

**DECISIONS 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 D HARRISON**

**v**

**UNITE THE UNION (TGWU SECTION)**

**Date of Decisions:**

**4 June 2009**

**DECISIONS**

Upon applications by Mr Harrison (“the Claimant”) under sections 55(1) and 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I refuse the Claimant’s application for a declaration that Unite the Union breached section 48(1)(b) of the 1992 Act, in the conduct of the election for members of the First Executive Council of the Union in 2008 by allegedly not securing that copies of every election address submitted to it in time were distributed to each of those persons by post along with the voting papers for the election, so far as reasonably practicable.
2. I refuse the Claimant’s application for a declaration that Unite the Union breached section 51(3)(b) of the 1992 Act by allegedly not enabling every person who was entitled to vote in that election to do so without incurring any direct cost to himself so far as is reasonably practicable.
3. I refuse the Claimant’s application for a declaration that Unite the Union breached section 51(4)(b) of the 1992 Act by allegedly not giving every person who was entitled to vote a convenient opportunity of voting by post, so far as is reasonably practicable.
4. I refuse the Claimant’s application for a declaration that Unite the Union breached rule 12.3 of the rules of the TGWU section in the conduct of the election for members of the First Executive Council of the Union in 2008, as alleged in complaints four, five and six.

## REASONS

1. At all material times the Claimant was a member of the TGWU section of Unite the Union) (“the Union”). By a registration of complaint form received at the Certification Office on 25 September 2008, the Claimant made a complaint against his Union of breaches of the 1992 Act and of a rule of the Union. The complaints concerned alleged irregularities in the election to the Executive Council of Unite for the period 2008-2010. The Claimant was the unsuccessful candidate in the election for the position of Territorial Representative for Region 5B of the TGWU section. Following correspondence with my office, he confirmed his complaints in the following terms:-

### **Complaint 1**

*“That between 3 March and 28 March 2008 Unite the Union (TGWU Section) was in breach of section 48(1)(b) of the Trade Union and Labour Relations(Consolidation) Act 1992, by failing to secure that, so far as reasonably practicable, copies of every election address of the candidates were distributed by post with the voting papers to each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B.”*

### **Complaint 2**

*“That between 3 March and 28 March 2008 Unite the Union (TGWU Section) was in breach of section 51(3)(b) of the Trade Union and Labour Relations (Consolidation)Act 1992, by failing to secure, so far as was reasonably practicable, that each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B was enabled to vote without incurring any direct cost to themselves.”*

### **Complaint 3**

*“That between 3 March and 28 March 2008 Unite the Union (TGWU Section) was in breach of section 51(4)(b) of the Trade Union and Labour Relations (Consolidation)Act 1992, by failing to secure, so far as was reasonably practicable, that each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B was given a convenient opportunity to vote by post.”*

### **Complaint 4**

*“That between 3 March and 28 March 2008 Unite the Union (TGWU Section),by failing to secure that, copies of every election address of the candidates were distributed by post with the voting papers to each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5, the union breached rule 12.3 of the rules of the union which required all person entitled to vote to be supplied with a ballot paper.”*

### **Complaint 5**

*“That between 3 March and 28 March 2008 Unite the Union (TGWU Section) by failing to secure, that each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B was enabled to vote without incurring any direct cost to themselves, the union breached rule 12.3 of the rules of the union when it failed to ensure all members received a return pre-paid envelope for the return of their ballot paper”*

### **Complaint 6**

*“That between 3 March and 28 March 2008 Unite the Union (TGWU Section), by failing to secure, that each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B was given a convenient opportunity to vote by post the union breach rule*

*12.3 of the rules of the union when it failed to ensure all members received a return pre-paid envelope for the return of their ballot paper”*

2. I investigated the alleged breaches in correspondence and a hearing took place on 8 May 2009. At the hearing, the Claimant represented himself and provided nine witness statements, including his own. The Union was represented by Mr Stephen Pinder of EAD Solicitors. Mr S Hearn (a director of Electoral Reform Services) was present at the hearing and provided a short witness statement but did not give evidence. Both parties provided written skeleton arguments. The rules of the Union were before me, together with a 149 page bundle of documents prepared by my office for use at the hearing. The Union submitted a further letter at the hearing, which was incorporated into the bundle.

