

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

**MRS S MASSEY**

**v**

**UNIFI**

**Date of Decisions:**

**22 December 2006**

**DECISIONS**

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

- (i) The Claimant’s application for a declaration that the Union breached rule 4.2 of the rules of the Union between 17 October 2002 and 7 January 2003 by its refusal to provide the Claimant with legal advice is not within the jurisdiction of the Certification Officer and I refuse the Claimant’s application for a declaration.
- (ii) I refuse to make the declaration sought by the Claimant that on 7 January 2003 UNIFI acted in breach of rule 7.16 of the rules of the Union by debarring the Claimant from office within the Union for two years.
- (iii) The Claimant’s application for a declaration that UNIFI breached Schedule C paragraph 7.2 of the rules of the Union by not publishing notice of the election to fill a vacancy on the National Executive Committee is dismissed upon withdrawal by the Claimant.
- (iv) I declare that on or about 24 September 2002 UNIFI breached rule 10.17 of the rules of the Union by failing to follow Standing Orders procedure as provided by paragraphs 6 and 10 of Schedule A of the rules of the Union.
- (v) I declare that on or about 24 September 2002 UNIFI breached rule 10.24(vii) of the rules of the Union by failing to ensure the Union’s National Company Committee’s observance of the rules of the Union.
- (vi) I declare that on or about 24 September 2002 UNIFI breached paragraph 6 of Schedule A of the rules of the Union by failing to provide the Claimant with at least 14 days notice of a motion of censure.
- (vii) I declare that on or about 24 September 2002 UNIFI breached paragraph 6 of Schedule A of the rules of the Union by the Union’s Royal Bank of Scotland National Company Committee failing to raise or carry a prior motion to an emergency motion.

- (viii) The Claimant's application for a declaration that on or about 24 September 2002 UNIFI breached paragraph 10 of Schedule A of the rules of the Union by the Union's Royal Bank of Scotland National Company Committee failing to ensure that speakers spoke only once in respect of a motion of censure is dismissed upon withdrawal by the Claimant.
- (ix) The Claimant's application for a declaration that on or about 24 September 2002 UNIFI breached rule 13(2) of the rules of the Union by its failure to ensure Procedure A of rule 13 was implemented against the Claimant is not within the jurisdiction of the Certification Officer and I refuse the Claimant's application for a declaration.
- (x) The Claimant's application for a declaration that on or about 15 November 2002 and 7 January 2003 UNIFI breached rule 14(i) of the rules of the Union by failing to ensure that the Appeals Committee was properly constituted is dismissed upon withdrawal by the Claimant.
- (xi) I declare that on or about 15 November 2002 and 7 January 2003 UNIFI breached rule 14(iii) of the rules of the Union by failing to endeavour to promote an agreement between the parties.
- (xii) I refuse to make the declaration sought by the Claimant that between 28 October 2002 and 7 January 2003 UNIFI breached rule 16.1 of the rules of the Union by failing to rule on the procedure of rule 13 in the complaint made against the Claimant.
- (xiii) I refuse to make the declaration sought by the Claimant that on or about 6 September 2002 UNIFI breached rule 21.5 of the rules of the Union by the General Secretary acting partially in requesting the Claimant to withdraw from the election for the Union's Royal Bank of Scotland Member Nominated Trustees to the Royal Bank of Scotland Pension Fund Board.
- (xiv) I refuse to make the declaration sought by the Claimant that on or around 20 September 2002 the General Secretary acted in breach of Procedure A(iv) of rule 13 of the rules of the Union by failing to ensure that the subject matter of a more serious charge was incorporated into a requisition signed by not fewer than 10 members before referring it to the Appeals Committee. This complaint was brought out of time.
- (xv) I refuse to make the declaration sought by the Claimant that on or around 20 September 2002 the General Secretary acted in breach of Procedure A(v) of rule 13 of the rules of the Union by failing to ensure that the relevant complaints clearly and precisely stated the nature of conduct allegedly detrimental to the Union.
- (xvi) I declare that during the period 20 September 2002 to 3 January 2003 the General Secretary acted in breach of Procedure A(ii) of rule 13 of the rules of the Union by failing to investigate or properly consider complaints the Claimant had made.

- (xvii) I declare that the Appeals Committee acted in breach of rule 14(iii) of the rules of the Union by refusing the Claimant's request for a postponement of the hearing of 7 January 2003.
- (xviii) When I make declarations I am required by section 108B(3) of the 1992 Act to make enforcement orders unless I consider that to do so would be inappropriate. I consider it inappropriate to make enforcement orders in respect of any of the declarations I have made.

## REASONS

1. By application dated 3 July 2003 the Claimant made numerous allegations against her Union UNIFI ("the Union"). The allegations were subsequently identified as complaints relating to appointments or elections, and the disciplinary procedures of the Union. These matters are potentially within the jurisdiction of the Certification Officer by virtue of subsections (2)(a) and (2)(b) of section 108A of the 1992 Act. After correspondence with the Claimant's then solicitors, the complaints were eventually identified in the following terms:

### **Complaint 1**

*"that in breach of UNIFI rule 4.2 a disciplinary sanction was imposed on Mrs Massey which consisted of the refusal to provide legal advice from the union between 17 October 2002 and 7 January 2003"*

### **Complaint 2**

*"that on 7 January 2003 by debarring Mrs Massey from holding any union office within the union for two years with immediate effect, the union breached rule 7.16 of the rules of the union"*

### **Complaint 3**

*"that by failing to publish notice of the election to fill the vacancy on the National Executive Committee left by the debarment of Mrs Massey, since 7 January 2003 onwards the union breached rule Schedule C paragraph 7.2 of the rules of the union"*

### **Complaint 4**

*"that at the National Company Committee meeting, on or about 24 and 25 September 2002 by failing to follow the Standing Orders procedure in paragraphs 6 and 10 of Schedule A the union breached rule 10.17 of the rules of the union"*

### **Complaint 5**

*"that at the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 the Secretary to the NCC in conjunction with the Chair of the Committee failed to ensure that the NCC and the members observed the Union's rules in breach of rule 10.24 (vii) of the rules of the union"*

### **Complaint 6**

*"that at the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 by failing to give at least 14 days advance notice of the censure motion against Mrs Massey the union breached paragraph 6 of Schedule A of the rules of the union"*

**Complaint 7**

*“that the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 by failing to raise or carry a prior motion that the emergency motion against Mrs Massey be considered as a matter of urgency the union breached paragraph 6 of Schedule A of the rules of the union”*

**Complaint 8**

*“that at the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 by failing to ensure speakers spoke only once to the censure motion against Mrs Massey the union breached paragraph 10 of Schedule A of the rules of the union”*

**Complaint 9**

*“that at the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 by considering the censure motion against Mrs Massey the union took disciplinary action against Mrs Massey and failed to ensure the complaint against Mrs Massey was dealt with exclusively under Procedure A of rule 13 in breach of rule 13(2) of the rules of the union”*

**Complaint 10**

*“that in continuing breach of Rule 14(i), the Appeals Committee that met on 15 November 2002 and 7 January 2003 to hear charges against Mrs Massey was improperly constituted in that it had less than 7 members and vacant positions were not filled at the annual conference from among the voting representatives in compliance with the appropriate procedure”*

**Complaint 11**

*“that in breach of rule 14(iii) of the rules of the union the Appeals Committees that met on 15 November 2002 and 7 January 2003 to hear charges against Mrs Massey failed to endeavour to promote an agreement between the parties”*

**Complaint 12**

*“that between 28 October 2002 and 7 January 2003, by refusing to give a ruling as to the rule 13 procedure to be adopted in the complaint made against Mrs Massey, the Union breached rule 16.1 of the rules of the union”*

**Complaint 13**

*“that on or about 6 September 2002 by his letter of that date to Mrs Massey requesting her withdrawal from the election for Member Nominated Trustees of the Royal Bank of Scotland, the General Secretary of UNIFI acted partially and in breach of rule 21.5 of the rules of the union”*

**Complaint 14**

*“that the General Secretary acted in breach of Rule 13 Procedure A (iv) by failing to ensure that the subject matter of the more serious charge was ‘incorporated in a requisition signed by not fewer than 10 members’ before referring the complaints to the Appeals Committee”*

