

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

**MS F M LEE**

**v**

**NATIONAL ASSOCIATION OF SCHOOLMASTERS  
UNION OF WOMEN TEACHERS  
(No 3)**

**Date of Decisions:**

**18 October 2007**

**DECISION**

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

- (i) I refuse to make the declaration sought by the Claimant that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 6(d)(v) of the Rules of the Union by holding a Special Conference without ensuring that two representatives elected from the Islington Local Association and other Local Associations, constituted under Rule 8, were present.
- (ii) I refuse to make the declaration sought by the Claimant that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 6(d)(vi) of the Rules of the Union by holding a Special Conference without ensuring that an additional representative elected from the Islington Local Association and other Local Associations, constituted under Rule 8, was present.
- (iii) Ms Lee withdrew her complaint that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 6(j)(iii) of the Rules of the Union by holding a Special Conference without twenty-one days notice being given to the Islington Local Association and other Local Associations. This complaint is dismissed on withdrawal.
- (iv) (a) I make the declaration sought by the Claimant that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 6(j)(iv) of the Rules of the Union by holding a Special Conference at which there were representatives present who were not duly elected as required by Rule 6(d).

- (b) When I make a declaration I am required by section 108B(3) of the 1992 Act to consider whether an enforcement order is appropriate. I do not consider it appropriate to make an enforcement order in respect of the declaration I have made.
- (v) I refuse to make the declaration sought by the Claimant that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 27(a)(i) of the Rules of the Union by a Special Conference having approved changes to the Rules without the Union having given Local Associations' members the required notice in writing of the proposed amendments.

## **REASONS**

1. The Claimant is a part-time teacher and a member of the National Association of Schoolmasters Union of Women Teachers ("the Union" or "the NASUWT"). By an application dated 15 September 2006 the Claimant made five complaints against the NASUWT arising from a Special Conference held by the Union on 29 April 2006. Following correspondence with the Claimant the complaints which she wished to pursue were confirmed by her in the following terms:-

### **Complaint 1**

*"that on 29 April 2006 in breach of rule 6(d)(v) of the Rules of the Union a Special Conference of the Union was held without the Union ensuring that two representatives elected from the Islington Local Association and other Local Associations constituted under rule 8 of the rules of the Union were present"*

### **Complaint 2**

*"that on 29 April 2006 in breach of rule 6(d)(vi) of the Rules of the Union a Special Conference of the Union was held without the Union ensuring that an additional representative elected from the Islington Local Association and other Local Associations constituted under rule 8 of the rules of the Union was present"*

### **Complaint 3**

*"that on 29 April 2006 in breach of rule 6(j)(iii) of the Rules of the Union a Special Conference of the Union was held without twenty-one days notice of the Special Conference being given to the Islington Local Association and other Local Associations"*

#### **Complaint 4**

*“that on 29 April 2006 in breach of rule 6(j)(iv) of the Rules of the Union a Special Conference of the Union was held without the Union ensuring the representatives present were those required by rules 6(d)(v) and 6(d)(vi) of the rules of the Union”*

#### **Complaint 5**

*“that on or around 29 April 2006 in breach of rule 27(a)(i) of the Rules of the Union a Special Conference of the Union approved changes to the rules of the Union without the Union having given Local Associations’ members notice in writing of the proposed amendments to the rules not less than three months prior to the date of the Special Conference”.*

