to determine such a breach of rule complaint where the alleged breach had occurred prior to 27 July 1999. My Office explained to Mrs Travis that on 27 October 1999, the Employment Act 1999 amended the 1992 Act by extending my jurisdiction to determine certain breach of union rule complaints, but that the Commencement Order laid down by Parliament, for the parts of the 1999 Act relating to my jurisdiction, restricted my determination of such complaints to alleged breaches occurring after 27 July 1999. This was accepted by Mrs Travis.

1.6 Mrs Travis wrote again, on 8 March 2000, complaining that she had been unfairly denied the right to stand for re-election to the union’s Central Executive Council (CEC) (the elections for which were held during September/October 1999). She explained that, under the union’s rules, only members of the union’s Regional Councils were eligible for nomination for election to the union’s CEC (which was the union’s principle executive body and as such was subject to the election requirements in the 1992 Act) and that the union by its actions in “ ... *ballot*

rigging which took place during the Regional Council elections in February and March 1999.” had removed her from the Regional Council and so denied her the right of nomination for the CEC.

1.7 Mrs Travis’ complaint was accepted, by me, as a complaint that the union had breached section 47(1) of the 1992 Act. Section 47(1) of the Act provides that “ *No member of the trade union shall be unreasonably excluded from standing as a candidate.*”.

1.8 I investigated the complaint in correspondence and decided that a formal hearing, to hear argument should be held. The hearing was held on 28 November 2000. The union was represented by Mr J O’Hara its National Legal Officer. Mrs Travis attended the hearing and was represented by her husband, Mr L Travis. The union produced witness statements from Mr K. Gregory, the Regional Secretary of the Birmingham and West Midlands Region with responsibility for the day to day management of the Region, and from Mr V Bloor a member of the Regional Council and a member of the Region’s Regional Committee since 1996. Both Mr Gregory and Mr Bloor attended the hearing and gave evidence. Mr Travis produced witness statements from a Mr W Osborne, Mrs B Dring and Mr O Granfield. However, at the hearing, Mr Travis explained that both Mr Osborne and Mrs Dring, having been expelled from the union (and now having other employment) were, for reasons of finance and availability, unable to attend the hearing.

Decision

1.9 After careful consideration of the documents, evidence, arguments put to me and the relevant

legislation I refuse to make the declaration sought by Mrs Travis. The reasons for my decision are set out below.

Requirements of the Legislation

1.10 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred in this decision. The relevant statutory requirements are as follows:

“ 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 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.*

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

1.11 That then is the background and relevant legislation. I now set out the facts, arguments put by the parties on the complaint and the reasons for my decision.

The Complaint: that the union had unreasonably excluded Mrs Travis from standing as a candidate in the GMB Central Executive Council elections, 1999, in breach of section 47(1) of the 1992 Act.

Facts

2.1 Election to the union's Regional Councils and the union's CEC are governed by its rules 20 (read with rules 17G and 18) and rule 11(read with rule 18) respectively.

2.2 The union's rule 18.3 states:

“ The third qualification for any member seeking election to the Central Executive Council under rule11 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.”.

2.3 Mrs Travis had been a member of both (one of) the union's Regional Councils and of its CEC for approximately 10 years. In 1999 she again stood as a candidate in the GMB Birmingham and West Midlands Region, Regional Council election for 1999 - 2001. The ballot, which was held by way of a show of hands vote at each branch, was held with a deadline for voting of 15 April 1999. The results of the elections were sent, by Mr Gregory, Regional Secretary, to all branch secretaries on 21 April 1999. They showed that, in the seat in which she had stood (the APEX (Commercial Services) Section) Mrs Travis had failed to secure her election to the Council. A further letter (to branch secretaries) from Mr Gregory the following day listed the unsuccessful candidates. It showed that Mrs Travis was, in the section for which she had stood, the highest placed unsuccessful candidate.

2.4 Under rule, each Regional Council at its first meeting upon taking office, elected from its own number a number of posts and a Regional Committee which, under rule, consisted of at least

seven members. Each Regional Committee was required to meet every four weeks and was required to perform duties (under rule) and such business assigned to it by the Regional Council. Its decisions were made on behalf of the Regional Council.