**Complaint 15**

*“that the General Secretary acted in breach of Rule 13 Procedure A (v) by failing to ensure that relevant complaints stated ‘clearly and precisely’ the exact nature of the conduct allegedly detrimental to the union”*

**Complaint 16**

*“that the General Secretary acted in breach of Rule 13 Procedure A by failing to investigate or properly consider Mrs Massey’s complaints about*

*the conduct of some of the members of the Royal Bank of Scotland National Company Committee and the UNIFI complainants' failure to adhere with the requirements of Rule 13 Procedure A (iv) and (v)"*

**Complaint 17**

*"that in breach of rule 14(iii) of the rules of the union, on 24 December 2002 the Appeals Committee unreasonably refused Mrs Massey's request that the hearing of 6 and 7 January 2003 be postponed"*

2. On 3 April 2003 the Claimant presented an application to the Employment Tribunal (ET) which was heard in October 2003. The decision was promulgated in January 2004, subsequent to which the Union appealed to the Employment Appeal Tribunal (EAT). The Appeal was heard in June 2004 and the decision promulgated in August 2004. As part of its decision the EAT issued directions in the matter of compensation. On 15 November 2004 the Claimant suffered a stroke. On 1 November 2005 the Court of Protection appointed the Claimant's husband, Mr Eugene Massey, as Receiver to continue proceedings at the EAT. On 9 March 2006 the Court of Protection Authorised Mr Massey to continue proceedings before the Certification Officer. The compensation hearing at the EAT took place on 18 and 19 July; the judgment was delivered on 7 September.
3. Although I investigated the Claimant's alleged breaches in correspondence, I decided not to hear this matter until the conclusion of proceedings at the ET and EAT as there were overlapping considerations.
4. A hearing before me took place on 20 November 2006. The Claimant was represented by Mr J Laddie of counsel instructed by Messrs Ford & Warren, solicitors. Mr Massey, the Claimant's husband, attended the hearing.
5. Prior to the hearing the Union, through its solicitors, Messrs Simpson Millar, conceded complaints 4,5,6,7,11,16 and 17, and, citing commercial reasons, decided not to attend the hearing. The Union provided written submissions and a witness statement by Mr MacGregor, Secretary of the Union's Royal Bank of Scotland National Company Committee in 2002/2003.
6. The Claimant withdrew complaints 3, 8 and 10 prior to the hearing.
7. Three bundles of documents were prepared for the hearing by my office. The rules of the Union were also in evidence. Both parties submitted a skeleton argument with Mr Laddie's being confined to jurisdictional issues. A witness statement signed by Mrs Massey was submitted by Messrs Ford and Warren. As there was some dispute over the status of this document arising from the Court of Protection Order relating to Mrs Massey I did not treat it as evidence. However, in my judgment there was nothing relevant in it that was not covered in the 700 or so pages of documents before me.

**Findings of Fact**

8. Having considered the representations made to me and the relevant documents I make the following findings of fact:-

9. UNIFI merged with Amicus in October 2004. At that point UNIFI's General Secretary, Mr Sweeney, became a Deputy General Secretary of Amicus, a position he still holds.
10. Mrs Massey was employed by the Royal Bank of Scotland (RBS) until she retired in June 2001. She was a member of UNIFI and continued to be so following her retirement. At all relevant times she was a member of the Union's National Executive Committee (NEC) and, as such, was a co-opted member of the Union's RBS National Company Committee (NCC).
11. In 2002 the RBS introduced a new system for the appointment of trustees to its Pension Fund Board. Previously, UNIFI nominated all its member trustees to the Board. In 2002 the RBS required that trustees representing union members be elected by the members. UNIFI negotiated a position whereby preferred candidates could be identified by the Union and by the Group Pensioners Association (GPA). The electorate was the whole membership of the fund irrespective of whether they were members of either organisation.
12. On 7 May 2002 the Union issued a bulletin to members inviting them to apply for one of five positions of UNIFI preferred candidates in respect of the election of member nominated trustees.
13. On 6 June 2002 Mr Haggett, at that time Assistant General Secretary of UNIFI, wrote to the RBS, which was running the election, nominating five members who had put themselves forward as UNIFI preferred candidates. He indicated that the June meeting of the NCC would decide who were to be the Union's preferred candidates.
14. On 9 June 2002 the Claimant signed her nomination for member trustee to the Pension Fund Board. She did not seek preferred candidate status from either the Union or the GPA.
15. On 11 and 12 June 2002 at a meeting of the NCC it was decided that three trustee candidates would be preferred and that they should be 'active' members of the scheme (as opposed to retired members such as the Claimant). The GPA submitted two preferred candidates.
16. On 5 August 2002 the Claimant submitted her nomination to the RBS.
17. On 2 September 2002 the RBS sent out the pen portrait of each of the 91 candidates who had been asked to submit them. That of the Claimant had been amended by the RBS.
18. The Claimant's pen portrait included the phrase "*I urge you to look beyond these [the preferred candidates] and vote for an independent trustee*". The Employment Tribunal subsequently accepted that those words could be construed as meaning that the preferred candidates may not act independently of the Union.

19. Mrs Shenton, Chair of the NCC and herself a preferred candidate, immediately complained to the Union about the Claimant's pen portrait. On 6 September 2002 Mr Sweeney wrote to Mrs Massey requesting her to withdraw her nomination forthwith on the grounds that she was an NEC member representing the NCC, had attended NCC meetings where decisions were taken on the nomination of preferred candidates, that she had not sought nomination as a preferred candidate, and nor had she informed NCC colleagues of her intention to stand in the election. Mr Sweeney copied this letter to a number of UNIFI members including some of the NCC.
20. On 9 September 2002 Mr Haggett lodged a formal complaint against Mrs Massey for the content of her pen portrait and asked for it to be dealt with under Procedure A of rule 13 of the rules of the Union relating to disciplinary procedures. Mr Martin, another of the preferred candidates, complained that Mrs Massey's pen portrait included an attack on the Union and brought the Union into disrepute. In all there were four written complaints against the Claimant.
21. On 20 September 2002, Mr Sweeney, having previously written to the Claimant concerning the complaints from Mr Haggett and a Mr Hensby, again wrote to her. He referred to the complaints and treated them as charges of conduct detrimental to the Union brought against the Claimant as a member of the NEC. He said they should be heard by the Union's Appeals Committee under Procedure A(xiv) of rule 13 of the rules of the Union.
22. On 25 September 2002, the Technical Manager of the RBS wrote to the 91 candidates setting out the results of the ballot. All five of the candidates preferred by the Union or GPA were elected. After the five preferred candidates, the Claimant had polled the next highest number of votes and would therefore succeed to the first vacancy during the next six year term.
23. On 24-25 September 2002 the Claimant arrived late but was present at a meeting of the NCC. The question of her actions in the election was debated. Mrs Massey declined an invitation to speak at the meeting. The NCC passed a motion of no confidence in Mrs Massey to represent the NCC or the NEC and called on her to consider her position.
24. On 16 October 2002 the Claimant wrote to Mr Sweeney seeking legal assistance in connection with her forthcoming Appeals Committee hearing. Mr Sweeney's letter of the following day refused that request. Also on 16 October, the Claimant complained to Mr Sweeney about the NCC motion of no confidence. In particular, that Standing Orders had not been followed.
25. On 19 October 2002 the Claimant wrote to Mr Sweeney accepting that paragraph (xiv) of Procedure A of rule 13 of the rules of the Union was appropriate as complaints had been brought against her as a member of the NEC. This paragraph provides for a hearing by the Appeals Committee. However, the Claimant went on to complain that there had been various procedural breaches by both the NCC and the Appeals Committee.