### **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. Mr Harrison joined the Transport and General Workers Union (“TGWU”) in about 1975. He is employed as a driver by Walsall Metropolitan Borough Council where he has been a shop steward and convener since about 1978. He has been a full time convener at his place of work since about 2001 and has served on the General Executive Council of his union between 2006 and 2008, representing a geographical area in Region 5. He was the territorial representative for Region 5 Division B. In 2008 he stood for, what was in effect, re-election.
5. Unite the Union was formed on 27 April 2007, following the amalgamation of the TGWU and Amicus. At the relevant time the union operated with a TGWU section and an Amicus section and, initially, the Executive Councils of the two former unions continued in office. The first joint Executive Council was elected in 2008 and is known as the First Executive Council. It consists of 80 members, 40 from each section. The rules governing this election were the rules of the former relevant unions.
6. The election procedure within the TGWU section of the Union provides for branches to nominate candidates. The branch nominations obtained by candidates are printed on their biographical details, which accompanies the ballot paper. It is generally considered that it is advantageous to have a greater number of branch nominations than one’s rivals. In his election in 2006 Mr Harrison stood against Ms Ryan, the same candidate that he stood against in 2008. In 2006 he received 32 branch nominations and 3,800 votes. Ms Ryan received 11 nominations and 2,869 votes.
7. The process for organising the 2008 elections for the First Executive Council began in September 2007. Electoral Reform Services Limited (“ERS”) was appointed as the statutory Independent Scrutineer. ERS is a long established and reputable organisation with considerable experience in the conduct of trade union elections. The nomination period was from 3 December 2007 to 11 January 2008. Mr Harrison received 38 branch nominations and Ms Ryan received 7.

8. The ballot rules provided for eligible members to be sent the appropriate number of ballot papers, the biographical details as submitted by the candidates and a return freepost/reply-paid envelope addressed to the Independent Scrutineer. These documents were together known as 'the ballot pack'. The ballot paper was attached, by way of a perforation, to a covering letter. The covering letter contained the member's name and address which was positioned to show through the "window" of the dispatch envelope. The dispatch envelope had printed on its outside flap an ERS helpline number for members to call in the event of a query.
9. In addition, the letters sent to branches by the Union and the notices to be exhibited for members gave a freephone telephone number for the 'T&G section ballot enquiry service', which members were invited to ring if they had not received their ballot papers by 18 March. This service was to operate between 18 and 26 March 2008.
10. The voting period was between 3 and 28 March 2008. Ballot packs were sent to over 1.5 million members.
11. Mr Harrison states that on or around 5 March 2008 he received a ballot pack but that it did not include any biographical details or a prepaid return envelope. He states that he made contact with both the Union and ERS and was told by ERS that the missing items would be sent to him. As he had not received them by 11 March, he returned his ballot paper using his own envelope and stamp. Subsequently, on 16 March, he received the missing items from ERS together with a letter of explanation.
12. Mr Harrison states that at about the same time he received a number of calls from members and branch secretaries throughout the region with similar stories. On 12 March 2008 he telephoned the joint General Secretary, Mr Woodley, and emailed him at 8.39 pm that evening. He made a formal complaint against ERS for not doing its job properly and demanded a re-run of the ballot. He copied his email to an Assistant General Secretary, Mr Collins. Mr Collins responded to Mr Harrison at 8.48am the next morning, 13 March, informing him that he had already taken the matter up with Mr Owen Thomas of ERS the previous evening, having been aware of some problems since 10 March.
13. Also on 13 March 2008, ERS wrote to the members whom it considered might not have received a prepaid envelope and/or biographical details, enclosing both items.
14. Also on 13 March 2008, Mr Thomas wrote to Mr Harrison, to explain the outcome of his investigations into Mr Harrison's complaint. Mr Thomas accepted that a small number of ballot packs had not contained return envelopes and that this had been brought to the attention of ERS by a handful of callers to their helpline and to the Union. He stated that, although the total number of callers was in single figures, the problem had been treated very seriously and investigations had shown the problem was in Segment 357 of the

election mailing. This Segment contained 2,668 members. He stated that to be totally sure the problem was fully rectified the whole Segment had been re-mailed with a reply envelope on 14 March. Mr Owen did not accept that there was any material error regarding the mailing of ballot papers or biographical details. As to the ballot papers, he made the point that the members name and address were attached to the ballot papers and so, if a member received a ballot pack at all, he or she must have received the ballot paper. As to the biographical details, Mr Owen had checked the ballot packs that had been returned from Region 5B (on the basis that, with changes of addresses etc, a substantial number of packs are returned by Royal Mail as undeliverable) and had not found any that did not contain biographical details. He stated that, in conducting this exercise, he had found two ballot packs without a reply envelope and both were in Segment 357. He further stated that the ERS helpline had not received a single call concerning a missing biographical detail, which he would have expected as both the covering letter with the ballot pack and the ballot paper refer to the intended enclosures.