- 2.5 On 7 July 1999, the Regional Committee, acting under rule, expelled from the union (for reasons unconnected with this application) eight members of the union. Seven of those expelled were members of the Regional Council. The following day those expelled were sent letters conveying the Regional Committee's decision.
- 2.6 At its next meeting, on 14 July 1999, the Regional Committee noted the result of the disciplinary action and the possibility of an appeal.
- 2.7 All eight expelled members exercised their right of appeal, under union rule, by common letter dated 15 July 1999.
- 2.8 On 11 August 1999, the Regional Committee again met and filled (from the Regional Council) three vacancies on the Regional Committee, which had arisen as a result of the expulsions, on a pro tem basis, pending the outcome of the expelled members' appeal.
- 2.9 Nominations for elections to the union's CEC closed on Monday 12 July 1999. However on 29 June 1999 the union's Appeal Tribunal, acting under rule, had created an additional "General Seat" in the Birmingham and West Midlands Region and established a closing date, for nominations to that seat, of Monday 2 August 1999.
- 2.10 The Appeals Committee of the CEC heard the appeals by the expelled members (para 2.7) on 25 November 1999. The appeals were dismissed and on 12 January 2000 the Regional Committee considered the expulsions and steps were taken to apply union rule 20.6 by

inviting those “next in line” to attend the next meeting of the Regional Council. Mrs Travis was one of those members invited to join the Council.

2.11 The union’s rule 20.6 states:

“When elected, the Regional Council shall take office as from 15 April in the year of the election and shall hold office for a period of two years. Vacancies which occur during the term of office shall be filled by the next highest on the list of unsuccessful candidates in the relevant Section at the last election.”.

The Applicant’s Case

2.12 In correspondence Mrs Travis explained that, on 7 July 1999, she had received a telephone call from a full time Branch Secretary, who had informed her that, at the time of the Regional Council elections, he had been visited by the Regional Secretary (Mr Gregory) and had been shown the voting paper of the Longbridge Branch. It was alleged that Mr Gregory had stated to the Branch Secretary “ *See how she votes*” (meaning Mrs Travis President of the Longbridge Branch) and stated “ *she don’t vote for you, I want you to take her off your list, if you were going to support her.*”. The Branch Secretary, Mrs Travis, later revealed, was Mr W Osborne who had that day been one of the eight members of the union expelled (see para 2.5).

2.13 Mr Osborne, Mrs Travis reported, had told her (during the telephone call on 7 July) that he had (as the Regional Secretary suggested) removed her name from his branch list, thus not voting for her election to the Regional Council.

2.14 Mrs Travis added that in the telephone call of 7 July, she had been given detailed information on the way and for whom her branch had voted, and was therefore satisfied that Mr

Osborne's information could only have come from seeing her branches (voting) papers.

- 2.15 At the next branch meeting, Mrs Travis informed me that she had checked the information given to her by Mr Osborne with the Branch Minutes of its voting preferences and had found Mr Osborne's comments to be accurate.
- 2.16 In correspondence Mrs Travis added that she had informed her branch of what had occurred and the branch secretary had been instructed, by the branch, to write, on 26 September 1999, to the union's General Secretary seeking an investigation by members outside the Region. She added that the union declined to set up an investigation and insisted the matter was pursued under union rule 6. Mrs Travis wrote, that this would mean an investigation by the very Regional Committee and Regional Secretary about whose activities the branch was complaining. The branch did not, therefore, pursue this approach.
- 2.17 At the hearing of her complaint, Mrs Travis submitted witness statements signed by Mr Osborne and Mrs Dring (who for the reasons stated in para 1.8 were both unable to attend the hearing). In his statement, Mr Osborne stated that in February 1999 he had received a telephone call from Mr Gregory who had asked to meet him in his office. Mr Osborne's statement showed this meeting to have taken place in late February or early March 1999 and that the Regional Finance Officer (RFO) was also present. At the meeting, Mr Osborne stated, discussions took place on a number of subjects unrelated to this complaint. However, Mr Osborne's statement continued by reporting that the RFO then left the room to make a telephone call. During his absence, Mr Osborne stated that Mr Gregory asked Mr Osborne who he was going to vote for in the forthcoming Regional Council elections and a discussion took place. Mr Gregory then asked him if he intended to vote for Mrs Travis. He had replied yes and explained why. Mr Gregory, Mr Osborne stated, then told him that Mrs Travis never voted for him or for other long serving members on the Regional Council and showed Mr

Osborne a folder containing the ballot paper submitted by Mrs Travis for the Regional Council election. This Mr Osborne stated, showed that Mrs Travis had not voted for him. He then told Mr Gregory that, in that case he would not vote for her. Mr Osborne's statement continued by reporting that Mr Gregory also suggested that he (Mr Osborne) might also like to let other people know how Mrs Travis' branch had voted.