26. On 25 October 2002 in two separate letters, Mr Sweeney replied rejecting the Claimant's contention that the motion of no confidence on 24/25 September 2002 was passed in breach of the rules of the Union. His letter also confirmed that he would be copying their correspondence to the members of the Appeals Committee. He denied misinterpreting the procedure under Rule 13 of the rules of the Union in relation to her forthcoming hearing before the Appeals Committee and further stated that there was no contravention of Rules 10.16 or 10.24 of the rules of the Union.
27. On 31 October 2002 the Claimant wrote to the Certification Office stating that she did not think procedures stipulated in the Union rule book had been complied with and requested the Certification Office to ensure that they were. She added:

*"I would ask you at this stage to limit your consideration to the question of whether or not Rule 13A had been followed"*

28. On 5 November 2002 the Certification Office wrote to the Claimant explaining the Certification Officer's jurisdiction and how to make a complaint. The letter highlighted the requirements in respect of time-limits for complaints to be made. It was clear from this letter that the Certification Officer was not able to intervene to stop proceedings within the Union. Although slightly ambiguous, the letter conveys, on a fair reading, that the Certification Office did not regard her letter as an application made under section 108A of the 1992 Act.
29. On 15 November 2002 the Appeals Committee met to consider the complaints against the Claimant. The Appeals Committee is a body elected at each Annual Conference from nominations made by branches. No member of the Union's main national committees is eligible to stand. The Committee adjourned stating that the complaints were of a serious nature and that a requisition signed by not less than 10 members needed to be provided. It said if such a requisition was received it would reconvene in eight weeks.
30. On 2 December 2002 Mr Sweeney wrote to the Claimant attaching a requisition signed by more than ten members who were not members of the NEC. This read:

*"Requisition brought under Rule 13 - Procedure A (iv) and (xiv).  
We the undersigned wish to complain about the conduct of a member of the National Executive Committee, Mrs Stella Massey.  
We believe that Stella Massey's pen portrait, in which she attacks Unifi's decision to have preferred candidates, brings our union into disrepute, her actions being detrimental and prejudicial to the interests of this union and thus in breach of rule 3.9.  
The discussions surrounding the decision to field preferred candidates had been the subject of many lengthy debates at the Royal Bank of Scotland National Company Committee during 2002. Throughout all of this Stella Massey, who had been present at the majority of committee meetings, neither raised any objections or criticisms of the proposals, nor indicated her desire to stand as a Member Nominated Director.  
Why she chose this method of expressing her criticisms and advocating ignoring 'Preferred Candidates' has left us confused but also very*

*disappointed that a senior activist of our union should choose to do so in such a public forum. We are also very concerned that she has publicly declared herself to be independent, which within this context is a direct contradiction of her Unifi roles and status within this union."*

31. Between 2 December and 24 December 2002 there was an exchange of correspondence about the date on which the Appeals Committee would hear the complaints against the Claimant. The Union suggested 6 or 7 January 2003. The Claimant said neither was suitable "*for private reasons*". The Union said ample notice had been given. The hearing would go ahead with or without the Claimant.
32. On 16 December 2002 the Claimant wrote to Mr Sweeney saying that the hearing by the Appeals Committee had already been prejudiced by the resolution of the NCC and by his letter of 6 September. She further alleged that Bruce Martin, Eric Hensby and Liz Shenton had broken rule 13.2 of the rules of the Union in allowing the motion of no confidence. She pointed out that the rules did not provide a procedure for her as a member of the NEC to bring complaints against other members or the General Secretary.
33. On 3 January 2003 Mr Sweeney sent the Claimant a statement by Mrs Shenton which set out the main points she would be making on behalf of the complainants at the Appeals Committee hearing. These included some issues not previously raised.
34. On the same day the Claimant produced a written statement representing her views on the issues, also confirming that she was not content for the Appeals Committee to proceed in her absence. She included a postscript commenting on the new issues raised in Mrs Shenton's statement.
35. On 7 January 2003, in the Claimant's absence, the Appeals Committee reached its determination following a hearing. It found Mrs Massey had acted in a way detrimental and prejudicial to the interests of the Union and unanimously ruled she be debarred from holding any office within the Union for a period of two years effective immediately.
36. On 3 April 2003 the Claimant presented an application to the Employment Tribunal (ET) under section 66 of the 1992 Act to the effect that she had been subject to unjustifiable discipline.
37. On 4 July 2003 a registration of a complaint form was received in the Certification Office from Zermansky and Partners, the solicitors then acting for the Claimant, citing alleged breaches of union rule as provided by section 108A of the 1992 Act. It took almost a full year for the solicitors to confirm the formulation of the seventeen complaints.
38. In October 2003 the ET case was heard. The decision, with written reasons, was promulgated on 9 January 2004. It upheld Mrs Massey's claim in part. The Union appealed to the Employment Appeals Tribunal (EAT). After a hearing on 4 June 2004, the EAT judgment on 3 August allowed the appeal in

part but upheld the ET's findings on two points and gave directions for the assessment of compensation.

39. Unfortunately, on 15 November 2004, before the compensation hearing could take place Mrs Massey suffered a stroke. As she was unable to give instructions to her solicitors, an application was made to the Court of Protection. An Order appointing her husband as Receiver was made on 1 November 2005 and on 9 March 2006 he was Authorised to continue with proceedings before the Certification Officer. On 7 September 2006 the EAT ordered that Mrs Massey be awarded £17,000 compensation for two acts of unjustifiable discipline by the Union.
40. I decided not to hear this matter until the EAT had reached its final determination as there were overlapping considerations.
41. The ET and EAT decisions include the following findings which concern the complaints before me.
  - (1) The complaint to the ET was lodged out of time but allowed because "*the delay was attributable to a reasonable attempt to appeal*" against the actions complained of, and the complexity of the issues meant the claim was lodged within a reasonable time.
  - (2) The following were not acts of unjustifiable discipline within the meaning of sections 64 and 65 of the 1992 Act:
    - (a) the refusal of legal assistance from the Union;
    - (b) Mr Sweeney's letter of 25 October 2002 in which he refused to consider an alleged breach of Union rules in respect of the no confidence motion.
  - (3) The following were (my emphasis) acts of unjustifiable discipline within the meaning of sections 64 and 65 of the Act:
    - (a) the motion of no confidence passed by the NCC on 25 September 2002;
    - (b) the decision of the Appeals Committee on 7 January 2003 debarring Mrs Massey from holding Union Office for a period of 2 years.
  - (4) Rule 21 of the rules of the Union is a provision for elections conducted under the auspices of the Union's rules; it could not affect an election by an outside organisation such as the RBS electing trustees to its pension fund.
42. In evidence to the EAT Mr Sweeney agreed that Mrs Massey was not given the required notice of the motion of no confidence against her passed by the NCC on 25 September 2002.

## The Relevant Statutory Provisions

43. 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) the appointment or election of a person to, or the removal of a person from, any office;*
- (b) disciplinary proceedings by the union (including expulsion);*
- (c) -;*
- (d) -;*
- (e) -.*

*(6) An application must be made –*

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).*

*(7) Those days are -*

- (a) the day on which the procedure is concluded, and*
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.*

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

*(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.*

*(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 Rules of the Union

44. **Rule 4**

### **Benefits**

*4.2 Subject to the prior approval of the General Secretary, legal assistance and advice may be provided to any member in connection with any matters arising out of that member's employment or union activity.*

### **Rule 7**

#### **The National Executive Committee**

7.2 *The National Executive Committee shall be vested with and exercise complete executive powers, provided that in the exercise of those powers it shall do nothing inconsistent with the Rules or the general policy of the Union as laid down by Annual Conference or a Special Conference. National Executive Committee members shall always act in the interests of the Union.*

7.6 *The National Executive Committee shall be comprised of the following:*

- (i) The Honorary President and Honorary Vice President;*
- (ii) The General Secretary and the Joint General Secretary;*
- (iii) At least one member elected to represent each Region of the Union in accordance with Rules 7.10 and 7.13 (a "Regional" member).*
- (iv) At least one member elected to represent the members in each Company/Group of Companies in accordance with Rule 7.10 and 7.14 (a "Company" member).*

7.10 *Regional and Company members of the National Executive Committee shall be elected by secret ballot of the members of the appropriate constituency in accordance with Schedule C. In order to be validly nominated as a candidate in an election for the position of Regional member or Company member, a member:*

- (i) shall not be in arrears with subscriptions;*
- (ii) shall be a member of the appropriate constituency;*
- (iii) shall not have been removed from membership of any Committee/Council or Office within a 2 year period immediately preceding the date of the election.*

7.16 *National Executive Committee members and deputies elected under the provisions of Rule 7.10 or 7.15 shall hold office from the close of the first Annual Conference following their election until the close of the third Annual Conference following their election. If a vacancy occurs at least 6 months prior to the end of a period of office, it shall be filled by a further election within the appropriate constituency. A member or deputy elected to fill a vacancy in accordance with this rule shall hold office for the remainder of the term for which the previous holder was elected. A member elected to fill a vacancy as deputy in accordance with this rule shall be regarded as last deputy with all other deputies being re-numbered accordingly and shall hold office for the remainder of the term for which the original incumbent was elected.*