2. The hearing took place on 27 September 2007, having been postponed from 15 May at the Claimant’s request. At the hearing, the Claimant represented herself. She called no witnesses and did not provide a witness statement. The Union was represented by Mr Ford of counsel instructed by Mr E Cooper of Russell Jones and Walker, solicitors. Evidence for the Union was given by Mr Bartlett, Deputy General Secretary and Mr Darke, Senior Assistant Secretary, each of whom provided a witness statement. A 154 page bundle of documents consisting of relevant correspondence/documents was prepared for the hearing by my office. A second bundle of 132 pages contained the Rules of the Union, the Model Rules of the Islington Local Association and a legal authority. Mr Ford provided a 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. The Claimant’s complaints concerned the Special Conference held by the Union on 29 April 2006 to amend its Rules; specifically, whether the Union had complied with certain of its Rules relating to the composition of that Special Conference and the giving of notices.
5. The Claimant teaches at the Central Foundation Boys School, Islington and is a member of the Islington Local Association (“the ILA”) of the Union. She is an experienced Union activist, having served as the Treasurer and the Health and Safety Officer of the ILA and on the National Executive. The Claimant has made two previous complaints to me against her Union and also represented Mr Tyrrell, a colleague at her school, in his complaint to me. Mr Tyrrell’s case concerned the validity of the elections for officer positions within the ILA in 2005. I decided the case of **Tyrrell v NASUWT (CO/D/35-41/06)** on 5 October 2006. In that case I found that the ILA was in a state of some disarray. It would appear that little has changed. The ILA has about 225 members but the Claimant gave evidence that only two or three of its meetings

have been quorate since 2002. In recent elections just over 30 of its members voted. Furthermore, there are two competing factions within the Local Association. One faction consists of the Claimant, Mr Tyrrell and others. The other faction consists of Mr Robbins, Mr Simkins and others.

6. On 11 January 2006, Ms Chris Keates, General Secretary of the Union, sent an e-mail to all NASUWT Local Associations in which she gave notice of proposed amendments to the Rules pursuant to Rule 27(4)(i). She sent, as an attachment to the e-mail, the current rules, the proposed amendments and a version of the rules as they would appear if the amendments were agreed. Hard copies of the same documents were posted to the secretaries of all Local Associations on the same day. At that time, it was proposed that the Rule changes would be debated at the Union's Annual Conference to be held between 11 and 15 April 2006.
7. Later in January 2006 the National Executive met to consider the detailed arrangements for Annual Conference. It was then decided that the Rule changes would be debated at a dedicated Special Conference, having regard to the number and importance of the proposed changes. Accordingly, on 27 January 2006, the General Secretary sent a further e-mail to the Local Associations. This e-mail was addressed to "All local and negotiating secretaries" with copies to members of the National Executive and Regional Organisers. It stated that it was formal notice of a Special Conference to be held at Birmingham on Saturday 29 April 2006. A further copy of the proposed Rule changes and a copy of the Rules with the proposed rule changes were attached.
8. As I observed at paragraph five of the decision in **Tyrrell v NASUWT**, there has been some dispute as to what are the Model Rules which apply to the ILA. As in that case, however, the Union has accepted that the Model Rules which appear in this hearing bundle should be the Rules under which this matter is adjudicated, whilst reserving its position as to what are the Rules of the ILA for any other purpose. By Model Rule 13, the representatives of the Local Association at any National Special Conference "*shall be members of this Local Association and shall be elected by secret ballot of those present at a General Meeting*". The Model Rules further provide that the quorum at a General Meeting of the Local Association shall be 8 members.
9. The Union does not dispute that there was no General Meeting of the ILA held at which delegates to this Special Conference in April 2006 were elected.
10. Notwithstanding the failure of the ILA to elect delegates to Special Conference at a General Meeting, the Union received a form from the ILA entitled "Notification of Delegates" to the Special Conference. This gave written notification that the delegates from the ILA would be Greg Robbins and Peter Simkins. The form asks the following question: "*Delegation agreed at (which meeting and date)*". The response on the form was "*Delegate meeting 13/4/06*". I observe that this was during the period of the Annual Conference. The form also states that it was completed on the basis of information supplied by Greg Robbins, who is described as the Secretary.

