

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

**Mr A Irving**

**v**

**GMB**

**Date of Decision:**

**16 March 2007**

**DECISION**

Upon application by Mr Irving (“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 the GMB breached rule 6.1 of its rules on or about 15 March 2006 by confirming to the Claimant that a complaint had been brought against him under rule 6 without a complaint having been made against him to the Branch Secretary.
- (ii) I refuse to make the declaration sought by the Claimant that the GMB breached rule 6.2 of its rules on or about 15 March 2006 by failing to hold a hearing before the Branch or the Regional Committee of the alleged rule 6 complaint brought against him.
- (iii) I refuse to make the declaration sought by the Claimant that the GMB breached rule 5.7 of its rules on or about 20 June 2006 by allegedly continuing the Claimant’s suspension from office as Regional President for no good and sufficient reason.
- (iv) I refuse to make the declaration sought by the Claimant that the GMB breached rule 5.5 of its rules on or about 12 July 2006 by the actions of its Regional Secretary, Mr Nelson, in bringing a formal complaint against him under rules 5.5 and 5.6, which complaint was allegedly brought by Mr Nelson as an individual member.

## REASONS

1. Mr Irving is member of the GMB (“the Union”). By an application dated 16 July 2006 he made complaints against his Union arising out of his suspension from office as the Regional President of the Union’s Yorkshire and North Derbyshire Region on 11 January 2006 and the disciplinary charges which were laid against him on 12 July 2006. Following correspondence with Mr Irving, the complaints which he wished to pursue were identified in the following terms:-

### **Complaint 1**

*‘On or around 15 March 2006 by confirming to Mr Irving that a complaint had been brought against him under rule 6 without a complaint having been made against him to the Branch Secretary, the Union acted in breach of rule 6.1 of the rules of the union.’*

### **Complaint 2**

*‘On or around 15 March 2006 in breach of rule 6.2 of the rules of the union, the union failed to hold a hearing before the Branch or the Regional Committee of the alleged rule 6 complaint brought against Mr Irving.’*

### **Complaint 3**

*‘On or around 20 June 2006 by continuing to debar Mr Irving from office as the Regional President for no good and sufficient reason the union breached rule 5.7 of the rules of the union,’*

### **Complaint 4**

*‘On or around 12 July 2006, by bringing a formal complaint as an individual member of the union under rules 5.5 and 5.6 against Mr Irving, the Regional Secretary Mr Nelson acted in breach of rule 5.5 of the rules of the union.’*

2. I investigated these alleged breaches in correspondence. A hearing was arranged for 18 January 2007 which was adjourned that morning as counsel for the Claimant was unable to attend due to bad weather. The adjourned hearing took place on 22 February 2007. Mr Irving was represented by Ms Susan Machin of counsel. He attended and gave evidence. The Union was represented by Mr Jason Galbraith-Marten of counsel, instructed by Mr J O’ Hara of Thompsons Solicitors. Evidence for the Union was given by Mr Jerry Nelson, the former GMB Yorkshire and North Derbyshire Regional Secretary and Mr Richard Ascough, GMB Southern Regional Secretary. All the witnesses provided witness statements. A 204-page bundle of documents was prepared for the hearing by my office. There was a bundle of four authorities. The rules of the Union were also in evidence. Both parties submitted skeleton arguments and chronologies.