## **Rule 10**

### **National Company Committees**

10.17 *The procedure for the conduct of NCC meetings shall be in accordance with Standing Orders as detailed in Schedule A.*

10.24 *The National Company Committee Secretary or nominated deputy shall:*

- (vii) In conjunction with the Chair, strive to ensure that the NCC and the members observe the Union's rules.*

## **Rule 13**

### **Disciplinary Procedures**

(2) *Where a member makes a complaint/charge/allegation against another member the matter will be dealt with under Procedure A*

### **Procedure A – Member v Member**

- (i) Where a member makes a complaint/charge allegation about another member the matter will be raised in writing with the General Secretary;*
- (ii) On receipt of a written submission the General Secretary shall inform the member against whom the complaint/charge/allegation is made of the details surrounding the matter and provide copy of the written submission. The General Secretary shall investigate the circumstances.*

- (iv) *Where a member makes a more serious charge alleging violation of these Rules or of conduct detrimental to the Union against another member (excepting any allegation of harassment on the grounds of sex, race, disability or sexuality) this will be heard by the NEC, provided that in all cases the subject matter of the charge is incorporated in a requisition signed by not fewer than 10 members. These members must not be members of the NEC.*
  - (v) *The requisition outlined in (iv) above must state clearly and precisely the exact Rule(s) allegedly violated or the exact nature of the conduct allegedly detrimental to the Union.*
  - (vi) *The requisition must be sent to the General Secretary who shall immediately notify the member of the charge by registered post. The General Secretary will provide a copy of the requisition.*
  - (ix) *The NEC shall hear the charge at their next available meeting.*
  - (xii) *The NEC will then consider all the relevant matters. Should the NEC find the charge proven against the member any of the following penalties may be imposed:*
    - (a) *Censure of the member.*
    - (b) *Debarring the member from holding any Union office for whatever period seems appropriate.*
    - (c) *Suspension of the member from all or any of the benefits of membership for whatever period seems appropriate.*
    - (d) *Expulsion of the member from the Union.*
- The General Secretary will convey the decision of the NEC to the member concerned in writing within ten working days.*
- (xiii) *In the case of charges made by a member against another member alleging violation of the Rules or of conduct detrimental to the Union the NEC decision will be final.*
  - (xiv) *Where a member brings a charge alleging violation of these Rules or of conduct detrimental to the Union against a members(s) of the NEC the exact same procedure will apply except that the charge will be heard by the Appeals Committee. The decision of the Appeals Committee will be final.*

**Procedure B – Member v Committees of the Union (other than the NEC)**

- (i) *Where a member makes a charge alleging violation of these Rules or of conduct detrimental to the Union against a Committee of the Union (other than the NEC) this will be heard by the NEC, provided that in all cases the subject matter of the charge is incorporated in a requisition signed by not fewer than ten members. These members must not be members of the Committee against whom the charge is made nor members of the NEC. The NEC will hear the charge and decide on the outcome. There will be a right of appeal to the Appeals Committee against any charge upheld.*
- (ii) *The requisition outlined in (i) above must state clearly and precisely the exact Rule(s) allegedly violated or the exact nature of the conduct allegedly detrimental to the Union.*
- (iii) *The requisition must be sent to the General Secretary who shall immediately notify the Chair and Secretary of the Committee charged by registered post. The General Secretary will provide a copy of the requisition.*
- (iv) *The Committee against whom the charge is made will be allowed twenty eight clear days from receipt of the requisition outlined in (i) above in which to submit a written statement relevant to the charge for consideration by the NEC.*
- (v) *The Committee against whom the charge is made will be entitled to send two representatives to the NEC meeting when the charge is*

*considered. The representatives must be members of the Committee and not employees of the Union. They will be allowed to state their case. A representative who shall be one of the signatories to the requisition shall also attend to state their case. Both parties will be entitled to remain present up to the NEC making their decision.*

- (vi) *The NEC shall hear the charge at their next available meeting. The Procedure for conducting the hearing will be as follows:*
  - (a) *The representative of the signatories making the charge will state their case. The NEC and the Committee representative may question the representative of the signatories.*
  - (b) *The Committee representatives will then state their case. The NEC and the representative of the signatories making the charge may question the Committee representatives.*
  - (c) *The representative of the signatories and the Committee representatives will then be asked to sum up in that order. They will then retire while the NEC decides on the merits of the case.*
- (vii) *The NEC will consider all relevant matters. Should the NEC find that the charge against the Committee is not upheld the matter will be dismissed. Should the NEC find the charge proven against the Committee any of the following penalties may be imposed:*
  - (a) *Censure of members of the Committee.*
  - (b) *Debarring members of the Committee from holding any Union Office for whatever period seems appropriate.*
  - (c) *Suspension of members of the Committee from all or any of the benefits of membership for whatever period seems appropriate.*
  - (d) *Expulsion of members of the Committee from the Union.*
- (viii) *Should the Committee against whom the charge is made be dissatisfied with the decision of the NEC they may appeal to the Union's Appeals Committee as set out in Rule 14.*
- (ix) *The decision of the Union's Appeals Committee shall be final and binding upon the Union and the Committee concerned.*

#### **Rule 14**

##### **Appeals Procedure**

- (i) *There shall be an Appeals Committee of 7 members, none of whom shall be members or deputy members of the National Executive Committee, National Company Committees or members of the Standing Orders Committee. The Appeals Committee will be elected on a secret ballot of the Branch voting representatives present at each Annual Conference from among the members of the Union from nominations made by Branches of the Union. Should there be insufficient nominations those already nominated by Branches of the Union shall be declared elected, any remaining position(s) shall be filled by an election on a secret ballot by voting representatives present at Annual Conference from nominations from those voting representatives. The Appeals Committee shall take office at the close of the Annual Conference at which they are elected and shall hold office until the close of the next Annual Conference.*
- (ii) *Five members of the Appeals Committee shall constitute a quorum. Any member of the Appeals Committee who has an interest in the subject matter of an appeal shall take no part in the proceedings.*
- (iii) *Other than where there are specific laid down procedures, as in Rule 13, the Appeals Committee may determine the procedure for the conduct of appeal hearings. The Appeals Committee may at its absolute discretion call for further evidence or investigation as it may think fit. The Appeals Committee shall endeavour to promote an agreement between the parties. If agreement is not possible*

*then the Appeals Committee will conduct the appeal in accordance with the procedures.*

#### **Rule 16**

##### **Interpretation**

*16.1 The National Executive Committee shall have the power:*

- (i) to provide for any case in which the Rules are silent;*
- (ii) to interpret the Rules in the event of doubt, conflict or dispute;*
- (iii) to correct any grammatical inaccuracy or deficiency or clerical error;*
- (iv) to make any consequential amendment to the Rules which may be necessary as the result of a Resolution of an Annual/Special Conference amending the Rules.*

*16.2 Such decisions shall be circulated to all units of the Union and tabled as a motion to the next Annual Conference.*

*16.3 Annual Conference shall have the power to determine any question arising as to the interpretation of the Rules by the National Executive Committee.*

#### **Rule 21**

##### **Elections, Ballots and Voting**

*21.5 Where an election is conducted under the auspices of these Rules, the full-time officers and employees of the Union who are not candidates in such elections shall observe strict impartiality in all such elections.*

#### **Schedule A**

##### **Standing Orders for the conduct of Meetings**

*6. Motions for inclusion on the agenda of any meeting must be received by the Secretary of the Committee at least fourteen days before the meeting. A motion received too late for inclusion on the agenda may be considered as a matter of urgency if a motion is carried to that effect.*

*10. Other than the right of reply speakers may speak only once to a motion or an amendment.*

#### **Schedule C**

##### **Regulations for National Executive Committee Elections**

*7. Nominations*

*7.2 The General Secretary shall cause a notice to be published in the Union's Journal advising members of the procedure for making nominations. For by-elections, a similar notice shall be published if practicable within the timetable. The General Secretary shall cause notices to be issued to relevant units of organisation to set in train these election procedures.*

### **Jurisdiction**

45. Questions relating to whether Mrs Massey's complaints to me were made in time arise in respect of many of the fourteen remaining complaints, including some which the Union has chosen to concede. For convenience and, I trust, clarity I shall deal with issues relating to time-limits in this section of my reasons. Other issues of jurisdiction will be dealt with in my conclusions in respect of the individual complaints.