11. Mr Darke gave evidence that there had been previous problems about people putting themselves forward for Conference who were not entitled to do so and that the "Notification of Delegates" form had been introduced to deal with such problems. However, the administrative checks on the form carried out by the Union were restricted to the two problems that had previously been encountered; namely whether the subscriptions of the proposed delegates were up to date and whether they were members of the Local Association which they purported to represent. Mr Robbins and Mr Simkins passed both these tests.
12. The Special Conference took place on 29 April 2006 with Mr Robbins and Mr Simkins present as the delegates for the ILA. All but 3 of the 23 proposed amendments were carried by the required two-thirds majority of votes cast. The voting procedure had three possible stages. First, the delegates were asked to vote by show of hands with each delegate raising the accreditation card for that Local Association. In many cases this showed an overwhelming majority which was ruled upon by the President as satisfying the two thirds majority. If there was no challenge to this ruling, the amendment was carried. If the President considered that there was no overwhelming majority, she or he could call for scrutineers to count the number of delegates voting each way. If this did not give a clear and uncontested result, there would be an actual count of the card vote. At this Conference there was only one card vote, at which the proposed amendment was lost by 66,229 votes against to 58,696 votes in favour. All the other votes clearly achieved or failed to achieve the two thirds majority according to the uncontested rulings of the President. The ILA had a vote equivalent to its membership, namely about 225 votes.
13. The complaints were made to me by the Claimant on a registration of complaint form dated 15 September 2006.

### **The Relevant Statutory Provisions**

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

***S.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) ...*
- (b) ...*
- (c) ...*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) ...*

***S.108B Declarations and orders***

*(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements-*

- (a) *to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
- (b) *to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

## **The Relevant Union Rules**

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

### **6. Conference**

*(a) The annual meeting of the Association shall be Conference.*

*(b) The supreme government of the Association shall be vested in Conference and the decisions of Conference and of any Special Conference held in accordance with Rule 6(j) shall be binding on all members irrespective of class of membership.*

*(c) Conference shall normally be held during the school Easter holidays on such date or dates and at such place as appointed by the National Executive which date and place shall be published to the membership by the National Executive in such manner and at such time as the National Executive considers necessary for the efficient organisation of Conference.*

*(d) Conference shall comprise the following representatives who shall have speaking and voting rights:*

*(i)-(iv)...*

*(v) Two representatives elected by each Local Association constituted under Rule 8;*

*(vi) One additional representative elected by each Local Association constituted under Rule 8 for every hundred members over and above the first hundred members of that Local Association;*

*(vii)...*

*The full names and addresses of the representatives elected by Local Associations and Federations under (iv), (v) and (vi) above shall be submitted to the General Secretary by the Federation or Local Association concerned to be received by the General Secretary not less than six weeks before the first day of Conference.*

*For the avoidance of doubt any representative elected under (iv),(v) or (vi) above shall be a member of or delegate to the Local Association or Federation electing him/her as the case may be.*

*(j) A Special Conference shall be held:*

*(i) if the National Executive so considers necessary; or*

*(ii) on the request to the General Secretary of at least ten Local Associations together representing not less than one third of the membership of the Association;*

*for the purposes of conducting such business as shall be specified by the National Executive or by the Local Associations concerned in their request for the Special Conference.*

*(iii) Twenty-one days notice of a Special Conference shall be given to the Association.*

*(iv) A Special Conference shall comprise the same representatives as under (d) above. Notice of the full names and addresses of Local Association and Federation representatives shall be submitted to the General Secretary by the Federation or Local Association concerned to*

*be received by the General Secretary not less than seven days before the first day of Conference.*

#### **7. The National Executive**

*(j) The National Executive shall, subject to these Rules and to the decisions of Conference have full power and authority to take such action as it deems necessary for the conduct of the Association's affairs and the realisation of the objects set out in Rule 3.*

*Without prejudice to the generality of this power the National Executive shall:*

*(i) subject to ratification at the Conference immediately following such decision, make such bye-laws and regulations as to the management of the Association not inconsistent with these Rules as the National Executive may consider desirable and to rule upon any question as to the construction of any Rule, bye-law or regulation;*

#### **8. Local Associations**

*(a) The National Executive shall have power to form, dissolve or amalgamate such Local Associations as it sees fit subject to such criteria as are approved by Conference from time to time. Any decision taken by the National Executive in accordance with this paragraph shall be reported for ratification to the Conference immediately following that decision.*

*(b) The National Executive shall publish model rules for the conduct of Local Association business which rules shall be adopted by each Local Association save that the National Executive may approve any such local variations requested by a Local Association as it sees fit.*