## **Findings of Fact**

3. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows.
4. Mr Irving has been a member of the GMB since 1997. He is the branch secretary of the Ciba Chemical C41 branch in Bradford and a full time convener at that place of work. In 2005 he was elected to the Regional Committee of the Yorkshire and North Derbyshire region of the Union and in April of that year he was elected as the Regional President for a period of four years.
5. At all material times Mr Nelson was the Regional Secretary of the Yorkshire and North Derbyshire region. Mr Nelson ceased to be the Regional Secretary shortly before this hearing, having been removed from office.
6. On 14 December 2005 Mr Irving attended a Christmas lunch at Maxi's Chinese Restaurant with four other members of the Regional Executive Committee ("REC" or "Regional Committee"), the Regional Secretary Mr Nelson, his PA, Maria Ford and two representatives from the region's solicitors, Whittles. During the course of this lunch there was a vigorous exchange of views between Mr Irving and Noreen Metcalfe, another member of the REC, concerning the handling of equal pay claims by the Union. The exchange ended with sharp words from Mr Irving which Ms Metcalfe considered to be inappropriate and upsetting. Later that lunchtime Mr Irving apologised for what he had said and, as they were leaving, Mr Irving and Ms Metcalfe wished each other well. Mr Irving believed that their disagreement was resolved. Mr Nelson gave evidence that Ms Metcalfe was driven home by a colleague who later telephoned him to say that, on the way home, Ms Metcalfe had remained extremely upset by what Mr Irving had said. A couple of days later Mr Nelson telephoned Ms Metcalfe to find out how she felt. He gave evidence that she was still distraught and that she said she was considering resignation from the Regional Committee.
7. The REC met on 11 January 2006. Mr Nelson gave evidence that, about 25 minutes prior to the meeting, Ms Metcalfe told him privately that she wished to raise at the meeting the way in which she had been spoken to by Mr Irving at the Christmas lunch and that she was still considering resignation. At the end of the Regional Committee meeting, under "More Any Other Business", Ms Metcalfe raised this matter. Mr Nelson asked Mr Irving, Ms Metcalfe and his PA to leave the room whilst the Regional Committee discussed the situation in private session. The private session was inquorate, there being only four members present. The Regional Committee has nine members and a quorum requires one half of its members. In the private session it was decided to suspend Mr Irving from his position as Regional President and ask Mr Neil Derrick, Senior Organiser, to conduct an investigation into the alleged misconduct. Mr Irving and Ms Metcalfe were called back into the meeting and told of the decision.

8. By letters to Mr Irving and Mr Derrick dated 12 January 2006, Mr Nelson confirmed the suspension and the fact that an investigation would be carried out into the allegations of misconduct. He stated that the process would follow the rule book procedures covering the discipline of members. However, it was not until 17 January, following a request by Mr Irving, that Mr Nelson informed him of the specific allegation against him. It was alleged that Mr Irving had “... *verbally abused Noreen in an aggressive and intimidating manner* ...”. At no stage did Ms Metcalfe write a letter of complaint. The terms of the allegation were formulated by Mr Nelson. They were not the words of Ms Metcalfe.
9. At an inquorate REC on 8 February 2006, it was reported that Mr Derrick had completed his investigation. Mr Nelson stated that he would be recommending that the matter be passed to National as five members of the REC were involved in the incident and the Committee would therefore be unable to deal with it. At a special meeting of the REC on 17 February this recommendation was accepted.
10. In his oral evidence, Mr Nelson stated that neither he nor the REC had given any consideration to the rule book in suspending Mr Irving from his position as Regional President on 11 January 2006 nor in the proposed way of processing the allegation. At the hearing Mr Nelson was unable to state under which rule or rules these actions had been taken. He considered that he was dealing with a unique situation and that he was doing so in a sensible and pragmatic manner.
11. On 21 February, the then Acting General Secretary, Paul Kenny, wrote to Mr Irving informing him that he had been contacted by Mr Nelson and had decided to convene the Special Regional Committee (“SRC”). The SRC is an ad hoc body to which there is no reference in the rules of the Union. It was created in recent years by the Central Executive Council (“CEC”) under its residual powers in rule 10(16) to deal with a particular disciplinary matter in the Lancashire region. Its purpose is to deal with situations that would ordinarily be dealt with by a Regional Committee but where it would be inappropriate for that Regional Committee to do so by reason of the personal involvement of its members in the matter to be determined. The SRC is a body made up of lay members from each of the Union’s ten regions, other than the region from which the problem originated. Its members receive special training in discipline and grievance handling and are selected so as to achieve an appropriate gender and racial balance. It operates under the rules applicable to ordinary Regional Committees. Mr Kenny asked the Regional Secretary of the Southern Region, Mr Ascough, to convene and administer the SRC to deal with this matter.
12. In a letter dated 20 February and one apparently written on 3 March 2006, Mr Irving wrote to Mr Nelson seeking disclosure of certain documents and commenting upon the situation generally. Mr Nelson considered these letters to be an attack upon him as Regional Secretary and they were later used as the basis of disciplinary action against Mr Irving. Mr Irving’s letter of 3 March indicates that he was then of the opinion that the role of the SRC was to

review the findings of Mr Derrick's investigation and consider whether any disciplinary charges were merited. After 6 March Mr Nelson did not enter into any further correspondence with Mr Irving, the matter being handled for the Union from that time by Mr Ascough.