### **Summary of the Claimant's submissions**

46. Mr Laddie acknowledged that I had no discretion to consider an application that was not made within six months of the day on which the breach is alleged

to have taken place or, if within that six months, “*any internal complaints procedure of the union is invoked to resolve the claim*” within the period of six months starting with the earlier of the day on which the procedure was concluded and the last day of the period of one year beginning with the day on which the procedure is invoked.

47. Mr Laddie submitted that Mrs Massey first registered a complaint with the Certification Office by her letter of 31 October 2002. This complaint related specifically to the motion of no confidence passed on 24-25 September 2002 by the NCC. This complaint also refers to matters now contained in complaints 14 and 15.
48. Mr Laddie submitted in the alternative that all of the disputed complaints, other than complaint 2 which occurred on 7 January 2003, were in the nature of continuing breaches, continuing at least until the Appeals Committee hearing on 7 January 2003 and were accordingly in time when presented to the Certification Officer on 4 July 2003.
49. Further, and also in the alternative, Mr Laddie submitted that Mrs Massey in her extensive correspondence with Mr Sweeney invoked an internal complaints procedure in respect of the complaints that she brought to the Certification Officer. Mr Laddie contended that she could accordingly rely on the extended computation of time provided under subsections (6) and (7) of section 108A of the 1992 Act. This provision enabled her to submit her application within six months of 7 January 2003 when the Appeals Committee made its determination.
50. As for the conceded complaints, Mr Laddie submitted that, even if the Union could not concede the issue of time, in conceding the complaint they had conceded the fact that an internal complaints procedure had been invoked.

### **Summary of the Union’s submissions**

51. In written submissions the Union re-asserted its contention that complaints 1, 9, 12, 13, 14 and 15 were out of time. Mrs Massey’s registration of complaint form was submitted to the Certification Office on 4 July 2003 and all complaints relating to events alleged to have occurred prior to 5 January 2003 are out of time.
52. The Union did not consider that Mrs Massey had invoked any internal complaints procedure of the Union to allow her the extension to the six month time-limit as provided in subsection (6)(b) of section 108A of the 1992 Act. The appropriate procedure to be followed in relation to complaints about the NCC was clearly contained in Procedure B of rule 13 of the rules of the Union, dealing with complaints by members about Committees other than the NEC.
53. The Union submitted that Mrs Massey’s correspondence with the General Secretary making reference to various matters could not be said to invoke an internal complaints procedure to satisfy subsection (6)(b) of section 108A of

the 1992 Act. Nor could any statement she made to the Appeals Committee, as that body was not the appropriate forum for hearing her complaints against the NCC. It was solely concerned with considering the charges made against her.

54. As far as complaints against the General Secretary were concerned, there was no formal procedure in the rule book, but the Union accepted that the correct practice would have been to put the issue before the NEC, of which she was a member. She did not do this.
55. The Union further submitted that Mrs Massey made it clear that she did not consider herself to have entered into any internal complaints procedure in relation to any of her complaints. In her letter of 27 December 2002 she says "*If I do decide to make a formal written complaint...*".

### **Conclusions - Jurisdiction**

56. In my judgment, complaints 1, 2, 11, 12, 15, 16 and 17 clearly relate to events that were continuing on, or happened after, 4 January 2003 and were therefore lodged in time.
57. For complaints numbered 9, 13 and 14 I must consider whether Mrs Massey's letter of 31 October 2002 to the Certification Office constituted an application under section 108A of the 1992 Act and whether any internal complaints procedure of the Union was invoked.
58. The Union has not addressed me on the issue of Mrs Massey's letter of 31 October 2002 to the Certification Office. That letter from Mrs Massey contains the following passage:

*"It is my belief that the procedures stipulated in the union rule book have not been complied with, and I ask you to ensure their proper observance. In view of my stated intention not to attend the Appeals Committee hearing on 15 November 2002 I would ask you at this stage to limit your consideration to the question of whether or not rule 13A has been followed."*

59. On the face of it and with hindsight this could be interpreted as registering with the Certification Office an application under section 108A of the 1992 Act for a declaration that rule 13A had been breached. However, the Certification Office receives many vaguely worded requests for guidance, for help in ongoing situations and about matters on which the Certification Officer may or may not have jurisdiction. In such circumstances the office explains the limited scope of the Certification Officer's powers and requires the writer to clarify their intentions. The office reply of 5 November 2002 to Mrs Massey did just that and also highlighted the issue of time-limits.
60. The office clearly did not regard Mrs Massey as having made an application under section 108A of the 1992 Act in her letter of 31 October 2002. Mrs Massey should have deduced that from the response of 5 November and realised that there were still issues of time-limits she had to address.

61. Further grounds for believing that Mrs Massey's letter of 31 October 2002 should not be regarded as submitting an application under section 108A of the 1992 Act are found in the fact that when she submitted a very full registration of complaint form through her then solicitors, Zermansky and Partners, some seven months later, she made no reference to having lodged any previous application.
62. In the substantial correspondence that ensued between the Certification Office and Zermansky and Partners the issue of time-limits arose many times. Throughout, the Claimant relied on the formula that the "*Certification Officer has jurisdiction to consider this matter on the basis that Mrs Massey invoked an internal complaints procedure by reason of it being raised in the course of her correspondence with the General Secretary, which was then referred for consideration by the Appeals Committee*". There was no reference to the letter of 31 October 2002. Indeed, on 25 June 2004 in a letter to the Certification Office seeking to add new complaints, Zermansky and Partners accepted that none of the extra complaints had been set out in Mrs Massey's application lodged on 4 July 2003. A change of legal representation may change emphasis and sharpen focus on different matters but in all the circumstances I find that Mrs Massey's letter of 31 October 2002 was not an application under section 108A of the 1992 Act. That letter cannot therefore be used to bring any of Mrs Massey's complaints within the time-limits proscribed by subsections (6) and (7) of section 108A of the 1992 Act.
63. Finally on this matter, I have to consider whether Mrs Massey satisfied the conditions required to obtain extended time-limits under subsections (6) and (7) of section 108A of the 1992 Act for lodging her application by virtue of invoking an internal complaints procedure of the Union as provided under subsection (1) of section 108B of the 1992 Act.
64. There is well established case law to the effect that for this purpose to be satisfied three things must be proven:
  - (i) that there is a procedure;
  - (ii) that the procedure was invoked; and
  - (iii) the dates on which the procedure was invoked and on which it was concluded.
65. In **Murphy v GMB (D/34-41/02)** the Certification Officer found that the term "*any procedure*" may be given a wide interpretation. The words not only comprehend a written procedure, they include any procedure generally known to the members of the Union as a way of raising and resolving complaints.
66. In the present case, Procedure B of rule 13 of the rules of the Union sets out the process by which a member could complain about a Committee of the Union (other than the NEC). Of Mrs Massey's fourteen remaining complaints, numbers 4, 5, 6, 7 and 9 are about the decisions or the behaviour of the NCC. Mrs Massey made no attempt to use the process provided by Procedure B.
67. Mr Laddie submitted that Mrs Massey did not do so because her complaints were against individual members of the NCC not with the NCC itself. He

further argued that the 10 signatures required to requisition a complaint under this procedure could not include Mrs Massey's as she was excluded, being a member of the NEC. I do not accept these arguments. Only one of the five complaints concerning the NCC refers to individuals, and then as office holders. Moreover, the fact of her NEC membership did not debar her from using Procedure B - if she could find ten others to support her.