#### **12. National Officers' Committee**

*(d) Between meetings of the National Executive the National Officers' Committee shall conduct the business of the Association.*

#### **27. Amendment to Rules**

*(a) An amendment to these Rules may be proposed by:*

*(i) The National Executive by giving notice to the Local Associations in writing of the proposed amendment to these Rules not less than three months prior to the date of Conference or any Special Conference called to consider amendments to these Rules.*

*(c) An amendment to these Rules shall be made only by Conference or a Special Conference and shall require a two-thirds majority of the votes cast at that Conference.*

16. The Model Rules of the Islington Local Association relevant to this application are as follows:

#### **13 CONFERENCE**

*(a) The Local Association shall be represented at national Conference and at any national Special Conferences.*

*(b) Representatives to the national Conference and to any national Special Conferences shall be members of this Local Association and shall be elected by secret ballot of those present at a General Meeting.*

*(c)-(f)...*

## Conclusions

### Complaint 1

17. The Claimant complained that

*“on 29 April 2006 in breach of rule 6(d)(v) of the Rules of the Union a Special Conference of the Union was held without the Union ensuring that two representatives elected from the Islington Local Association and other Local Associations constituted under rule 8 of the rules of the Union were present”.*

18. Rule 6(d)(v) provides that

*(d) Conference shall comprise the following representatives who shall have speaking and voting rights:  
(i)-(iv)...  
(v) Two representatives elected by each Local Association constituted under rule 8;*

19. I deal with the substance of the Claimant’s complaint under this head in my decision on Complaint 4. I find, however, that it is misconceived to bring a complaint about the composition of Special Conference under Rule 6(d) as the composition of Special Conference is dealt with expressly under Rule 6(j).

20. Rule 6(a) states, *“The annual meeting of the Association shall be Conference”*. This indicates strongly that “Conference”, for the purposes of Rule 6, is the annual meeting. This view is supported by Rule 6(b) which makes a distinction between Conference and Special Conference. Accordingly, in my judgment, Rule 6(d), in providing for the composition of “Conference”, does not also provide for the composition of Special Conference. The composition of Special Conference is dealt with expressly in Rule 6(j), albeit with reference back to Rule 6(d).

21. For the avoidance of doubt, some of the more general provisions of Rule 6 may apply equally to both Special Conference and Annual Conferences, by necessary implication. What I find, however, is that the calling and composition of a Special Conference is dealt with specifically in Rule 6(j) and that this excludes the equivalent provisions elsewhere within Rule 6 which relate to the annual meeting.

22. Had I found for the Claimant on this complaint in relation to the representatives of the ILA, I would not have found for her as regards her allegations that the representatives of other Local Associations were not duly elected. The Claimant adduced no evidence that this was the case and I find her allegations in this regard to be unsubstantiated.

23. For the above reasons, I refuse to make the declaration sought by the Claimant that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 6(d)(v) of the Rules of the Union by holding a Special Conference without ensuring that two representatives elected from



the Islington Local Association and other Local Associations, constituted under Rule 8, were present.

### **Complaint 2**

24. The Claimant complained that:

*"on 29 April 2006 in breach of rule 6(d)(vi) of the Rules of the Union a Special Conference of the Union was held without the Union ensuring that an additional representative elected from the Islington Local Association and other Local Associations constituted under rule 8 of the rules of the Union was present".*

25. Rule 6(d)(vi) provides that:

*"(d) Conference shall comprise the following representatives who shall have speaking and voting rights:*

*...*

*(vi) One additional representative elected by each Local Association constituted under Rule 8 for every hundred members over and above the first hundred members of that Local Association;"*

26. For the same reasons as I have given in Complaint 1, I refuse to make the declaration sought by the Claimant that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 6(d)(vi) of the Rules of the Union by holding a Special Conference without ensuring that an additional representative from the Islington Local Association and other Local Associations, constituted under Rule 8, was present. However, I deal with the substance of this complaint in my decision on Complaint four.