13. On 14 March 2006, the CEC ratified the decision to use the SRC to hear the complaint on the basis that both parties had asked it to do so. Mr Irving denies that he had ever made such a request.
14. There was an exchange of e-mails between Mr Irving and Mr Ascough beginning on 7 March 2006 in which Mr Irving sought clarification of the role of the SRC. In an e-mail dated 15 March, Mr Ascough stated that "*The Special Regional Committee would be meeting in accordance with Rule 6*". In another e-mail of the same date Mr Ascough wrote "*The complaint is being brought by your colleague on the Regional Committee against you, under Rule 6*". Apparently Mr Irving was still uncertain of the position and on 16 March enquired if he would be defending himself or merely giving evidence as part of an investigation into a complaint. Mr Ascough responded on 20 March stating, "*This is a Rule 6 complaint by one member against another and you will be able to defend yourself against that complaint. Disciplinary penalties cannot be imposed by the Regional Committee hearing a grievance under Rule 6. If any issues of discipline arose as a result of this hearing they would have to be dealt with under Rule 5. My remit currently is only Rule 6*". Mr Ascough later informed Mr Irving that he would be entitled to a representative and to call witnesses. Mr Irving proposed calling eight witnesses.
15. Mr Ascough arranged for the hearing of what he called '*the grievance*' to take place on 17 May 2006. He was asked by Mr Irving for yet further clarification as to whether this would be a disciplinary hearing or an investigation. Mr Ascough responded on 12 April as follows: "*As previously advised this is a Rule 6 complaint and therefore not a disciplinary. If as a result of the hearing it was considered that there was a need for disciplinary action this would have to be dealt with separately under Rule 5. This would not happen on 17 May*". The date of the hearing was later adjourned to 5 June. Ms Metcalfe was informed that she would be presenting a complaint against Mr Irving on that occasion. On 24 April Mr Irving was sent the "Guidance on Procedure to be followed in Grievance Proceedings under Rule 6".
16. As a result of being sent this guidance, Mr Irving wrote to the General Secretary on 12 May 2006 stating that he considered rule 6 to be inappropriate as it did not allow him to defend himself in accordance with the laws of natural justice. Mr Kenny, who had by then been elected as General Secretary, responded on 22 May explaining the difference between rule 5, which deals with discipline, and rule 6. Mr Kenny explained, "*If a complaint is brought against an employee of the Union under Rule 6 and the Regional Secretary believes that such a complaint warrants potential disciplinary action, the Regional Secretary has the power to transfer the complaint from Rule 6 to the Disciplinary Procedure ...*". He also pointed out that a complaint under rule 6 is made by an individual member whereas a disciplinary charge under rule 5 is made by the Union or its constituent bodies. Further, he stated that an appeal

from the decision of the SRC could be made to the CEC, thus ensuring the two stage process in accordance with rule 6.

