

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

MS C BEDALE

v

UNISON

Date of Decision:

25 February 2010

DECISION

Upon application by Ms Bedale (“the Claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

I declare that on or around 12 January 2009 UNISON breached paragraph 49 of its Election Procedures for the election of members to its National Executive Council 2009/2011 by property and resources of the Union being used in support of campaigning for prospective candidates in that election.

REASONS

1. Ms Bedale is a member of UNISON (“the Union”, or “UNISON”). By an application received in the Certification Office on 13 July 2009, Ms Bedale made allegations against UNISON arising from the election held in 2009 for members of its National Executive Council (“the NEC”). A complaint was identified and confirmed by Ms Bedale in the following terms:-

“That at a meeting held on or around 12 January 2009 of its Manchester Branch, (Local Government) and thereafter, UNISON breached point 49 of its 2009/2011 Election Procedures, compiled in accordance with Schedule C(7) of its rules, by permitting funds, property or resources to be used to support campaigning for the particular candidates in the 2009 elections to its National Executive Council.

The candidates were for the listed seats in the named region, service group or ‘section’ (and their branch in brackets):

North West Region Seats

General seat: Bob Oram (Manchester Local Government)

Male seat: Jimmy Fallon (Halton Local Government)

Women’s seat: Angela Bowen (Stockport Local Government)

Women’s seat: Elaine Cottrell (Lancashire County Local Government)

Reserve seat: Michelle Bentham (Bolton Health)

National Local Government Service Group

General seat: Carol Lukey (Lancashire County Local Government)

Male seat: Glenn Williams (Sefton Local Government)

Women's seat: Julie Robinson (Ashfield Local Government)

Women's seat: Lynn Poulton (East Sussex Local Government)

National Health Service Group

General seat: Clare Williams (North Tyneside & Wear Health)

Male seat: Eric Roberts (London Ambulance)

Women's seat: Ann Moses

Women's seat: Chris Sullivan

Young Members

Lisa Waldock: (North Yorks Police)

Black Members

Male seat: Mark Clifford (Cumbria County Local Government)

Women's seat: Liz Cameron (Salford Local Government)

Women's seat: June Nelson

The UNISON resources which I believe were used to support campaigning for these candidates included:

Paid time of branch staff - including secretarial facilities to convene the meeting on 12 January 2009;

Branch/union stationery;

Telephone calls at the Branch's expense;

The Branch Office premises (where the meeting was held);

Branch email; and

As the meeting was held in normal working time, I believe that it would also include the use of trade union facility time for those who attended'.

2. I investigated the alleged breach in correspondence. A hearing took place on 5 February 2010. At the hearing, Ms Bedale represented herself but did not give evidence. Mr R McHale, assistant branch secretary of the Cheshire branch, gave oral evidence on her behalf. The Union was represented by Mr Segal of counsel instructed by Mr J O'Hara of Thompsons solicitors. Oral evidence for the Union was given by Mr A Caffery, Manchester branch secretary. Both Mr McHale and Mr Caffery tendered written witness statements. A 191 page bundle of documents was prepared for the hearing by my office containing documents submitted by the parties. The rules of the Union were also in evidence. The parties each submitted a written skeleton argument.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties I find the facts to be as follows:-
4. Ms Bedale has been a member of the Union and its predecessor since about 1980 and has held branch office since before 1993 when UNISON was formed upon the amalgamation of NUPE, NALGO and COHSE. She is currently the joint-branch secretary of the Manchester Community and Mental Health Branch.