27. Had I found for the Claimant on this complaint in relation to the representatives for the ILA, I would not have found for her as regards her allegations that representatives of other Local Associations were not duly elected. The Claimant adduced no evidence that this was the case and I find her allegations to be unsubstantiated.

### **Complaint 3**

28. The Claimant withdrew this complaint at the hearing and I accordingly order that it is dismissed upon withdrawal.

### **Complaint 4**

29. The Claimant complained that:

*"on 29 April 2006 in breach of rule 6(j)(iv) of the Rules of the Union a Special Conference of the Union was held without the Union ensuring the representatives present were those required by rules 6(d)(v) and 6(d)(vi) of the rules of the Union".*

30. Rule 6(j)(iv) provides that:

*(j) A Special Conference shall be held:*

*(iv) A Special Conference shall comprise the same representatives as under (d) above. Notice of the full names and addresses of Local Association and Federation representatives shall be submitted to the General Secretary by the Federation or Local Association concerned to be received by the General Secretary not less than seven days before the first day of Conference.*

31. I accept the Claimant's submission that the effect of Rule 6(j), which provides that a Special Conference "*shall comprise the same representatives as under (d) above*" is to effectively incorporate into Rule 6(j) the relevant provisions of Rule 6(d). Accordingly, I find that there would be a breach of Rule 6(j) if the Special Conference in April 2006 did not comprise elected representatives, as provided for in Rule 6(d) (v) and (vi).
32. Rule 6(d)(v) and (vi) both provide that Conference shall comprise representatives elected by each Local Association constituted under Rule 8. Rule 8(b) provides for there to be Model Rules for the conduct of each Local Association. I have discussed the Model Rules of the ILA at paragraph 8 above and find that they require the representatives of the ILA to a Special Conference to have been elected at a quorate General Meeting of the Local Association.

#### Summary of Submissions - Complaint 4

33. The Claimant submitted that Rule 6(j) stipulates how a Special Conference is to be comprised and relied upon the words "*shall comprise*". As to Rule 6(d)(v) and (vi), the Claimant emphasised the word "elected" and the reference to the Model Rules. In her submission there was a clear breach of Rule 6(j) as there had been no General Meeting of the ILA to elect representatives to the Special Conference in April 2006. The Claimant also asserted that there were other Local Associations in the London District in which the representatives to the Special Conference had not been properly elected.
34. Mr Ford, for the Union, submitted firstly that Rule 6(j) does not require the Union to secure that the appropriate number of representatives from each Local Association attends Special Conference, with the consequence that no Conference could be held unless all the delegates attended. Secondly, Mr Ford submitted that Rule 6 does not require the Union to guarantee that the representatives of each Local Association are properly elected at a local level. He maintained that, if this were the case, the Rule would be unworkable as it would require an impractical level of supervision by the Union. He accepted that the words "shall comprise" in Rule 6 mean that Conference shall consist of the representatives listed and not other persons but he argued that if the Union was properly notified of the name of a delegate, it was entitled to assume that the person was duly elected. Mr Ford commented that the Union would of course investigate any complaint that a purported representative was not duly elected, as it had done in the case of someone who had purported to be a representative of the Southwark Local Association in 2004. He argued that the Claimant's real complaint was that there had been a breach of the ILA

Model Rules but that she could not successfully argue that there had been a breach of Rule 6.