68. There is no written procedure to process complaints against the General Secretary, but the Union's practice of bringing such issues to the NEC falls within the acceptable definition of a procedure as outlined by the Certification Officer in **Murphy v GMB** (see above). Although a member of the NEC and therefore able to raise her complaints directly, Mrs Massey did not do so.
69. If, as found, Mrs Massey did not use those two available procedures did she use any other? Mr Laddie contended that Mrs Massey's correspondence with Mr Sweeney constituted her attempt to use internal procedures to resolve her complaints.
70. The ET accepted Mrs Massey's application even though it was out of time. It exercised its discretion on the grounds set out at paragraph 41(1) above. Similarly, the Certification Officer did not exercise his right to refuse this application on the grounds that the Claimant had not endeavoured to resolve the matter through any internal complaints procedure of the Union. In both cases, a discretionary power has been exercised on the basis of what was considered reasonable behaviour. Subsections (6) and (7) of section 108A of the 1992 Act offer no such discretion. Either internal procedures of the Union were invoked in time or they were not.
71. Where there is no formal internal complaints procedure of the Union, or where no such procedure has been invoked, I must consider whether there is another procedure for dealing with complaints that is well-known and used within the Union. Often such a procedure will involve writing to the General Secretary detailing a complaint. In this case and in the absence of the Union at the hearing, I received little evidence on whether this practice operated in UNIFI. However, the limited evidence on this point available in the documents before me suggests that it was common practice to refer complaints to the General Secretary. It is in this context that I have considered the autumn 2002 correspondence the Claimant had with Mr Sweeney.
72. In my view, the Claimant's twelve or so letters to Mr Sweeney between 20 September 2002 and 3 January 2003 were largely accusations of wrong-doing by Mr Sweeney; requests for clarification of the complaints against her; requests for his comments on her allegations about the NCC; and argument against the way in which preferred candidates had been chosen. As such they do not constitute an attempt to use internal procedures of the Union to resolve the issues about which she complained to the Certification Officer.
73. However, Mrs Massey's letter of 19 October 2002 to Mr Sweeney specified, in some cases in terms, her complaints which later featured in her application

to the Certification Officer and on which her subsequent complaints were founded.

74. Although Mr Sweeney's reply to that letter countered her complaints, he did pass them on to the Appeals Committee which was at least expected to have regard to them during Mrs Massey's disciplinary hearing. On balance, and on the facts of this case, I find that the Claimant invoked an internal complaints procedure of the Union by her letter of 19 October 2002 and that that procedure was not concluded until 7 January 2003.
75. In the light of this, Mrs Massey can rely on her letter of 19 October 2002 to Mr Sweeney to satisfy the requirements of subsections (6) and (7) of section 108A of the 1992 Act. I find that complaints 4, 5, 6, 7, 9, and 13 were brought in time. Complaint 14 is a special case with which I will deal later. In view of the above, I find that only in the case of complaint 14 are there remaining doubts about whether Mrs Massey's complaints were brought within proscribed time-limits.

### **Complaint 1**

*“that in breach of UNIFI rule 4.2 a disciplinary sanction was imposed on Mrs Massey which consisted of the refusal to provide legal advice from the union between 17 October 2002 and 7 January 2003”*

### **Summary of the Claimant's submissions**

76. Mr Laddie submitted that this complaint had been brought in time because Mrs Massey had raised the question of her entitlement to legal assistance with Mr Sweeney on 16 October 2002 and pursued the matter in letters to him during December 2002, specifically on 16 and 30 of December. In his letter of 17 October 2002 Mr Sweeney advised Mrs Massey that she would not receive legal assistance from the Union and in his letter of 3 January 2003 that he would not put the matter to the NEC's January meeting.
77. Mr Laddie acknowledged that rule 4.2 of the rules of the Union gave the Union discretion to grant legal assistance and advice but said that such discretion had to be exercised in a fair way and not as a punishment or a disciplinary penalty. He submitted that the consequences for the Claimant of losing her case were far more serious than for those bringing charges against her. In this case the Union could not rely on the argument that they treated all members in the same way and had not withheld the assistance for disciplinary reasons. No reason was ever given to Mrs Massey for the denial of assistance under this rule. In the absence of such an explanation Mr Laddie submitted that I could only conclude that the assistance had been withheld for disciplinary reasons.

### **Summary of the Union's submissions**

78. Apart from the question of time-limits with which I have already dealt, the Union submitted that rule 4.2 of the rules of the Union was not a rule relating to discipline and therefore not within my jurisdiction. It submitted that the

refusal to give legal advice was not “*one of those exceptional cases*” referred to in **Dennison v UNISON (D/12/03)** where otherwise lawful action under a non-disciplinary rule was taken “*for a disciplinary purpose*” and therefore potentially unlawful. In **Dennison v UNISON**, the legal advice that was deliberately withdrawn was advice that would usually have been given in the normal course of events.

79. The Union submitted, in the alternative, that if I had jurisdiction, rule 4.2 is a neutral provision and any decision taken in relation to it cannot be interpreted as being a disciplinary sanction. The rule does not give an absolute entitlement to legal advice. The Union contended that the advice and assistance sought by the Claimant was not available in the normal course of events. The Union’s refusal to grant the assistance was an impartial decision and applied to all individuals in this dispute. There was no disciplinary intent in relation to the Claimant.

### **Conclusion – Complaint 1**

80. Any jurisdiction I may have to hear this complaint derives from subsection (2)(b) of section 108A of the 1992 Act which provides that the Certification Officer has jurisdiction to consider allegations of breach of rule which “*relate to disciplinary proceedings by the union*”. It has been established in **Ryan v UNISON (D/45-48/01)** and **Dennison v UNISON** that the Certification Officer is not confined in his jurisdiction by this formulation to rules which expressly deal with discipline. In **Ryan v UNISON** a penalty which could have been imposed under disciplinary rules was imposed under a non-disciplinary rule and it was held that the latter rule was “*a rule relating to discipline*”. In **Dennison v UNISON** a rule dealing with legal assistance was used to withdraw assistance from a member for clearly disciplinary reasons. Both were held to be within the Certification Officer’s jurisdiction as provided under subsection (2)(b) of section 108A of the 1992 Act.
81. However, in **Dennison v UNISON**, the Certification Officer stated that when a discretion under a rule as on legal assistance “*is properly exercised to the disadvantage of a member ... it would normally be wholly artificial for a member to make a claim to the Certification Officer under section 108A(2)(b) ... Even where the disadvantage arises as a result of an alleged breach of rule relating to the grant of legal assistance, there can be no assumption that it is a breach which relates to disciplinary proceedings*”. The more usual analysis in those circumstances is that this would be a matter for the courts not the Certification Officer.
82. I respectfully agree with, and adopt, that view. In the circumstances of this case there is no evidence that legal advice and assistance was withheld from the Claimant for disciplinary reasons. I do not follow Mr Laddie in believing that in the absence of any other explanation from the Union I must conclude that the action was taken for disciplinary reasons. Unions may well have a policy of not funding member against member cases or member against the Union. Indeed, the ET found that the withholding of legal advice and assistance was not unjustifiable within the meaning of section 65 of the 1992

Act as those facilities would not ‘otherwise have been provided’ as the union would not fund one member’s dispute against another. It noted that to have found otherwise would have led to the situation where a union might have been required to provide legal assistance for the purpose of suing the union itself. The Employment Tribunal considered this could not have been Parliament’s intention. Again, I respectfully agree with these views. I find that this complaint is not within my jurisdiction and I refuse the Claimant’s application for a declaration.

83. If I am wrong on the matter of jurisdiction I would still refuse the declaration sought. The refusal of legal advice and assistance sought under rule 4.2 of the rules of the Union was a matter of discretion properly and fairly exercised by the Union. There was no breach of the express terms of this rule and I find that the Union did not exercise its discretion perversely.

### **Complaint 2**

*“that on 7 January 2003 by debarring Mrs Massey from holding any union office within the union for two years with immediate effect, the union breached rule 7.16 of the rules of the union”*

### **Summary of the Claimant’s submissions**

84. Under rule 7.16 of the rules of the Union the Claimant was entitled to serve on the NEC for two years. Mr Laddie submitted that by invoking unlawful disciplinary procedure against her and by unlawfully imposing the sanction barring her from office for two years the Union breached its rule 7.16.
85. Mr Laddie accepted that the Claimant had no absolute right to serve for 2 years and, if the disciplinary procedures in rule 13, and the Appeals Procedure in rule 14 of the rules of the Union had been properly applied, the Union could have removed her from office. However, by its own admissions in relation to complaints 11, 16 and 17 the Union had accepted breaches of rules 13 and 14. Moreover, the ET and the EAT had found that Mrs Massey had been unjustifiably disciplined by the Union. Mr Laddie submitted that against this background it was no longer possible for the Union to use other rules to obtain protection for its failure to adhere to rule 7.16.