2.18 Mr Osborne's statement continued by stating that after his expulsion from the union he had mentioned what he had done to some of his colleagues and that they had told him to inform Mrs Travis. This he had done in July 1999.

2.19 Mrs Dring's statement showed that she was the Regional President until her expulsion from the union in February 2000. In her statement Mrs Dring stated that she had chaired the meeting on 7 July 1999 at which the eight members of the union had been expelled. She confirmed that at that meeting no discussion had taken place on the filling of vacancies left by the expulsions, but that, between 7 and 14 July she was approached by the Regional Secretary, Mr Gregory, with regard to filling the vacancies. She had told him that this should be discussed at the next Regional Committee meeting on 14 July. At the meeting on 14 July, Mrs Dring's statement reported that a long debate with regard to the filling of vacancies had taken place, and that the areas debated were the Regional Committee, Regional Council, Regional auditors and Regional trustee.

2.20 Mrs Dring's statement reported that the Regional Committee, on 14 July, decided to fill three vacancies on the Regional Committee and to fill the vacancies for the Regional auditor and trustee. The question of replacing the Regional Council members, she stated, was also debated and that it was pointed out that the rule book was quite clear, that the vacancies had to be filled by the persons with the next highest votes as the vacancies occurred ie on 7 July. Mrs Dring's statement also showed that it was pointed out, at the meeting, that in preventing these people taking up office it could debar them from standing for the CEC elections.

- 2.21 Mrs Dring's statement continued by stating that, following the debate it was moved and carried that the vacancies (on the Regional Council) that emanated from the expulsions should not be filled.
- 2.22 Mrs Travis argued that, since you must be a Regional Council member to be nominated for the CEC elections, any interference in the Regional Council elections must therefore effect the outcome of the CEC elections which were statutory elections covered by the 1992 Act. She further argued that, at its meeting on 7 July 1999, the Regional Committee decided not to inform the members who were to replace the expelled members on the Regional Council and that this was because those members may then have sought nomination to the CEC. Mrs Travis added that the information as to what took place at 7 July 1999 Regional Committee meeting, was not available to her until June 2000 and that she was not informed of her status as a Regional Council member until January 2000.
- 2.23 At the hearing Mr Travis, on behalf of Mrs Travis, commented that Mr Gregory's actions (in seeking to persuade branches not to vote for Mrs Travis) had been motivated because of a dispute that had arisen between Mrs Travis and Mr Gregory as to the correct way to action a request from an officer of the union who was seeking early retirement. Mr Travis stated that at previous Regional Council elections Mrs Travis had achieved around 28,000 votes, but that as a result of Mr Gregory's actions, in seeking to interfere with the ballot, her share of the vote in the 1999 Regional elections had dropped by some fifty percent to around 14,000 votes.
- 2.24 Mr Travis added that the union rule (rule 11.4) which provided that no member could be eligible for nomination for election to the CEC unless they were a member of the Regional Council was accepted by Mrs Travis. Her complaint, he argued was in two parts. First that there was interference in January/February 1999 in the ballot for seats on the Regional Council that prevented her election to the Regional Council and secondly, that under rule

20.6, having expelled members of the Regional Council, the next in line for those seats should fill the vacancies. The relevant part of rule 11.4 states “Vacancies which occur during the term of office shall be filled by the next highest on the list of unsuccessful candidates in the relevant Section at the last election.”. Mr Travis argued that this was automatic and that the Regional Committee having expelled the seven members of the Regional Council and written to them on 8 July 1999 should also, on that day, have written another letter to each of the seven members next in line for those seats, informing them that they were now members of the Regional Council.

The Union’s Response

2.25 In response to the complaint the union wrote that it agreed that on 7 July 1999 the Regional Committee acting under rule expelled eight members, seven of whom were members of the Regional Council. The following day, the union added, those expelled were informed of the decision of the Regional Committee.