15. The results of the election were declared on 1 April 2008. Mr Harrison lost by 113 votes. He received 2,351 votes and Ms Ryan 2,464.
16. On 2 April 2008 Mr Harrison emailed the joint General Secretary stating his wish to appeal against the result of the ballot and requesting a re-run. He also requested a breakdown of the addresses in Segment 357. Mr Harrison argued that those members who had received a voting pack without a prepaid envelope would have thrown their ballot papers in the bin before receiving the second mailing from ERS, thus affecting the result. By an email from ERS of 28 April, Mr Harrison was supplied with the first part of the postcodes to which the re-mailing of Segment 357 was sent.
17. By a letter dated 2 July 2008 Mr Woodley in effect rejected Mr Harrison's request to re-run the ballot. He stated that ERS were confident that they had dealt with the problem for three reasons. First, that ERS do manual checks of packs every hundred items to pick up problems. Secondly, ERS do a more regular weight check, which would have picked up a missing biographical details booklet but might not have picked up something as light as a missing envelope. However, at the hearing, it was clarified that the biographical details for the election in question would have been relatively light, being three pages of A5, printed on both sides. Thirdly, ERS had observed that the Region 5B return rate was in expected numbers. Mr Woodley further stated that only seven members had contacted the Union regarding incomplete ballot packs and all had been sent return envelopes by ERS.
18. Mr Harrison contacted the Certification Office about this matter by letter of 7 August 2008 and completed a registration of complaint form, which was received at my office on 25 September.

19. Mr Harrison submitted eight letters by way of supporting statements, in addition to his own, each dated March or April 2009. These were from:-
- (i) Mr Plimmer, Branch Secretary of 5/998 Branch in Willenhall. He states he received numerous telephone calls from shop stewards and branch members about prepaid return envelopes missing from the ballot packs and that he believed some members had returned their voting papers using their own envelopes and stamps.
  - (ii) Mr Phillips, Branch Secretary of 5/157 Branch in Dudley. He states that he received phone calls from members and shop stewards about missing prepaid envelopes.
  - (iii) Mr Barrett. He states that both he and his wife received ballot packs. His pack did not contain a prepaid envelope or biographical details and his wife's ballot pack did not contain biographical details. Mr Barrett returned his ballot paper in his wife's prepaid envelope.
  - (iv) Mr Walters, Branch Secretary of 5/855 Branch in Walsall. He states that he received regular phone calls from members whose ballot packs did not contain the prepaid envelope or biographical details. He states that he was aware some members returned their voting papers using their own envelopes and stamps.
  - (v) Mr Jackson, Branch Secretary of 5/784 Branch in Sandwell. He states that he was contacted by a number of members (including his wife) who had not received a prepaid envelope.
  - (vi) Mr Moss, Branch Secretary of 5/625 Branch with membership in Cowley. He states that he received reports of ballot packs with missing prepaid envelopes and that replacements were received about two weeks later.
  - (vii) Mr Hartshorn, Branch Secretary of 5/46 Branch in Wolverhampton. He states that the majority of the membership of his branch either did not receive any ballot papers or did not receive a prepaid envelope. He stated that members living in Wolverhampton, Dudley and Birmingham did not have a problem but those living in Walsall and South Staffordshire did have a problem.
  - (viii) Ms Labon, Branch Secretary of 5/189 Branch in Cannock. She states that not all her members received ballot papers.

### **The Relevant Statutory Provisions**

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

#### **Section 48 Election addresses**

- (1) *The trade union shall –*

- (a) *provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and*
- (b) *secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.*

**51 Voting**

- (3) Every person who is entitled to vote at the election must -
  - (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and
  - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (4) So far as is reasonably practicable, every person who is entitled to vote at the election must -
  - (a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
  - (b) be given a convenient opportunity to vote by post.