### **Summary of the Union’s submissions**

86. The Union submitted that rule 7.16 of the rules of the Union is to be read as subject to rule 13. Moreover, as Mrs Massey had had the matter of her debarment from office adjudicated on, and remedy decided, by the EAT it is inappropriate for the same complaint to be decided in a different forum, that is, before the Certification Officer.

### **Conclusion – Complaint 2**

87. This matter falls to be determined by me by virtue of subsection (2)(a) of section 108A of the 1992 Act regarding union rules relating to the appointment or removal of any person from office.

88. Subsections 14 and 15 of section 108A of the 1992 Act make provision to ensure that an alleged breach of a union's rule is not brought before both the court and the Certification Officer. However, there is no provision to say that different alleged breaches resulting from the same actions or inactions by the Union cannot be submitted under the two jurisdictions. In this case neither the ET nor the EAT was asked to consider if rule 7.16 of the rules of the Union had been broken. I find that this complaint falls within my jurisdiction.
89. Mr Laddie accepted that if the disciplinary and appeals procedures had been properly followed, rule 7.16 of the rules of the Union would not have been breached. He relied on the EAT finding that Mrs Massey had been unjustifiably disciplined and on admissions by the Union that rules were breached.
90. In my judgment, there is an important distinction between what is an offence of unjustifiable discipline under sections 64 and 65 of the 1992 Act and what is discipline for an alleged breach of union rule under subsection (2)(b) of section 108A of the 1992 Act. Section 64 of the 1992 Act deals with the issue of a member suffering some detriment at the hands of the union for reasons that are proscribed in one of 12 categories of conduct in section 65(2)-(4) of the 1992 Act. 'Some detriment' is not the same as 'discipline' and a finding that a member has been subjected to "*unjustifiable discipline*" does not mean that that person has been wrongly disciplined under a union's rule book. The EAT finding does not determine mine.
91. As far as the Union's admissions are concerned, I note that in conceding complaints 4, 5, 6, 7, 11, 16 and 17 the Union cited commercial reasons. Of these conceded complaints, only two related to failures by the Union in relation to disciplinary action against the Claimant. One was that no attempt was made by the Appeals Committee to endeavour to promote a settlement. The other was that the Appeals Committee unreasonably refused the Claimant's request that the hearing be postponed. In the circumstances I regard the relations between the complainants and the Claimant, and her refusal to say why she could not attend on 6 or 7 January 2003, as being minor breaches which do not go to the heart of the Union's disciplinary and appeal processes. The Appeals Committee consists of members elected at the Union's Annual Delegate Meeting from amongst those members nominated by branches. No member of the Union's staff or its National Committees may sit on the Appeals Committee. It demonstrated its good faith in adjourning the hearing in November 2002. I find that at the time it took its decision in January 2003, it did so in good faith. It had before it a full statement of the issues on both sides - including the Claimant's postscript on new issues raised in Mrs Shenton's submission. Against that background I accept the Union's argument that rule 14(viii) of the rules of the Union enabled the Appeals Committee to debar Mrs Massey from holding office for two years without breaching rule 7.16 of the rules of the Union. I refuse to make the declaration sought.

### **Complaint 3**

*“that by failing to publish notice of the election to fill the vacancy on the National Executive Committee left by the debarment of Mrs Massey, since 7 January 2003 onwards the union breached rule Schedule C paragraph 7.2 of the rules of the union”*

92. This complaint was withdrawn by the Claimant prior to the hearing.

### **Complaint 4**

*“that at the National Company Committee meeting, on or about 24 and 25 September 2002 by failing to follow the Standing Orders procedure in paragraphs 6 and 10 of schedule A the union breached rule 10.17 of the rules of the union”*

93. The Union conceded this complaint, citing commercial reasons. I find the complaint well-founded and make the declaration sought.

### **Complaint 5**

*“that at the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 the Secretary to the NCC in conjunction with the Chair of the Committee failed to ensure that the NCC and the members observed the Union’s rules in breach of rule 10.24 (vii) of the rules of the union”*

94. The Union conceded this complaint, citing commercial reasons. It follows that if the required Union procedures were not followed as found in Complaint 4 and elsewhere, the obligation imposed by rule 10.24(vii) of the rules of the Union on the Secretary and Chair of the NEC was not met. I find the complaint well-founded and make the declaration sought.

### **Complaint 6**

*“that at the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 by failing to give at least 14 days advance notice of the censure motion against Mrs Massey the union breached paragraph 6 of Schedule A of the rules of the union”*

95. The Union conceded this complaint, citing commercial reasons. I find the complaint well-founded and make the declaration sought.

### **Complaint 7**

*“that the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 by failing to raise or carry a prior motion that the emergency motion against Mrs Massey be considered as a matter of urgency the union breached paragraph 6 of Schedule A of the rules of the union”*

96. The Union conceded this complaint, citing commercial reasons. I find the complaint well-founded and make the declaration sought.

### **Complaint 8**

*“that at the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 by failing to ensure speakers spoke only once to the censure motion against Mrs Massey the union breached paragraph 10 of Schedule A of the rules of the union”*

97. This complaint is dismissed upon withdrawal by the Claimant prior to the hearing.

## **Complaint 9**

*“that at the National Company Committee (NCC) meeting, on or about 24 and 25 September 2002 by considering the censure motion against Mrs Massey the union took disciplinary action against Mrs Massey and failed to ensure the complaint against Mrs Massey was dealt with exclusively under Procedure A of rule 13 in breach of rule 13(2) of the rules of the union”*

### **Summary of the Claimant’s submissions**

98. Mr Laddie submitted that the motion of no confidence passed by the NCC was an act of discipline against Mrs Massey as part of a planned course of disciplinary action which culminated in her debarment from office on 7 January 2003. Mr Laddie contended that the EAT had found the motion of no confidence passed on 25 September 2003 an act of unjustifiable discipline by the Union against the Claimant. It was a public reprimand of her and was not taken within the procedures for such cases as set out in rule 13 of the rules of the Union.

### **Summary of the Union’s submissions**

99. The Union submitted that the motion of no confidence was an expression of the NCC’s opinion, not an act of discipline. It therefore fell outside the jurisdiction of the Certification Officer.
100. The Union further submitted that if a legitimate expression of a negative opinion, which will inevitably lead to a detriment, is a disciplinary sanction giving rise to a need to invoke formal disciplinary sanctions, the Union would have to invoke disciplinary procedures before any committee or Union official expressed a negative opinion about a member. The Union contended that that simply could not be the case.
101. The Union noted that in **UNISON v Gallagher**, before the EAT; three areas of the Certification Officer’s jurisdiction were listed. The Union submitted that the motion of no confidence in respect of Mrs Massey coincided with none of these. It was not (a) purporting to discipline Mrs Massey; (b) imposing a disciplinary sanction on her; nor (c) subjecting her to a significant detriment by depriving her of a significant entitlement as a member under its rules. Although the Union accepted that the motion of no confidence was a detriment to Mrs Massey, it did not deprive her of a significant entitlement under the rules of the Union.
102. The Union further submitted that although the EAT found the vote of no confidence was unjustifiable discipline within the specific definition given in section 65 of the 1992 Act, it did not follow that it was discipline which invoked the Union’s disciplinary machinery.

### **Conclusion – Complaint 9**

103. Any jurisdiction I may have to determine this complaint derives from subsection (2)(b) of section 108A of the 1992 Act.

104. In my judgment many of the same considerations apply to this complaint as to complaint 1 dealt with above. As with that complaint, I find the action complained of (here the motion of no confidence) was not based on a rule relating to discipline. As indicated above under complaint 2, I accept the Union's argument that while the action complained of may amount to unjustifiable discipline under section 65 of the 1992 Act, it was not an action imposing a disciplinary penalty and the complaint does not fall within my jurisdiction. I therefore refuse the application for a declaration.
105. If I am wrong on that issue, I would dismiss the complaint as I do not find that there is anything in the rules of the Union that requires a motion of no confidence to be passed only after full disciplinary procedures of the Union have been invoked.