5. In 2008, the Union began preparations for the election of members to its NEC who were to hold office between 2009 and 2011. By rule D 7 all elections held under the rules are to be conducted in accordance with schedule C of the rules and any regulations made by the NEC. Paragraph 7 of schedule C gives the NEC the power to determine any matter of procedure relating to a relevant election. Pursuant to these provisions, the NEC agreed and published a document entitled “Election Procedures 2009/2011” (“the Electoral Rules”). The Union accepted that the terms of this document had effect as rules of the Union, where appropriate, and, in particular, that paragraph 49 of that document had effect as a rule of the Union. The essence of paragraph 49 is that, “*UNISON funds, property or resources cannot be used to support campaigning for any particular prospective or confirmed candidate ...*”.
6. The same document set out an election timetable. By this timetable, nominations were to take place between 5 January and 13 February 2009, voting was to take place between 14 April and 15 May, the deadline to submit written complaints to the Returning Officer was 22 May and the results were to be announced on 9 June. The successful candidates were to take up office following the close of the National Delegate Conference in 2009.
7. The Manchester branch of the Union has approximately 10,000 members, who are employed predominantly by Manchester City Council. It is regarded as being a significant branch in the Union’s North West region. The branch has a management team which meets weekly, between meetings of the Branch Committee, to administer the branch. The management team consists of the Branch Chairman, Branch Secretary, Branch Treasurer and eight Assistant Branch Secretaries. The Branch Secretary is Mr Tony Caffery and one of its Assistant Branch Secretaries is Ms Rena Wood. In late 2008, the Manchester branch moved premises to new offices in Quay Street. It was proud of its new surroundings and wished to mark the move with a social event. It was unable to organise such an event before Christmas, as it had intended, but arranged for it to take place on 12 January 2009, one week after nominations had opened in the NEC elections.
8. The events which gave rise to this complaint began when a letter dated 23 December 2008, on Union headed paper, was sent out in Mr Caffery’s name to about 40 “UNISON colleagues”. The full terms of that letter are as follows:

“Dear Colleagues,

I would like to invite you to a small social event at our new branch office on Monday 12th January 2009 at 4pm. As the North West is the biggest region in UNISON a few of us would like to use the opportunity to meet and discuss a strategy for the North West on a number of key issues and challenges facing our members.

Please would you indicate on the tear off slip if you are able to attend and return in the FREEPOST envelope enclosed. Please also indicate if you cannot attend but would like to be involved in future events/discussions around issues affecting our region.

Yours sincerely,

TONY CAFFERY
BRANCH SECRETARY
MANCHESTER BRANCH

.....
NAME

BRANCH

EMAIL ADDRESS

I cannot attend but would be interested in future discussions.

PLEASE PRINT NAME

PLEASE DELETE AS APPROPRIATE AND RETURN THE TEAR OFF SLIP
BY 8TH JANUARY 2009.”

9. Mr Caffery stated in evidence that he did not draft this letter, that it is not his signature that appears on it and that he had not even seen a copy of the letter until after this complaint had been made. He stated that the letter was entirely the work of Ms Wood who had signed the letter in his name. Mr Caffery made no complaint about this, saying that it was customary for many such letters to go out in the name of the branch secretary. Mr Caffery did not know whether the envelope had been addressed to named individuals, but he assumed that it must have been as the invitation was only extended to those with whom the Manchester branch was friendly. He stated, for example, that the branch was friendly towards the Branch Secretary of the Cheshire branch, Ingrid Lee, but that the Assistant Secretary of that branch, Mr McHale was not in the same category. Mr McHale understood this to mean that he was not politically “like minded”.
10. On 7 January 2009, Mr McHale was in the officers’ room of the Cheshire branch when a member of staff came in and said that there was a telephone call from the Manchester branch office asking if anyone would be attending the meeting there on Monday, 12 January. Mr McHale thinks that this person referred to the meeting as being a Regional Strategy Meeting. He had a brief discussion with other officers present and asked the staff member to tell the Manchester branch that they would see if they could get someone to attend. In his evidence, Mr Caffery gave evidence that he thought Ms Wood had asked office staff of the Manchester branch to ring round to find out who might be attending.
11. Mr McHale described himself at the hearing as being an activist on the left of the Union. He was immediately suspicious of the nature of the meeting to be held at the Manchester branch office, as it appeared to him that it was against the guidance and rules of the Union. He stated that he was aware of similar meetings that had been organised by the left within the Union, which had

resulted in disciplinary proceedings against those involved. The guidance in question is entitled “*Democracy in UNISON*” and it states at paragraph 1.6 that “*Any breach of the guidance may amount to conduct prejudicial or detrimental to the Union and could be subject to disciplinary action under rule F*”. Mr McHale explained that, in broad terms, the guidance prohibited branches seeking to develop or change UNISON policy by initiating action which went beyond the branch itself, except where action was taken through the appropriate structures of the Union, e.g. by raising the matter with the relevant regional or national committee. Mr McHale stated that if there was a grouping in the Union organising against the left, he wanted it to be exposed.