**The Relevant Union Rules**

21. The rule of the Union which is relevant for the purpose of this application is as follows:-

*12.3 In all ballots of the Union to which this rule applies, the method of voting shall be by the marking of a ballot paper by the person voting and the election shall be organised and conducted with the directions from time to time of the General Executive Council.*

**Conclusions**

**Complaint 1**

22. Mr Harrison's first complaint is in the following terms:

**Complaint 1**

*"That between 3 March and 28 March 2008 Unite the Union (TGWU Section) was in breach of section 48(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992, by failing to secure that, so far as reasonably practicable, copies of every election address of the candidates were distributed by post with the voting papers to each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B."*

23. Section 48(1)(b) of the 1992 Act is in the following terms:-

**48 Election addresses**

- (1) *The trade union shall –*
  - (a) *provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and*
  - (b) *secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.*

### **Summary of submissions**

24. Mr Harrison argued that a number of members, possibly as many as 2,668, had not received the candidates' biographical details at the same time they had received the voting papers. He argued that it was reasonably practicable for them to have done so and that there was therefore a breach of this provision. Mr Harrison submitted that the re-mailing of the members in Segment 357 on 13 March 2008 was not sufficient to correct the error as, by then, many members would already have discarded their ballot papers or voted without the benefit of having considered the candidates' biographical details.
25. Mr Pinder, for the Union, did not concede that voting packs had been sent out without biographical details. He referred to Mr Thomas' report of 30 March 2008 in which Mr Thomas stated that ERS did not receive a single call concerning a missing biographical detail (sometimes called an election address or candidate statement) and that, in his experience, it would be inconceivable that there would be no such calls if the biographical details were missing. Mr Thomas also pointed out, that having checked those voting packs sent to Region 5B which had been returned as undeliverable, he had found no instance of a ballot pack without biographical details. Nevertheless, Mr Pinder did not dispute Mr Harrison's own evidence or the witness statement of Mr Barrett about the absence of any biographical details in their ballot packs. He submitted that the absence of recorded complaints about biographical details by either ERS or the Union demonstrated that the system adopted by ERS for the inclusion of them in the ballot pack was adequate and that, in any ballot of over 1.5 million people, problems are likely to occur. In these circumstances, he argued that the concept of "reasonable practicability" should be applied and on the facts of this case the Union had done all that was reasonably practicable. He noted that the information given to members included helpline phone numbers for the correction of errors. He noted the Union's prompt reaction to Mr Harrison's complaint, the investigation carried out by ERS, the corrective action taken by ERS and the explanations given to Mr Harrison in Mr Thomas' letter of 30 March and Mr Woodley's letter of 2 July.

### **Conclusion – Complaint 1**

26. Section 48(1)(b) of the 1992 Act imposes a duty on the Trade Union to secure an outcome. The outcome to be secured is that the relevant election addresses are distributed to voters "by post along with the voting papers for the election".
27. On the facts of this case, I accept the evidence of Mr Harrison and the witness statement of Mr Barrett that election addresses were not included with the voting papers they received by post from ERS. I also accept the Union's evidence that this was not a widespread occurrence. Nevertheless, there is a potential breach of section 48(1)(b) if even one member does not receive the relevant election address along with the voting papers for that election. In this context, Parliament has injected the qualification that the duty of the Union to secure the stated outcome is "so far as reasonably practicable". The question I

must therefore determine is whether the Union complied with the duty in section 48(1)(b) “so far as reasonably practicable”.

28. The Union appointed a reputable and experienced scrutineer and, on the evidence before me, it appears that the mailing system used by the scrutineer successfully mailed the election address along with the voting papers to all but a few of the electorate of over 1.5 million members. I heard no evidence from ERS about the nature of the problem that was experienced in Segment 357 but it decided to re-issue election addresses to all those in that Segment. It did so on the basis of the complaint from Mr Harrison, without having received any similar complaints on its own helpline. Mr Pinder stated that ERS took this action not because it believed there was a problem but out of an abundance of caution. In these circumstances, it is arguable that the Union should have re-mailed, at the same time, both the election address and another ballot paper so that the election address was distributed by post “*along with the voting paper*”, as required by section 48(1). However such members, whose only problem was the absence of the election address, would then be in possession of two voting papers. To have adopted that solution in the present case, ERS would have had to re-issue 2,668 election addresses and voting papers to members, the vast majority of whom had not complained about any problem with their ballot packs. In the circumstances of this case, I find that the Union did, so far as reasonably practicable, secure that the election addresses were distributed by post to voters along with the voting papers. Although it failed to secure that the two documents were received together in a few cases, I have no evidence that the distribution system would foreseeably give rise to that consequence and the steps which it took upon being informed of the problem were prompt, thorough and effective.
29. For the above reasons, I refuse the claimant’s application for a declaration that Unite the Union breached section 48(1)(b) of the 1992 Act, as alleged.