2.26 The union added that it denied that on 7 July 1999 any discussion took place as to whether any resultant vacancy on the Regional Council should be filled, or if so by whom. The union added that after the end of the next Regional Committee meeting, on 14 July 1999, an informal discussion about filling vacant positions on the Regional Committee had taken place.

2.27 The union confirmed that the eight members expelled appealed against that decision by common letter dated 15 July 1999 and added that at the next meeting of the Regional Committee, on 11 August, the Committee filled a number of vacancies on a pro tem basis pending the outcome of the expelled members appeals. This was done, I was informed, to ensure that essential posts were filled and to ensure there was a quorum at meetings of the Regional Committee. It was not, the union stated, thought necessary to fill any vacancy on

the Regional Council and that decision took no account of the CEC elections.

- 2.28 The nominations for elections to the CEC, the union informed me, closed on Monday 12 July 1999. However, as a result of an internal union appeal one additional seat was created in the Birmingham and West Midlands Region and a closing date for nominations to that seat was established as Monday 2 August 1999. The last day for voting in that election was Monday 4 October 1999.
- 2.29 The union informed me that the union's appeal committee, considered the expelled members appeal and, following a hearing, on 25 November 1999, dismissed them. The Regional Committee then, on 12 January 2000 considered the expulsions and took steps to apply Rule 20.6 by inviting those members of the Region "next in line" to attend the next meeting of the Regional Council.
- 2.30 The union submitted that rule 20.6 ensured that a Regional Council vacancy could be filled without the need for a fresh election. The union argued that the rule did not operate to fill vacancies on the Regional Council automatically without the need for intervention by the Regional Committee. Nor did it, the union stated, specify the procedure by which the vacancy was to be filled. Rather, the union argued the rule simply identified who should fill the relevant vacancy ie "the next highest on the list of unsuccessful candidates in the relevant Section at the last election".
- 2.31 The union denied that Mrs Travis was or should have been a member of the Regional Council at any time between 7 July and 4 August 1999 and by so being, was eligible for election to the CEC.
- 2.32 The union argued that it was reasonable for the Regional Committee, on 11 August 1999, not

to fill vacancies on the Regional Council pending the outcome of the appeals by the expelled members. Unlike the Regional Committee (where there was a need to ensure a quorum at its meetings), the union felt there was no need, while the appeals were pending, to fill the Regional Council vacancies. The Regional Committee, the union said, did not take account of the elections to the union's CEC and had acted reasonably in postponing a decision, on the filling of the vacancies, until after the outcome of the expulsion appeals was known.

2.33 Further and alternatively, the union submitted that, if rule 20.6 operated to fill the Regional Council vacancies automatically after the expulsions, as suggested by Mrs Travis, then it followed the Mrs Travis was not excluded from standing as a candidate in the union's CEC elections as she must have been aware of the expulsions and was aware of her position as a "highest loser" in the Regional Council elections.

2.34 At the hearing the union raised doubts regarding the date Mr Osborne had stated his meeting with Mr Gregory had in fact taken place. It was established that Mr and Mrs Travis had left for Australia on union business, with Mr Gregory, on 8 March 1999 (returning on 23 March) and that Mrs Travis' branch had met and voted on the 9 March in her absence. The union therefore argued that the alleged meeting between Mr Osborne and Mr Gregory, if it took place at all, could not have taken place when Mr Osborne's statement said it did (in late February or early March) because the branch had not voted until 9 March and Mr Gregory had been in Australia until 23 March. The union therefore commented that if the meeting had taken place in late February (which was denied) Mr Gregory could not have produced the ballot papers because the branch, at that time, had not yet voted. Also that by the time Mr Gregory could have had a meeting with Mr Osborne, Mr Osborne's branch had voted.

2.35 At the hearing, the union called Mr K Gregory (the Regional Secretary of the Birmingham and West Midlands Region) as a witness. Mr Gregory for the union confirmed that as

Regional Secretary he was (under union rule) entitled to attend and speak at both Regional Council and Regional Committee meetings. He confirmed that he was not, however, a member of the Regional Committee. He confirmed the union's submitted account of the events of 7 July (see para 2.25) and that at no time on that day, whether before, during or after the hearing did he witness or participate in any discussion about filling vacancies that might have arisen if any members were removed or suspended from Office or were expelled. He also confirmed that, on 8 July 1999, letters were sent to the eight members informing them of the Regional Committee's decision (that they be expelled from the union).

