

**DECISION OF THE CERTIFICATION OFFICER ON APPLICATIONS
MADE UNDER SECTION 5 OF THE TRADE UNION ACT 1984.**

APPLICANT: G STONE

**TRADE UNION: NATIONAL ASSOCIATION OF TEACHERS IN
FURTHER AND HIGHER EDUCATION**

DATE OF DECISION: 30 JUNE 1987

DECLARATIONS

Under section 5 of the Trade Union Act 1984 (the Act) I am empowered to make a declaration applied for by any person who claims that a trade union has failed to comply with one or more of the provisions of Part I of the Act. In making the declaration I am required to specify the provisions with which the trade union has failed to comply.

For the reasons set out below I make the following declarations:

A I declare that in relation to the elections in 1986 of voting members of their National Executive Committee, the National Association of Teachers in Further and Higher Education failed to comply with section 2(1) of the Act in that entitlement to vote in those elections was not accorded equally to all members of the Association.

- B. I further declare that in relation to the holding of a voting position on the National Executive Committee by the General Secretary of the Association, the Association failed to comply with section 1(1) of the Act in that they failed to secure that he held that position by virtue of having been elected at an election in relation to which the requirements of section 2 of the Act had been satisfied.
- C. The Association failed to comply with section 2(9) of the Act in that ordinary members of the Association were unreasonably excluded from standing as candidates in such elections as did take place.

The Application

1. This decision concerns applications under section 5 of the Act made to me in February 1987 by Mr G Stone, a member of the National Association of Teachers in Further and Higher Education (NATFHE). Mr Stone made his applications on alternative grounds alleging that whichever of two bodies established within NATFHE - the National Council or the National Executive Committee - was in law the principal executive committee of the Association, in neither case had they been constituted in 1986 by election procedures which complied with the requirements of Part I of the Act.
2. Specifically, Mr Stone's complaints were that if the National Council was the principal executive committee, then the restrictions under NATFHE's rules which permitted a member to stand as a candidate for election to the National Council only if proposed and seconded by members of a Regional Council operated so as to exclude ordinary members from standing for election.

3. If, however the National Executive Committee was the principal executive committee of NATFHE, then Mr Stone complained that none of the members of the Committee had been directly elected by the ordinary members of the Association; that the Association's rules excluded ordinary members of NATFHE from standing for election to the Committee; that the General Secretary had a vote on the Committee; and that the Committee could include co-opted members.

The Facts

4. NATFHE provided a timetable of the elections held in 1986 for both the National Council and the National Executive Committee, and confirmed that those elections were conducted in accordance with the Association's rules. This meant that, as Mr Stone had alleged, only those proposed and seconded by their Regional Council could stand for election to the National Council; and only members of the National Council were eligible to stand as candidates in the elections for the National Executive Committee and to vote in those elections. The General Secretary, who was a voting member of the National Executive Committee, was not elected by the membership but was appointed by the National Council. In certain circumstances an unspecified number of other persons could be co-opted to the Committee as voting members, but during 1986 and up to the date of Mr Stone's complaint there had been no such co-opted members on the Committee.
5. Before considering the matter further in the light of these facts, it was necessary first to determine which body was NATFHE's principal executive committee within the meaning of the Act. It appeared that from the outset NATFHE had sought to secure compliance with the 1984 Act, and this had included obtaining an opinion from Counsel as to which

body was the Association's principal executive committee. They submitted this opinion in support of their arguments that their principal executive committee was the National Council. I considered these arguments most carefully; but in the light of the Association's rules and the submissions made, my view was that the balance of the arguments led inescapably to the conclusion that the Association's principal executive committee was not the National Council but the National Executive Committee.

6. My reasons for concluding that the Association's National Executive Committee is their principal executive committee can be summarised as follows. The statutory definition says that the principal executive committee of a union is the principal committee of that union exercising executive functions, by whatever name it is known. That definition requires me to concentrate on the carrying out of executive functions, not on the formulation and control of policy. Whilst I am clear that between Annual Conferences of NATFHE the National Council is supreme on matters of policy, my view is that that does not help in the identification of the principal executive committee. Examining the NATFHE rule book I note that a number of functions which I regard as executive in nature are specifically and variously allocated to one or other of the National Council and the National Executive Committee. But it is quite clear that generally it is for the National Executive Committee to conduct the business of NATFHE except when the National Council is actually meeting, which I was informed it does on average eight times per year.