12. Mr McHale telephoned three other branch secretaries to find out if they had received a similar invitation. He concluded that “left” branches had almost certainly not been invited to the meeting. He stated that his own branch had a mixture of officers and was not generally perceived as being a “left” branch.
13. Mr McHale decided to ask a friend, the Branch Publicity Officer, Ms Sharon Stanley, to attend the meeting and take notes. She agreed to do so and attended the meeting on 12 January 2009 with the Assistant Branch Secretary, Carol Lawson.
14. About 20 people attended the meeting at the new offices of the Manchester branch on Monday, 12 January 2009. There is, however, a conflict of evidence about what occurred at that meeting. Mr Caffery was present throughout the meeting and gave oral evidence at the hearing before me. Neither the Claimant nor her witness, Mr McHale were present at the meeting. The Claimant relies instead on the written account of the meeting that was prepared by Ms Stanley shortly thereafter and presented to a meeting of the branch committee of the Cheshire branch on 14 January, together with the context in which the meeting occurred. The evidence of Mr Caffery is that the meeting was almost entirely a social event. He and his colleague branch officers had each contributed about £10 for food and drink. People gathered initially in small groups around the food table. Some had a tour of the office. Later, those who stayed sat around the large conference table and, not unnaturally, the topic of conversation turned to Union issues, including the then current NEC elections. Mr Caffery has no recollection of any paperwork being circulated or seeing a written list of candidates in the NEC election. He also does not recall making any concluding remarks or stating that a further meeting would take place on 12 March. He thinks that the meeting ended at about 6pm, when some attendees went to the pub together.
15. On the other hand, Ms Stanley’s note of the meeting records that she arrived at about 4.05pm when all those present were already seated around the large conference table. She states that the meeting was not a social event and that discussions focussed on two topics: strategies for National Conference and nominations for candidates to the NEC. As to the nominations, Ms Stanley recorded the following:

“In particular there was discussion about the left candidates standing for NEC nomination. A list of candidates was distributed, and a request was made that we ‘encourage’ our branches to nominate these candidates, and if

successful, encourage our members to vote for them come election time. Some of the candidates on the list were present at the meeting. ... Discussion then took place regarding timelines for nominations, elections etc. Diane was asked if it was possible, once nominations had closed, that we could produce campaign leaflets for those candidates that we are supporting, and issue those leaflets to branches to send out to members during the election period. Diane said this would be possible. A discussion took place about using branch resources to encourage members to vote and include a list of those candidates being supported by the branch. It was agreed this could be done via newsletters etc. Discussion took place around requests from candidates to speak to AGMs or Branch Committee meetings – the right to accept requests, or indeed decline was discussed. We were told that notes on NEC nominations from the meeting will be sent out to those present.”

Ms Stanley concluded her note by stating:

“Tony closed the meeting by suggesting that we continue to meet every 2 months or so. A date for the next meeting was set for Thursday 12 March, 4.30 at Manchester Branch.”

16. Whilst what occurred at this meeting was in dispute, there was no dispute that Ms Wood sent an email, timed at 18.03 on 12 January 2009, to about 15 people who were present at the meeting that day. The email is in the following terms:

“Noerth (sic) West Network.

*Please email to confirm receipt.
List of nominees.*

*Rena Wood,
UNISON*

*Assistant Branch Secretary,
Manchester UNISON”*

It was agreed that the attachment to this email was a list of 17 names in five categories; North West seats, National Local Government, Health, Young Members and Black Members. Although Mr Caffery’s written witness statement makes no reference to this email, he stated in evidence that he did not draw it up and neither did the branch committee or branch management team. He stated that he presumed it was a list of preferred candidates that had been created by Ms Wood. He further stated that he had no knowledge of any “North West UNISON Network”. Ms Bedale made the point that this could not have been a list of those members who had been nominated by the Manchester branch as it did not make its nominations until 28 January, nor could it have been a list of those members who were to be considered for nomination by the Manchester branch as it could not nominate for those seats in the Health sector in which it had no members.