#### Conclusion - Complaint 4

35. Rule 6 is of fundamental importance to the governance of the Union. It concerns, amongst other things, the composition of the Annual Conference and any Special Conference. Rule 6(b) vests Conference with the supreme government of the Association and the importance of a Rules Revision Special Conference is self-evident.
36. Against this background, the Union accepts that there was no quorate General Meeting of the ILA to elect its representatives to the Special Conference in April 2006 and that accordingly Mr Robbins and Mr Simkins were not entitled to attend that Special Conference as participants.
37. In my judgment, Rule 6(j) imposes a requirement on the Union that any Special Conference shall comprise the representatives elected in accordance with the Rules and no others. I accept Mr Ford's submission that Rule 6(j) does not require the Union to secure that the appropriate number of representatives from each Local Association attends Special Conference. Whether a Local Association decides to elect some or all or none of the representatives to which it is entitled is a matter for the Local Association. Accordingly, I find that there has been no breach of Rule 6(j) by the ILA not having elected an additional member under Rule 6(d)(vi) as it was entitled to do. In my judgment, Rule 6(j) is not concerned with whether a local association exercises its full entitlement to send representatives to a special conference, but with defining the nature of that entitlement, thereby excluding those not entitled.
38. Mr Ford argued that it would be unworkable if Rule 6(j) were to be interpreted as imposing a requirement on the Union that only those entitled to attend at a Special Conference should do so. I disagree. I find that the wording of Rule 6(j) is clear and unambiguous. It provides that a Special Conference "*shall comprise*" those provided for by the Rules. The use of the mandatory word "shall" is not only a clear statement of the drafter's intention, but it is neither surprising nor exceptional having regard to the importance of the bodies to which those representatives are being elected. Although the obligation which this Rule places on the Union is a high one, it is not one which renders the Rule unworkable. The Union must take such steps as it considers appropriate to avoid persons who are not entitled to attend and vote at Special Conference doing so. The steps it in fact takes will depend on its judgement of the risk that persons not so entitled will attend. Indeed, this appears to have been the approach of the Union hitherto. I heard evidence that when problems arose with eligibility of representatives on two previous occasions, administrative steps were taken to prevent the recurrence of such problems. I see no overwhelming difficulty in the Union amending its procedures so as to ensure that the problem that has arisen in this case is not also dealt with by an appropriate administrative procedure. For example, the Union may require a more definite statement on the "Notification of

Delegates” form or other proof that representatives have been properly elected. Should it emerge at a later stage that a representative has not been properly elected, the Union may well be in breach of Rule 6(j) but it does not follow that the subsequent Special Conference would be a nullity. The issue of remedy would depend on all the circumstances of the case, in particular, the number of representatives improperly present at the Special Conference and the majorities achieved in the resolutions that were voted upon.

39. For the above reasons, I make the declaration sought by the Claimant that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 6(j)(iv) of the Rules of the Union by holding a Special Conference at which there were representatives present who were not duly elected as required by Rule 6(d).
40. When I make a declaration I am required by Section 108B(3) of the 1992 Act to consider whether an Enforcement Order is appropriate. On the facts of this case I find that an Enforcement Order is not appropriate. In so finding, I have had particular regard to the fact that the ILA had about 225 votes at Special Conference and that the resolutions carried or lost were won or defeated by a significantly greater majority.

### **Complaint 5**

41. The Claimant complained that:

*"on or around 29 April 2006 in breach of rule 27(a)(i) of the Rules of the Union a Special Conference of the Union approved changes to the rules of the Union without the Union having given Local Associations' members notice in writing of the proposed amendments to the rules not less than three months prior to the date of the Special Conference"*

42. Rule 27(a)(i) of the Rules of the Union provides

*(a) An amendment to these Rules may be proposed by:  
(i) The National Executive by giving notice to the Local Associations in writing of the proposed amendment to these Rules not less than three months prior to the date of Conference or any Special Conference called to consider amendments to these Rules.*

### **Summary of Submissions**

43. The Claimant’s written submissions were to the effect that Rule 27(a)(i) was breached by the Union having given notice of the Special Conference to the Secretaries of its Local Associations and not directly to the members of those Local Associations. She maintained that the Rule required local members to be individually notified by Head Office. At the hearing, the Claimant put her case more broadly. She maintained, first, that the Rule required members to be notified individually by either Head Office or the local Secretary. Secondly, she argued that the General Secretary’s notification by e-mail was not the giving of notice “in writing”. Thirdly, she submitted that by sending the notification to the ILA to Mr Robbins, as its Secretary, the Union was in breach of Rule, as Mr Robbins was not the Secretary of the ILA in January

2006. She made this third submission on the basis that the AGM in 2005, at which Mr Robbins' election was declared, was inquorate and thus null and void. Accordingly, in the Claimant's submission, Mr Robbins' election was null and void.