7. Leaving aside the question of policy formulation and control, I found nothing in the rule book to persuade me that the National Executive Committee is subordinate to the National Council when carrying out the day to day business of the Association. When the

Committee is discharging such business there is nothing to say that it is acting on behalf of the National Council. It is true that in addition to its policy role the National Council also has some executive functions, but in the execution of business I take the Council and the Committee to have equal status. I therefore consider that a crucial consideration must be the amount of business handled by each of the two bodies. On this footing it seems indisputable that by far the greater burden falls on the National Executive Committee. It has charge of the business of the Union throughout the year, save for those few days when the National Council is in session.

8. Furthermore, as regards specifically allocated executive tasks, the number and significance of those allocated to the National Executive Committee appear to me to confirm that the Committee has a much greater executive role than the National Council.
9. Having concluded that the principal executive committee of the Association is their National Executive Committee, I now turn to the complaints made by Mr Stone in relation to that Committee.

Reasons for the Declarations

10. Mr Stone's complaint against the National Executive Committee elections in 1986 fell into three parts. His principal concern was with the voting arrangements whereby, as NATFHE acknowledged, only members of the National Council were entitled to vote. Ordinary members of the Union had no entitlement to vote for candidates for the National Executive Committee. Next he challenged the presence, in a voting capacity on the Committee, of the General Secretary and co-opted persons, all without election. Lastly

he complained about the nomination process whereby, as NATFHE again acknowledged, only members of the National Council could stand for election to the National Executive Committee. I take each of these points in turn.

The Voting Arrangements

11. Section 2(1) of the Act requires, with certain express exceptions that:

“Entitlement to vote at the election must be accorded equally to all members of the trade union in question....”

NATFHE have not sought to argue that any of the exceptions to that requirement would permit them to restrict entitlement to vote in the elections for the National Executive Committee to members of the National Council, as they do in pursuance of their Rule 17.1. In the circumstances there is no doubt that, in the 1986 elections for the National Executive Committee, NATFHE failed to comply with section 2(1) of the Act.

The General Secretary and Co-opted Members

12. Section 1(1)(a) of the Act says that it shall be the duty of every trade union to secure that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 has been satisfied.
13. The General Secretary of NATFHE becomes a voting member of the National Executive Committee by virtue of his office. Section 1(2) of the Act requires that in such circumstances the requirements-of-section 1(1) apply to that office: thus it must be subject to an election satisfying the requirements of section 2. It is clear that the General

Secretary was not elected; he was in fact appointed by the National Council under Rule 12.1. These circumstances constitute a breach of section 1(1) of the Act.

14. As regards co-opted members, I have established that there were no co-opted members on the National Executive Committee during the 12 months that preceded Mr Stone's complaint to me. Accordingly NATFHE were not in breach of section 1(1) in this respect at any time during that period. I therefore make no declaration on this part of Mr Stone's case.

The Nomination Process

15. Section 2(9) of the Act requires that:

"No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election."

As indicated earlier, only members of the National Council are able to stand for election to the National Executive Committee of NATFHE. For their part, NATFHE indicated to me that in the event of my concluding that the National Executive Committee was their principal executive committee, they would feel bound to accept that this nomination procedure was too restricted. Accordingly I again find in favour of Mr Stone.

Remedial Steps

16. The 1987 annual elections for the National Executive Committee took place during April/May. The Officers of the Association told me that NATFHE's policy was to comply with the law; consequently, in the light of my declarations on Mr Stone's complaints they undertook to set in train the procedural and constitutional steps necessary in order to hold

fresh elections for the National Executive Committee as soon as practicable this year, in full conformity with the requirements of the Act.

Observations

17. As this case developed it became apparent that NATFHE had not set out to flout the Act. Indeed, on the passing of the Act they had sought legal advice as to their obligations under Part I and had acted on that advice. Unfortunately it was advice with which, after the most careful consideration, I was unable to agree. NATFHE's response, as already indicated, was an unhesitating commitment to put things right and to act upon these findings accordingly.