17. Ms Stanley presented her notes of the meeting of the 12 January at the meeting of the branch committee of the Chester branch on 14 January. The Cheshire branch merely noted the report. It did not decide to take the matter any further. Mr McHale considered this to be unsatisfactory and sent the report to two or three activists at other branches, including Ms Bedale. On 22 January,

Ms Bedale's branch committee decided to register a formal complaint about the actions of the Manchester branch. On 24 January, Ms Bedale wrote to the General Secretary and President. Her complaint was redirected to regional level where it was rejected. Her subsequent escalation of the complaint to national level was also rejected, as was her complaint to the Returning Officer, Electoral Reform Services, under paragraph 50 of the Electoral Rules.

18. There is no evidence of any further meetings being convened by the Manchester branch, similar to the meeting on 12 January.
19. It transpired that four of the persons to whom Ms Wood sent her email of the 12 January were nominated as candidates in the NEC election.
20. Ms Bedale commenced this application to me by a registration of complaint form received at my office on 13 July 2009.

The Relevant Statutory Provisions

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

Section 108A Right to apply to Certification Officer

(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) -(e)*

The Relevant Union Rules

22. The rules of the Union which are relevant for the purpose of this application are as follows:-

D7 Elections

All elections required to be held under these rules shall be conducted in accordance with schedule C and any regulations made by the National Executive Council.

Schedule C: Elections

7 The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election, including the power to determine the method of voting (whether to be by simple majority; by single transferable vote; by multi-transferable vote; or by some other system) provided that the person(s) securing the greatest number(s) of votes according to the system employed shall be the person(s) declared elected, so long as they are and remain eligible for election.

National Executive Council Election Procedures 2009/2011 Procedures for Branches

45 Branches must not allow any access by prospective or confirmed candidates, or their supporters to the (UNISON) electoral roll. This means that branch or

workplace registers of members cannot be used for election purposes. The register of members will only be used for the official distribution of ballot papers. Unauthorised use of the register of members is not permitted by the Data Protection Act.

- 46 *Any branch or group of members that invites a candidate to speak at a meeting about their candidacy in this election, must also extend a similar invitation to all other candidates. Candidates may appoint a representative to attend such a meeting including speaking on the candidate's behalf.*
- 47 *Branch funds may be used to enable meetings to be held, whether by hiring a suitable room, publicising the arrangements for meeting or paying the travel expenses of candidates or their representatives.*
- 48 *Prospective candidates must not visit branches or workplaces, or attend meetings, for purposes of canvassing without the agreement of the branch and unless the same facility has been offered to other candidates.*
- 49 *UNISON funds, property or resources cannot be used to support campaigning for any particular prospective or confirmed candidate with three exceptions:*
- a. The first exception to this will be if a nominating body wishes to advise their members of nominations they have made through their usual channels of communications with members e.g. branch newsletters.*
 - b. The second exception is detailed in paragraph 47 of these procedures.*
 - c. The third exception is detailed in paragraph 50 of these procedures.*

UNISON funds, property or resources' refer to funds, property or resources at national, regional and branch level. It includes (but is not limited to):

- funds*
- secretarial and office facilities*
- computerised information*
- union stationery*
- telephone calls and text messages at the union's expense*
- the paid time of branch staff*
- expenses for travel and subsistence*

Procedures for Candidates

- 50 *For the purposes of seeking nomination a prospective candidate may request a copy of the contact details for all nominating branches from the Member Liaison Unit. This will be supplied free of charge. Any subsequent action in seeking nominations is purely the responsibility of the candidates and shall be at their expense.*