2.36 Mr Gregory stated that after the Regional Committee meeting on 14 July 1999, an informal discussion had taken place regarding the effect of the expulsions on the Regional Committee. He explained that three of the expelled members had been members of the Regional Committee and that the Regional Committee consisted of twelve members with a quorum for meetings of eight. The view was expressed, on 14 July, that the expulsion of three members of the Committee could make its meetings vulnerable to being inquorate if just two of the remaining nine members were unable to attend. Mr Gregory stated that this made good sense to him and he therefore invited the members of the Regional Council who had been the three losers with the highest votes in the election, by the Council of Committee members (see para 2.4), to attend the next meeting of the Regional Committee on 11 August 1999. At that meeting, Mr Gregory added, the remaining Committee members discussed the situation and to ensure it kept itself quorate, invited the three onto the Regional Committee. Mr Gregory added that the three were advised that if the appeals were successful, the expelled members would be restored to their positions including membership of the Regional Committee.

2.37 Mr Gregory also added that the Regional Committee, on 11 August, considered what effect the expulsions, and the inviting of Council members onto the Committee, had had on other positions such as the Regional Member Auditors and Regional Trustees. Again Mr Gregory

advised me that the Regional Committee considered it necessary to fill these positions which it did.

2.38 Mr Gregory confirmed that the Regional Committee, on 11 August, then considered the vacancies left, by the expulsions and other movements (para 2.36-2.37), on the Regional Council. He informed me that the Committee took the view that unlike the Committee vacancies and with the appeals pending, there was no urgency or need to fill the Council vacancies at that time. He added that Mrs Travis' assertion that the Regional Committee discussed the Regional Council vacancies at its 7 July meeting and withheld information from her or her colleagues and so denied them candidature for election to the CEC was not true. He stated that at no discussion about the filling of vacancies, whether formal or informal, was there any mention of the elections to the union's CEC. He added that the Committee's whole approach was simply to fill those positions, on the Committee, that needed to be filled and that it was not necessary at that time to fill the vacancies on the Regional Council.

2.39 For the union Mr Bloor also gave evidence at the hearing. He stated he had been a member of the Regional Council and a member of the Regional Committee since 1996. He confirmed he was present at the meeting of the Committee on 7 July 1999 and that no discussion took place on the filling of vacancies left by the expulsions. Mr Bloor further confirmed Mr Gregory's version of the events of meetings on 14 July and 11 August 1999 (see paras 2.37 to 2.38).

2.40 In his submission at the hearing Mr O'Hara referred me to the words of Mrs Justice Smith in the case of *Ecclestone v National Union of Journalists* [1999] IRLR 166. in which Justice Smith had stated that section 47 (of the Act) "... is designed, first, to ensure that a person is not excluded from standing for office by the imposition of unreasonable or unfair criteria or procedures, and also to ensure that he or she is not excluded by the unfair, or unreasonable,

application of criteria or procedures which are fair in themselves.”

- 2.41 Mr O’Hara argued that the use of the word “excluded” was more than the placing of a hindrance or the placing of an obstacle in the path of a candidate it indicated, he stated, a complete and absolute bar on the member being a candidate for election.
- 2.42 He commented that Mrs Travis had not alleged either that the qualification for candidature was of itself unreasonable or the improper exclusion from candidature of a member who had the required qualifications. He thought that Mrs Travis was alleging that she was unreasonably excluded from securing a valid qualification for candidature (ie membership of a Regional Council). He submitted that as such, this complaint fell outside the scope and intent of section 47(1) of the 1992 Act.
- 2.43 Union rule 20.6, Mr O’Hara submitted, ensured that a vacancy on a Regional Council could be filled without the need for a fresh election. He argued that Mrs Travis had implicitly conceded that the rule does not operate to fill vacancies automatically on the occurrence of a vacancy without the need for intervention by the Regional Committee. Nor, he felt, did it specify the procedure by which any such vacancy should be filled. He argued that the rule simply identified who should fill the relevant vacancy.
- 2.44 In whatever way rule 20.6 operated, Mr O’Hara argued, it did so by identifying the member who would then belong to the class of those eligible for nomination for election and that this rule did not fall foul of section 47(3) (see para 1.10) of the 1992 Act. Accordingly, he argued, subsection 47(3) applied to deem the exclusion of Mrs Travis to be not unreasonable.
- 2.45 Mr O’Hara further argued that if Mrs Travis automatically became a member of the Regional Council when the Regional Committee expelled the eight union members, then Mrs Travis was not excluded from standing as a candidate and that her automatic membership of the

Regional Council would have enabled her to stand for election to the union's CEC.