#### **Complaint 10**

*“that in continuing breach of Rule 14(i), the Appeals Committee that met on 15 November 2002 and 7 January 2003 to hear charges against Mrs Massey was improperly constituted in that it had less than 7 members and vacant positions were not filled at the annual conference from among the voting representatives in compliance with the appropriate procedure”*

106. This complaint is dismissed upon withdrawal by the Claimant prior to the hearing.

#### **Complaint 11**

*“that in breach of rule 14(iii) of the rules of the union the Appeals Committees that met on 15 November 2002 and 7 January 2003 to hear charges against Mrs Massey failed to endeavour to promote an agreement between the parties”*

107. The Union conceded this complaint, citing commercial reasons. I find the complaint well-founded and make the declaration sought.

#### **Complaint 12**

*“that between 28 October 2002 and 7 January 2003, by refusing to give a ruling as to the rule 13 procedure to be adopted in the complaint made against Mrs Massey, the Union breached rule 16.1 of the rules of the union”*

#### **Summary of the Claimant's submissions**

108. Mr Laddie clarified that this complaint related to Mr Sweeney's refusal to allow Mrs Massey to be represented at the Appeals Committee hearings by someone who was not a member of the Union. Mr Laddie submitted that Procedure A (viii) of rule 13 of the rules of the Union was not precise. The rule stated that the person against whom allegations are made will be allowed to *“state their case either personally or through a union member, who shall not be an employee of the union, nominated by that member”*. Mr Laddie contended that it was not clear from that rule whether or not someone who was not a member of the Union could represent Mrs Massey. As there was this lacuna the NEC should have ruled on it as provided by rule 16.1 of the rules of the Union.

### **Summary of the Union's submissions**

109. The Union submitted that Procedure A (viii) of rule 13 of the rules of the Union is clear in that there are just two options for members facing disciplinary charges. Members may put the case themselves or through another member of the Union. The rule is not silent. It is clear that outside representation is not possible.

### **Conclusion – Complaint 12**

110. This matter falls to be determined by me by virtue of subsection (2)(b) of section 108A of the 1992 Act regarding union rules relating to discipline.
111. Rule 16.1 of the rules of the Union is permissive and does not impose a duty on the NEC to interpret the rules. Moreover, I agree with the Union that Procedure A (viii) of rule 13 of the rules of the Union is clear. There was nothing for the NEC to decide. I therefore refuse the application for a declaration.

### **Complaint 13**

*“that on or about 6 September 2002 by his letter of that date to Mrs Massey requesting her withdrawal from the election for Member Nominated Trustees of the Royal Bank of Scotland, the General Secretary of UNIFI acted partially and in breach of rule 21.5 of the rules of the union”*

### **Summary of the Claimant's submissions**

112. Mr Laddie submitted that Mr Sweeney's letter of 6 September 2002 to Mrs Massey by which he requested her to withdraw her nomination for election as a Union Member Trustee of the RBS Pension Fund broke the obligation on him provided under rule 21.5 of the rules of the Union to act impartially. Mr Laddie accepted that the ET had found as a matter of fact that this was not an election carried out under the auspices of the Union, but asked me to distinguish between that and an “election carried out under the auspices of the Union's rules”. Mr Laddie submitted that rule 21 of the rules of the Union should be taken as embracing all elections in which the Union participated.

### **Summary of the Union's submissions**

113. The Union submitted that the election in question was carried out by the RBS under arrangements and rules of its own devising. It was neither under the auspices of the Union nor under its rules.

### **Conclusion – Complaint 13**

114. This matter falls to be determined by me by virtue of subsection (2)(a) of section 108A of the 1992 Act regarding union rules relating to the appointment or removal of any person from office.
115. I accept the Union's submission and therefore refuse to make the declaration sought by the Claimant.

## **Complaint 14**

*“that the General Secretary acted in breach of Rule 13 Procedure A (iv) by failing to ensure that the subject matter of the more serious charge was ‘incorporated in a requisition signed by not fewer than 10 members’ before referring the complaints to the Appeals Committee”*

### **Summary of the Claimant’s submissions**

116. Mr Laddie submitted that when the Appeals Committee first met in November 2002 to consider complaints against the Claimant, it had before it letters of complaint from less than 10 members. The Appeals Committee itself decided that the allegations were of a serious nature and therefore needed to be made in a requisition to be signed by not fewer than 10 members of the Union.

### **Summary of the Union’s submissions**

117. The Union submitted that rule 13 of the rules of the Union does not require the General Secretary to ensure that the charge is made in any particular form, it being the responsibility of the complainant. The General Secretary’s responsibility is to administer the process. Further, if there was a breach in relation to the number of signatures, it was rectified by 2 December 2002 when a requisition signed by not fewer than 10 members of the Union was sent to Mrs Massey. Any breach occurred before, and was rectified by, 2 December and could not have been part of any internal complaints procedure of the Union after that date. Any complaint had to be lodged by 2 June 2003. The complaint lodged with the Certification Office in July 2003 was not within the time-limits proscribed by subsections (6) and (7) of section 108A of the 1992 Act.

### **Conclusion – Complaint 14**

118. Any jurisdiction I may have in this matter is by virtue of subsection (2)(b) of section 108A of the 1992 Act regarding rules relating to discipline.
119. I do not accept the Union’s submission that the General Secretary can avoid responsibility by saying that any mistake made was made by the members of the Union lodging the complaints. The complaints were addressed to the General Secretary who passed them to the Appeals Committee even though, given their serious nature, they were in a form which was inappropriate to the procedure.
120. I do though accept the Union’s submission in respect of time-limits. I find that this application was not brought within the time-limits proscribed by subsections (6) and (7) of section 108A of the 1992 Act. I therefore refuse to make the declaration sought by the Claimant.
121. If I am wrong in respect of time-limits, I would accept the findings of the Appeals Committee that the complaints against Mrs Massey had not been properly submitted to the Union in accordance with its rules and would issue the declaration sought by the Claimant but not make any enforcement order.

### **Complaint 15**

*“that the General Secretary acted in breach of Rule 13 Procedure A (v) by failing to ensure that relevant complaints stated ‘clearly and precisely’ the exact nature of the conduct allegedly detrimental to the union”*

#### **Summary of the Claimant’s submissions**

122. Mr Laddie submitted that the requisition against Mrs Massey should have specified each charge to ensure that she was clear in respect of the charges made against her. The requisition before the Appeals Committee on 7 January 2003 was ambiguous as to Mrs Massey’s conduct and how that conduct breached the rules of the Union. The statement submitted to the Appeals Committee on behalf of Mrs Massey’s detractors went beyond what was in the requisition and pointed to the shifting nature of the case against her.

#### **Summary of the Union’s submissions**

123. The Union submitted that the formulation of a complaint is the responsibility of the complainant not the Union. Moreover, the requisition both identified the precise rule allegedly breached by Mrs Massey (rule 3.9) and gave full details of the conduct subject to the complaint.

#### **Conclusion – Complaint 15**

124. This matter falls to be determined by me by virtue of subsection (2)(b) of section 108A of the 1992 Act regarding union rules relating to discipline.
125. I find that the requisition, referred to in paragraph 30, was sufficiently clear and precise to satisfy the requirements of Procedure A(v) of rule 13 of the rules of the Union. I therefore refuse to make the declaration sought by the Claimant.

### **Complaint 16**

*“that the General Secretary acted in breach of Rule 13 Procedure A by failing to investigate or properly consider Mrs Massey’s complaints about the conduct of some of the members of the Royal Bank of Scotland National Company Committee and the UNIFI complainants’ failure to adhere with the requirements of Rule 13 Procedure A (iv) and (v)”*

126. The Union conceded this complaint, citing commercial reasons. I find the complaint well-founded and make the declaration sought.

### **Complaint 17**

*“that in breach of rule 14(iii) of the rules of the union, on 24 December 2002 the Appeals Committee unreasonably refused Mrs Massey’s request that the hearing of 6 and 7 January 2003 be postponed”*

127. The Union conceded this complaint, citing commercial reasons. I find the complaint well-founded and make the declaration sought.

## **Remedy**

128. I have made declarations in respect of seven complaints. Where I make a declaration I am required to issue enforcement orders unless I consider it would not be appropriate.
129. In this case I have decided not to issue any such orders. The Union, UNIFI, no longer exists and its rule book is defunct. The Claimant was not seeking enforcement orders in relation to any of the complaints on which I have made declarations.

**E G Whybrew CBE**  
**Assistant Certification Officer**