Complaints about the conduct or fairness of elections

- 54 *Any complaint about the conduct or fairness of the election must be received by the Returning Officer by no later than the deadline laid out in the election timetable...*
- 55 *The Returning Officer shall determine the validity of any complaint made about the conduct or fairness of the election. If the Returning Officer is not satisfied that the election complies with the requirements of the law and the UNISON Rule Book; they have the right (if they consider it reasonable) to require that the election be held again, either in whole or part.*

A Summary of the Submissions

23. Ms Bedale argued that the organisation of the meeting of 12 January 2009 by Mr Caffery and his intention to hold similar meetings was a clear breach of the Union's "Democracy in UNISON" guidelines. She accepted that this was not a

breach of a rule that she could bring to me but asserted that it provided context for her formal complaint. She submitted that I should accept the account of the meeting as given by Ms Stanley as this was supported by the terms of the invitation letter of 23 December 2008, by Mr Caffery's acceptance that there was some discussion of candidates at the meeting of 12 January and by the terms of Ms Wood's email of 12 January and its attachment. In Ms Bedale's submission a major part of the meeting was devoted to promoting particular candidates and that it was not correct to say that such discussion was ancillary to a social event. Ms Bedale argued that the resources of the Union that had been used included office facilities, secretarial facilities and the paid time of the branch staff, Union stationery, telephone calls at the Union's expense and trade union facility time for those who attended in normal working time. Ms Bedale commented that she had no objection to individuals circulating campaigning material about candidates but that it must be in their personal capacity and at their own expense, in contrast to what occurred at the meeting convened by the Manchester branch on 12 January.

24. For the Union, Mr Segal accepted that a breach of paragraph 49 of the Electoral Rules would be a breach of the rules of the Union but denied that there had been any such breach. He submitted that I should accept the direct evidence of Mr Caffery that the meeting on 12 January 2009 was a social event with some minimal discussion of Union issues. He noted that Ms Bedale conceded at the hearing that refreshments were served. He also observed that all but one of those named in the attachment to the email had received the required two nominations before 12 January and so campaigning for nominations for them would have been a redundant exercise. In Mr Segal's submission, the word "campaigning" in paragraph 49 is not directed at inhibiting, let alone, prohibiting, discussion amongst Union members/officers as to whom they should nominate or campaign for. He argued that the mischief of paragraphs 45-49 is better categorised as campaigning by writing to members or addressing them at meetings. He did not accept that there would have been a breach of paragraph 49 even if the meeting of 12 January had been expressly convened to discuss which candidates the attendees at the meeting should invite their respective branches to nominate. Mr Segal further submitted that the word "resources" in paragraph 49 should not be interpreted to include the minimal cost of a meeting in a branch office as opposed, for example, to a meeting in a hired room in a pub. He argued that, if so, any telephone call by a branch officer at work seeking to persuade someone to support a particular nominee or candidate would be in breach of paragraph 49. Alternatively, he argued that, even if there was a use of resources to campaign, the use was so limited as to be de minimis and therefore not within the intended scope of paragraph 49.

Conclusions

25. The thrust of Ms Bedale's complaint is as follows:

"That at a meeting held on and around 12 January 2009 of its Manchester Branch, (Local Government) and thereafter, Unison breached point 49 of its 2009/2011 Election Procedures, compiled in accordance with Schedule C(7) of its rules, by

permitting funds, property or resources to be used to support campaigning for the particular candidates in the 2009 Election to its National Executive Council”.

Ms Bedale alleges that the Union resources used in breach of paragraph 49 were as follows:-

- “ 1. *Paid time of grant staff – including secretarial facilities to convene the meeting on 12 January 2009;*
2. *branch/union stationery;*
3. *telephone calls at the branch’s expense;*
4. *the branch office premises (where the meeting was held);*
5. *branch email.”*

26. As conceded by the Union, I find that a breach of paragraph 49 of the Electoral Rules would be a breach of the rules of the Union and within my jurisdiction, having regard to rule D7 and paragraph 7 of schedule C (see paragraph 20 above). Paragraph 49 of the electoral rules is in the following terms:

49. *UNISON funds, property or resources cannot be used to support campaigning for any particular prospective or confirmed candidate with three exceptions:*
- a. *The first exception to this will be if a nominating body wishes to advise their members of nominations they have made through their usual channels of communications with members e.g. branch newsletters.*
 - b. *The second exception is detailed in paragraph 47 of these procedures.*
 - c. *The third exception is detailed in paragraph 50 of these procedures.*

UNISON funds, property or resources’ refer to funds, property or resources at national, regional and branch level. It includes (but is not limited to):

- *funds*
- *secretarial and office facilities*
- *computerised information*
- *union stationery*
- *telephone calls and text messages at the union’s expense*
- *the paid time of branch staff*
- *expenses for travel and subsistence*

27. At the centre of this case is the meeting at the offices of the Manchester branch of the Union on 12 January 2009. I have set out above the disputed evidence of Mr Caffery and Ms Stanley. Mr Caffery’s evidence carries weight as it was given as oral evidence and subject to cross-examination. On the other hand, I am not compelled to accept his evidence on that basis. I noted that his memory of the meeting was not firm. He stated that the events in question were some time ago and qualified most of his responses by stating that they were to the best of his recollection. He stated not only that he did not write the invitation letter of 23 December 2008, which went out under his name, but that he had not seen a copy of it until this complaint was made. He could not explain the reference in that letter to “*future discussions*”. He stated that he had no knowledge of the email of 12 January 2009 and could not explain the reference in it to “*North West Network*”. There were therefore questions which the evidence adduced by the Union failed to answer. It is of course a matter for the Union which witnesses it wishes to call. On the other hand, the statement of Ms Stanley is clear and succinct. It does not purport to be a full note of the events that took place at the meeting on 12 January but it records her understanding of the contentious parts of that meeting. No evidence was called

that cast doubt upon Ms Stanley's good faith. Indeed, the fact that she was accepted at the meeting was an indication that she was not perceived as hostile to the views of the Manchester branch. The evidence of Ms Stanley must therefore be weighed in the context of the evidence as a whole. What then is the context?

28. The letter of invitation of 23 December 2008 is significant in a number of respects. It is written on Union notepaper. It is signed in the name of Mr Caffery, as Branch Secretary of the Manchester branch. It is addressed generically to "*Dear colleagues*", not to named individuals. It expressly refers to the meeting as being both "*a small social event*" and "*an opportunity to meet and discuss a strategy for the north west and a number of key issues and challenges facing our members*". It enclosed a return FREEPOST envelope. It had a tear off slip enabling people to express an interest in attending future events/discussions around issues affecting the region.
29. I accept Mr McHale's evidence that the Cheshire branch office received a telephone call from the Manchester branch office on 7 January 2009, asking if anyone from the Cheshire branch was going to attend a meeting at their new offices on 12 January which would involve some discussion of regional strategy.
30. I further note the acceptance by Mr Caffery that there was some discussion at the meeting on 12 January 2009 of potential candidates in the NEC elections.
31. The email sent by Ms Wood at 18.03 on 12 January 2009 is significant in a number of respects. It was sent by Ms Wood in her capacity as Assistant Branch Secretary. It was sent at or about the time the meeting on 12 January came to an end. It was sent to most of the people who had been present at that meeting. It is headed "*Noerth West Network*". It contained an attachment setting out 17 names which the Union agreed was a list of potential candidates in the NEC election.
32. Focusing firstly on the email, I have no doubt that this was produced and distributed for the purpose of supporting those named as prospective candidates in the NEC election. I find that it was intended to support them in both obtaining nominations and, if nominated, in securing votes. I note that it is advantageous for candidates to receive as many nominations as possible as the names of the nominating branches appear on the election addresses of the candidates and the nominating branches are allowed to circulate their members with the names of the persons nominated by that branch. The email was capable of being used as a demonstration that those named had the support of the Manchester branch and/or those present at the meeting on 12 January. I further find that the email was sent by Ms Wood in her capacity as a branch officer using the email facility made available to her by Manchester City Council to be used as a resource of the Union. Accordingly, I find that the sending of this email used resources of the Union, albeit minimal resources, to support campaigning for particular prospective candidates in the NEC elections in breach of paragraph 49 of the electoral rules.