2.46 He argued that the Regional Committee acted reasonably in not taking action to fill any vacancy on the afternoon of Wednesday 7 July 1999 and that the Committee was not under any obligation to do so then, or indeed, within any given period of time. He commented that it was both understandable and reasonable for the Regional Committee not to address the issue at that time at the end of a long and rather traumatic day.

2.47 Mr O'Hara further submitted that the Regional Committee was reasonable in not filling vacancies on the Regional Council pending the outcome of the appeals. He stated that the Committee did not know whether the eight expelled members would appeal and, if they did, how long it would take before the CEC heard the appeals. He submitted that there was no necessity to fill the Regional Council vacancies, whereas it was necessary to fill other positions (on the Regional Committee) left vacant by the expulsions.

Reasons for my Decision

2.48 I found that Mr Travis presented the case on behalf of his wife extremely clearly. Mrs Travis' case was that she had been excluded as a CEC candidate (in breach of the 1992 Act) because she was not a member of the Regional Council. He did not dispute that this was a requirement under the union's rule 18.3. Two reasons were put forward why Mrs Travis argued that this exclusion was unreasonable. First, that the elections to the Regional Council in the spring of 1999 were flawed because of interference in the elections by Mr Gregory, and second, that either she was automatically a member after the expulsions or, that the Regional Committee should have moved to fill those vacancies a lot more rapidly than they did. He further argued that they moved slowly to fill the vacancies for less than an honest reason, which was with the deliberate intent to keep her off the CEC. I have considered these two

arguments separately.

2.49 In the case of the Regional Council elections I have to consider two issues. First, do I have any right to consider them at all and secondly, did any improper interference take place?

2.50 It was clear from the outset and accepted by all parties that I have no locus (for the reasons given in paragraph 1.5 above) to consider the Regional Council elections in isolation from the elections to the Central Executive Committee. The union went further than this and argued that, even though the regional elections did determine who was qualified to stand in the Central Executive elections, I should not take into account any allegations of malpractice surrounding those elections. To do so, it was put to me, would extend the coverage of section 47 to include the unreasonable exclusion of a member from securing a valid qualification for candidature. This, it was argued would create a potentially limitless right to complain in circumstances no matter how remote the connection to elections to a union's principal executive committee. The union suggested that section 47 gave me no separate jurisdiction over anything that happened before nominations opened. I do not accept these arguments by the union.

2.51 Qualification procedures under rule are perfectly legitimate and these will, on occasions, take place before nominations open. A member may be excluded on the basis of reasonable criteria under section 47(1) of the 1992 Act. However, it must be right that I should consider not only whether such qualifications were reasonable, but also whether they were applied in a reasonable manner, (Justice Smith in *Ecclestone v NUJ*). In my view whether or not section 47 applies to particular qualification procedures can only be decided in the circumstances of each case. Of course some events in a qualification process can be so remote as to clearly be outside the scope for proper consideration under section 47 but that does not mean that all events prior to nominations opening are outwith that scope. In this

case the proximity (in both time and directness) of the elections to the Regional Council and of the election to the Central Executive is such as to bring them within the ambit of section 47. Further, the union relied on section 47(3), which it argued deemed the exclusion of Mrs Travis not to be unreasonable. The issues raised before me by the applicant were whether Mrs Travis was in an excluded class and if so, whether she had been excluded at the choice of the union. Both of which required an examination of the facts.

2.52 In considering the question of what, if any, improper action occurred in the Regional Council elections about which Mrs Travis complains I have to rely on the conflicting evidence of Mr Gregory and Mr Osborne. In this context it is a pity that Mr Osborne, for valid reasons, was unable to attend the hearing. I have therefore to consider his evidence essentially as hearsay which neither I nor the union were able to probe with him. Mr Gregory on the other hand was present at the hearing and did answer questions.