## **Complaint 2**

30. Complaint two is in the following terms:-

### **Complaint 2**

*“That between 3 March and 28 March 2008 Unite the Union (TGWU Section) was in breach of section 51(3)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992, by failing to secure, so far as was reasonably practicable, that each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B was enabled to vote without incurring any direct cost to themselves.”*

31. Section 51(3)(b) is in the following terms:-

#### **51 Voting**

- (3) *Every person who is entitled to vote at the election must -*
- (a) *be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and*
  - (b) *so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.*
- (4) *So far as is reasonably practicable, every person who is entitled to vote at the election must -*

- (a) *have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and*
- (b) *be given a convenient opportunity to vote by post.*

### **Summary of Submissions**

32. Mr Harrison submitted that the Union had accepted that some members in Segment 357 received ballot packs which did not contain a reply paid envelope. He further submitted that he had returned his ballot paper using his own envelope and stamp, thereby incurring a cost. He further referred to the witness statements of Mr Plimmer and Mr Walters, who stated that they were aware that others had also done so. On that evidence, Mr Harrison argued that the Union had been in breach of its duty to enable members to vote without any direct cost to themselves. He submitted that the Union could not argue that it had solved the problem by re-mailing the members in Segment 357 with prepaid envelopes on 13 March 2008 as this was ten days after voting began and, by then, many members would have either discarded their voting papers or voted at their own expense.
33. Mr Pinder, for the Union, submitted that there was no breach of section 51(3)(b) as all members were put in a position to vote during the balloting period without incurring any direct cost. He accepted that a few members were not able to do so for a part of the voting period but that, in considering this provision, regard must be had to the whole of the voting period. He further argued that even if there was a breach of the underlying obligation in the provision, the Union did enable members to vote at no direct cost to themselves so far as reasonably practicable.

### **Conclusion – Complaint 2**

34. The system for voting adopted in this election provided for a prepaid envelope to be sent to members with the voting papers and so complied fully with section 51(3)(b) of the 1992 Act. However, the Union accepted that some members in this particular election did not receive a prepaid envelope with their ballot packs. It attempted to remedy this error by re-mailing a prepaid envelope to the entire membership in the mailing segment in which the errors had been found. The voting period was between 3 and 28 March. The re-mailing exercise took place on 13 March, which is some 15 days before the end of the voting period and the day after the problems had been raised with the Union by Mr Harrison. On these facts I find that the Union did, so far as reasonably practicable, enable relevant members to vote at no direct cost to themselves.
35. For the above reasons, I refuse the Claimant's application for a declaration that Unite the Union breached section 51(3)(b) of the 1992 Act as alleged.

### **Complaint 3**

36. Complaint 3 is in the following terms:-

### **Complaint 3**

*“That between 3 March and 28 March 2008 Unite the Union (TGWU Section) was in breach of section 51(4)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992, by failing to secure, so far as was reasonably practicable, that each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B was given a convenient opportunity to vote by post.”*

37. Section 51(4)(b) is in the following terms:-

#### **51 Voting**

*(4) So far as is reasonably practicable, every person who is entitled to vote at the election must -*

- (a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and*
- (b) be given a convenient opportunity to vote by post.*

### **Summary of Submissions**

38. Mr Harrison submitted that this complaint is based on the same facts as the alleged breach of section 51(3)(b), namely the failure to supply a prepaid envelope. He argued that in practice most people vote in the first two weeks of an election period and, if a member does not have a prepaid envelope in this period, the member has not been given a convenient opportunity of voting by post. Although Mr Harrison’s original complaint did not assert that any members had failed to receive a ballot pack at all, he noted that the witness statements of Mr Hartshorn and Ms Labon referred to such people, whom he argued had been denied a convenient opportunity to vote by post.
39. Mr Pinder, for the Union, submitted that this complaint was misconceived insofar as it concerned any failure to supply a prepaid envelope at the outset of the voting period. He maintained that the issue of voting without cost was dealt with by section 51(3)(b) and that section 51(4)(b) was concerned with other issues, such as the length of the voting period. As to any complaint about members who did not receive a voting pack, Mr Pinder argued that this was a new matter which was not in Mr Harris’ original complaint and one which he could not now raise as particulars of this breach. Nevertheless, Mr Pinder argued in the alternative that insufficient evidence of any such breach had been advanced.