44. For the Union, Mr Ford submitted that not only were the Claimant's arguments misconceived, but that they should be struck out as being vexatious. He supported this submission with a number of arguments. He argued that Rule 27(a)(i) referred expressly to notification being given to "the Local Association", that the custom and practice in the Union going back as far as 1972, and possibly from the time of its formation, was for such notices to be sent to the Secretary of each Local Association, that the Claimant was well aware of this custom and practice from the positions she had held within the Union and that the Rules could have provided for notification of individual members if this had been the intention, as is the case elsewhere in the Rules. Mr Ford also submitted that notification by e-mail is self-evidently notification in writing. Finally, he submitted that Mr Robbins was the Secretary of the ILA at the relevant time. He argued that Mr Robbins had been elected by the members of the ILA in a postal ballot in 2005 and that the Claimant's argument related only to the declaration of that result. Mr Ford accepted that the AGM of the ILA in 2005 had been inquorate but argued that this did not mean that there was in effect no AGM that year. He argued that the inquorate nature of the AGM that year disqualified it from transacting business but did not prevent the result of an election being declared at it. Mr Ford argued that if this were not the case, there was a potential for chaos, in that the previous Secretary would have left office, having served for 12 months, but the newly elected Secretary could not take up office and administer the Local Association on behalf of its members.

#### Conclusion - Complaint 5

45. I find that the Claimant's argument that Rule 27(a)(i) requires individual notice of a Special Conference to be given to each member of a Local Association by either Head Office or by the Secretary of the Local Association to be without merit. The Rule refers to "the Local Association", not the members of a Local Association. A Local Association is an unincorporated association and, as such, it would be usual for notice of any relevant event to be given to that association through its elected officers. It would have been possible for the Rules to require notices to be given to individual members, as they require material to be sent to individual members in Rules 19(f)(ii) and 19(g)(i). This is an indication that the omission of equivalent words in Rule 27 was deliberate. Further, I accept Mr Darke's evidence that it is a long established custom and practice that all notifications to Local Associations are sent to the Secretaries of those Local Associations. Indeed, to do otherwise would have serious cost consequences for the Union.
46. I also reject the Claimant's argument that notification by e-mail does not satisfy the requirement of Rule 27(a)(i) that the notification of a special conference must be "in writing". I find that notification by e-mail is in writing. The Claimant's submission to the contrary is without merit.

47. The Claimant's third argument was that any notice given by the Union to Mr Robbins was of no effect as he was not legitimately holding office as the Secretary of the ILA at the relevant time. This argument is premised upon the proposition that for a valid notice to be served on a Local Association, it must be served on its Secretary. However this is not what is provided for by Rule 27(a)(i). The Rule requires that notice is given to the Local Association. Mr Darke gave evidence that in exceptional circumstances such notices have been given to other persons. For example, there have been some occasions on which there has been no Secretary in post and the notices were given to the President or other officer. In my judgment, notice is validly given to a Local Association by the National Executive in accordance with Rule 27(a)(i) if it is given in good faith to the person who is reasonably believed by the National Executive to be the person holding the position of Secretary of the Local Association or discharging the functions of Secretary. On the facts of this case, I find that the Union had been treating Mr Robbins as the Secretary of the Islington Local Association from the time of the inquorate AGM in May 2005, that the Union genuinely believed Mr Robbins to have been validly elected, that Mr Robbins had in fact been discharging the functions of Secretary of the ILA and that an investigation by Mr Darke into the validity of the 2005 ILA elections had concluded in February 2006 that Mr Robbins had been elected as its Secretary. In these circumstances I find that the Union complied with its obligation to notify the ILA of the Special Conference to be held on 29 April 2006 by sending an e-mail notification of that conference to Mr Robbins on 27 January 2006.
48. For the above reasons, I refuse to make the declaration sought by the Claimant that on 29 April 2006 the National Association of Schoolmasters Union of Women Teachers breached Rule 27(a)(i) of the Rules of the Union by a Special Conference having approved changes to the Rules without the Union having given Local Associations' members the required notice in writing of the proposed amendments.

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