2.53 The only real evidence Mrs Travis was able to produce about malpractice in the 1999 Regional Council elections came from Mr Osborne's written statement. Unfortunately, from Mrs Travis's point of view, that statement contained an important error relating to a key matter of dispute. Mr Osborne says in that statement that his meeting with Mr Gregory took place in February 1999 and that at that meeting Mr Gregory showed him how Mrs Travis's branch had voted in the Regional Council election. Those two statements cannot both be true. Mrs Travis's branch did not vote until 9 March. It may be that Mr Osborne was muddled over the dates we do not know and could not explore that with him. Moreover Mr Gregory denied that any such meeting ever took place. I have some doubts about Mr Gregory's statements to me at the hearing regarding his lack of influence over proceedings of Regional Council or Committee meetings. But I cannot conclude, on the basis of the evidence before me, that the improper interference occurred in the elections to the Regional Council as alleged by Mrs Travis. It is for these reasons that I cannot accept Mrs Travis's

first ground for claiming she was unreasonably excluded from standing as a candidate in the election to the union's Central Executive Committee.

2.54 I turn now to the question of whether Mrs Travis was, or should have been, a member of the Regional Council at the time nominations for the Central Executive Committee were open. The first question to be answered here is what does rule 20.6 mean when it says "Vacancies which occur during the term of office shall be filled by the next highest on the list of unsuccessful candidates ..."?

2.55 Rule 20.6 is not clear. At one point Mrs Travis seemed to be arguing that it meant that immediately a vacancy occurred she (by virtue of her position at the top of the list of unsuccessful candidates) automatically became a member of the Regional Council. However that contention is inconsistent with her claim that she was excluded from being a candidate for the Central Executive. If she was a member of the Regional Council at the relevant time she was not excluded from the subsequent election.

2.56 Where union rules lack clarity I have in the past applied three tests to see if they help. First what was the intention of those who framed the rule, second what does the rule taken in the context of the whole rule book seem to mean and third what would the ordinary member reading the rule take it to mean? Unfortunately these tests are not particularly helpful in this case. One thing is clear. The intention of the framers was to avoid the necessity of a new election for each vacancy. But that, along with the absence of any custom and practice evidence or material on the second and third tests, fails to help with the question of how quickly the vacancies should be filled.

2.57 Clarifying rule 20.6 is matter to which the union might give some attention. In the meantime, I have to judge whether the union's interpretation and application of the rule was reasonable

in the circumstances of this case. The test for me to apply is not whether I would have excluded the candidate, but whether the action taken by the union fell within the possible responses which a union acting reasonably could have taken. (see National Association of Teachers in Further and Higher Education (D/6/94) C.O.).

2.58 Mrs Travis argued that it was not reasonable to allow the vacancies on the Regional Council to run for more than six months and that this was a conscious move to exclude her (and others) from standing for the Central Executive. On the question of how, and for what reasons, the decisions to keep the vacancies open, there was again a conflict of evidence. This time between that of Mr Gregory and that of Mrs Dring. Again I had some difficulty with Mr Gregory's evidence. At one point he claimed he had invited Mrs Travis to attend the Regional Council meeting in October 1999 and then, when questioned, could not substantiate this and then stated that at the behest of the Regional Committee he had, in January 2000, invited her to attend the March 2000 meeting of the Council. However, Mr Bloor's evidence was in line with Mr Gregory's. Moreover Mrs Dring's witness statement, on which she was not available to answer questions, contained a number of significant inconsistencies with the official minutes (endorsed by subsequent meetings) of meetings which she had chaired. Therefore, on balance I have to accept the union's version of events.

2.59 Against this background I can understand why the Regional Committee refrained from moving to fill vacancies on the Regional Council until after the appeals of the expelled members had been determined. In taking this action they may or may not have been acting in line with rule 20.6 but were certainly not acting so obviously out of line with it for me to hold that they were unreasonably excluding Mrs Travis from standing as a candidate for the Central Executive Committee in 1999.

2.60 It is for these reasons that I dismissed the complaint by Mrs Travis.

E G WHYBREW
Certification Officer