### **Conclusion – Complaint 3**

40. In my judgment, section 51(4)(b) of the 1992 Act does not engage the issue of whether relevant members are unable to vote at no direct cost to themselves. Parliament has provided for this issue to be dealt with expressly in section 51(3)(b) and it is to be inferred that it has done so to the exclusion of its consideration in other provisions. The purpose of section 51(4)(b) is that members have an opportunity of voting by post without inconvenience. Excluding the issue of the cost of the envelope and stamp, I find that the Union did give relevant members a convenient opportunity to vote by post, having regard in particular to the information provided to voters to rectify errors and the length of the voting period.

41. I also find that Mr Harrison cannot raise in his skeleton argument further particulars of this alleged breach, namely an allegation that some members did not receive a ballot pack at all, without seeking a formal amendment of his complaint and giving the Union an opportunity to take instructions on the new allegation. Mr Harrison did not ask to amend and I did not grant an amendment. In any event, even were I prepared to consider this new way of putting the alleged breach of section 51(4)(b), I find that Mr Harrison has not adduced sufficient evidence to make it good. His evidence is mainly hearsay, having been received by branch secretaries and contained in witness statements which have not been subject to cross-examination. Some members may or may not have received ballot packs but there is no evidence that those members were eligible to vote, whether they had recently moved house and not notified the Union of their new address or failed to receive a voting pack for any other legitimate reason. To make good such a complaint the usual starting position is likely to be that those who have not received the balloting materials are named, so enabling the Union to investigate each alleged failure. The Union would then be in a position to investigate whether an eligible member has not been given a convenient opportunity to vote by post and, if so, whether it can avail itself of the defence that it had done everything reasonably practicable to comply. The mere assertion, especially as hearsay in correspondence, that some members did not receive the ballot pack is not good enough.
42. For the above reason I refuse the Claimant's application for a declaration that Unite the Union breached section 51 (4)(b) of the 1992 Act, as alleged.

### **Complaints 4, 5 and 6**

43. Complaints 4, 5 and 6 are in the following terms:-

#### **Complaint 4**

*"That between 3 March and 28 March 2008 Unite the Union (TGWU Section), by failing to secure that, copies of every election address of the candidates were distributed by post with the voting papers to each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5, the union breached rule 12.3 of the rules of the union which required all person entitled to vote to be supplied with a ballot paper."*

#### **Complaint 5**

*"That between 3 March and 28 March 2008 Unite the Union (TGWU Section) by failing to secure, that each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B was enabled to vote without incurring any direct cost to themselves, the union breached rule 12.3 of the rules of the union when it failed to ensure all members received a return pre-paid envelope for the return of their ballot paper"*

#### **Complaint 6**

*"That between 3 March and 28 March 2008 Unite the Union (TGWU Section), by failing to secure, that each person entitled to vote in the Unite the Union (TGWU Section) First Executive Council Election for the Territorial Representative for Region 5B was given a convenient opportunity to vote by post the union breach rule 12.3 of the rules of the union when it failed to ensure all members received a return pre-paid envelope for the return of their ballot paper"*

44. Rule 12.3 of the Rules of the TGWU section of the Union provide as follows:-  
**12.3** *In all ballots of the Union to which this rule applies, the method of voting shall be by the marking of a ballot paper by the person voting and the election shall be organised and conducted with the directions from time to time of the General Executive Council.*

### **Summary of Submissions**

45. Mr Harrison was unable to state how this Rule was breached. Although he still maintained that the breaches occurred he stated that it was difficult to find where in the Rules, as the Rules were not expansive or descriptive enough.
46. Mr Pinder, for the Union, argued that the Union had complied with the obligations contained in Rule 12.3 and that there was clearly no breach.

### **Conclusion – Complaints 4, 5 and 6**

47. Rule 12.3 creates two obligations. First, that “*the method of voting shall be by the marking of a ballot paper by the person voting*”. Secondly, that “*the election shall be organised and conducted with the directions from time to time of the General Executive Council*”. It is not contended by Mr Harrison that the Union failed to comply with either of these obligations. Further, Mr Harrison did not submit that the ballot rules were the rules of the Union for these purposes. He stated that they were just guidance for candidates and branch secretaries, to make them aware of how the ballot is conducted and its timescale. In any event, Mr Harrison stated that they were not sufficiently descriptive to cover the situation about which he complains. In my judgment Mr Harrison has not advanced a case that Rule 12.3 has been breached and I so find.
48. For the above reasons I refuse the Claimant’s application for a declaration that Unite the Union breached Rule 12.3 of the Rules of the TGWU section as alleged in complaints 4, 5 and 6.

**David Cockburn**  
**The Certification Officer**