33. It is against this background that I examine the meeting of 12 January 2009. I accept that part of the purpose of that meeting was to show invited colleagues the new branch offices. However, I do not accept that that was its entire purpose. The meeting was organised to take place seven days after the opening of nominations for the NEC elections, an event of great significance to the Union and its members. In these circumstances, I find that it would be unrealistic for a group of activists meeting at that time not to discuss likely candidates. Such discussion is not in itself a breach of rule. Indeed, in the pursuit of union democracy, it is to be encouraged. The issue I have to determine is whether the organisation and conduct of this meeting involved the funds, property or resources of the Union being used to support campaigning for any prospective candidate. At that time there were no confirmed candidates. The determination of this issue does not turn upon the purpose for which the meeting was called but what took place at the meeting and whether that involves the use of any of the Union's funds, property or resources.
34. Having regard to the terms of the invitation letter of 23 December 2008 and its reference to "*future discussions*", I find that those who attended the meeting on 12 January 2009 expected more than a social event and that, given the ongoing elections, they expected a discussion of potential nominees. As conceded by Mr Caffery, I find there was such a discussion with those present seated around the large conference table. I further find, on the balance of probabilities, that the list of 17 names in the attachment to Ms Wood's email was the product of that discussion. I find that those named in the attachment were the members that those present at the meeting had agreed to promote as prospective candidates. In the words of paragraph 49 of the electoral rules, the meeting agreed to support campaigning for those prospective candidates. In so finding, I prefer the evidence of Ms Stanley to that of Mr Caffery on this matter.
35. I accept that the branch officers each contributed to the cost of food and drink but I find that the inferences to be drawn from this are double-edged. Mr Caffery considered that it helped establish that the meeting was a social event. Equally, however, it could indicate that they were concerned about any significant branch money being spent on the meeting. It could reflect a concern that it was reasonably foreseeable (if not expressly intended) that a list of prospective candidates would be drawn up whose electoral ambitions would be supported by those present. Viewed in this way, the payment for food and drink by the branch officers would reflect a concern that the meeting would be found to be an activity which fell within paragraph 49 of the electoral rules.
36. I further find that property and resources of the Union were used in the production of the list of preferred candidates that was attached to the email of 12 January 2009. The attendees at the meeting were assembled by the use of Union notepaper and telephone calls either paid for by the Union or made available to the Union as a resource by Manchester City Council. Administrative arrangements for the meeting were made by branch officers and/or branch administration staff, acting in their relevant Union capacities. The time of those employed by the Union or those on paid release to the

Union is a resource of the Union. The use of Union premises for the meeting was the use of Union property.

37. For the above reasons, I find that the arrangements for and the holding of the meeting of 12 January 2009 involved the use of Union property and resources to support campaigning for prospective candidates, being the candidates that those at the meeting had agreed to support for nomination and, if nominated, in their campaigns to be elected. Accordingly, the making of the arrangements for and the holding of this meeting constituted a breach of paragraph 49 of the Electoral Rules.
38. Ms Bedale did not attempt to assess the cost to the Union of holding the meeting of 12 January or the cost to the Union of Ms Wood sending her circular email that day. Neither cost would have been substantial. However, I find that the cost would not have been so small as to be categorised as de minimis. I therefore reject Mr Segal's submission that I should find there to have been no breach of paragraph 49 on this ground.
39. On the other hand, Ms Bedale stated that she did not seek an Enforcement Order as she recognised that to require the NEC elections to be re-run at this stage in response to a meeting of such a character would be disproportionate. On the evidence before me, I am unable to assess the impact of the meeting on the result of the election. I note that 10 of the 17 persons named in the attachment to Ms Wood's email were elected to the NEC but I am unable to reach any conclusion as to the contribution made by the meeting and/or the email to their election. I note that each (but one) of the persons named in the attachment to the email already had the minimum number of nominations to stand as a candidate by 12 January 2009. For these reasons I do not consider it appropriate to make an Enforcement Order.

David Cockburn
The Certification Officer