17. The SRC met on 5 June 2006. There was a dispute about who could represent Mr Irving and the hearing was adjourned to 28 June. However, Ms Metcalfe and Mr Irving took the opportunity to discuss the complaint. Their discussions eventually led to an amicable resolution, which they communicated to the Union on 20 June. In a joint statement, they recorded that they had been successful in resolving their personal difficulties and asked that Mr Irving be reinstated to his position as Regional President. In a separate e-mail of 20 June, Ms Metcalfe stated that she had never raised a *'formal complaint'* and that, in raising the issue at the Regional Committee in January 2006, she had hoped that "... *as adults and professionals we could resolve the situation...*" She further stated that she felt "... *that the issue that was raised was a catalyst and that both Andy and I had been pawns in another's fight*". At a later stage, when asked by Mr Ascough to confirm that she had withdrawn her rule 6 complaint against Mr Irving, Ms Metcalfe responded that she could not withdraw her complaint as she had never raised one in the first instance.
18. Mr Nelson wrote to both Mr Irving and Ms Metcalfe on 20 June 2006. He stated that he was extremely pleased that they had managed to resolve their differences and asked them both for dates when they could all go out together for a meal and a drink "... *to hopefully start the process of re-building relationships.*" Neither Mr Irving nor Ms Metcalfe took up this invitation.
19. On 26 and 27 June 2006, Mr Nelson wrote to all the members of the REC attempting to arrange a special meeting on 30 June to discuss the matter and lift the "...*committee's suspension of the Regional President.*" Insufficient members were able to attend a meeting at such short notice and the issue was therefore left over to the next scheduled meeting of the REC on 12 July. Mr Nelson was on holiday from 1 to 10 July.
20. The full meeting of the REC on 12 July was preceded by a private session at which Mr Irving was reinstated as Regional President. In this private session Ms Metcalfe repeated her assertion that she had never raised a formal complaint. She also stated that she regretted not having withdrawn her complaint earlier. Mr Irving presided over the full meeting that followed in his capacity as Regional President. The first item of business, however, was disciplinary charges to be brought against Mr Irving. Mr Nelson formally lodged five disciplinary charges against Mr Irving, together with supporting documentation. The charges arose out of the correspondence from Mr Irving to Mr Nelson following his suspension. Mr Nelson considered that the allegations against him in this correspondence constituted a disciplinary matter within rules 5.5 and 5.7 (erroneously described by Mr Nelson at the time as rules 5.5 and 5.6). There was a discussion as to whether there should be an investigation prior to any hearing but Mr Nelson declared that the complaint was being made by him and that no investigation was needed as all the information was already available.

21. On 16 July 2006 Mr Irving completed his registration of complaint form to my office, which was received on 18 July.
22. The disciplinary hearing into the charges against Mr Irving took place on 6 September 2006 before the Regional Committee. Four out of the five complaints were upheld and Mr Irving was debarred from holding any regional position forthwith. He appealed and his appeal hearing took place on 6 December 2006 before the Appeals Committee of CEC. This was conducted as a full rehearing. The Appeals Committee upheld three of the original five complaints and decided that Mr Irving be suspended from holding any regional office until the next regional election cycle in January 2009; regional elections being held every four years.

### **The Relevant Statutory Provisions**

23. The provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) which are relevant for the purpose of this application are as follows:-

#### ***Section 108A Right to apply to Certification Officer***

*(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*

*(2) The matters are -*

- (a) ...*
- (b) disciplinary proceedings by the union (including expulsion)*
- (c) ...*
- (d) ...*
- (e) ...*

### **The Relevant Union Rules**

24. The rules of the Union relevant to this application are as follows:-

#### **Rule 5 Membership**

*5.5 The Central Executive Council, a Regional Council, or a Regional Committee shall have the power to suspend from benefit, or prohibit from holding any Branch Office, any member who in their judgement is guilty of attempting to injure the Union or acting contrary to the rules or who makes or in any way associates himself or herself with any defamatory, scurrilous or abusive attacks whether in any journal, magazine or pamphlet or by word of mouth, on any Official of the Union or Committee of the Union, or who acts singly or in conjunction with any other members or persons in opposition to the policy of the Union as declared by its Committee or Officials under these rules, or who gives encouragement to, or participates in, the activities of any organisation, faction or grouping whose policies or aims have expressed or implied promotion of racial supremacy or racial hatred at their core, or for any reason they deem good and sufficient.*

*5.6 A Regional Council or a Regional Committee shall have power to recommend to the Central Executive Council the expulsion from membership of any member on any of the grounds specified in clause 5 of*

*this rule. Whether on such a recommendation or otherwise, the Central Executive Council shall have power to expel from membership any member on any of the grounds so specified. No expelled member shall be eligible for re-entrance into membership without the consent and approval of the Central Executive Council, or a Regional Committee.*

*5.7 The Central Executive Council, a Regional Council or a Regional Committee shall have power to debar any member from holding any office or representative position in the Union, for such period as the Council or Committee concerned shall specify or from participating in the conduct of the business of the Union where in their opinion such member is acting contrary to the policy of the Union or against the best interests of the Union, or for any other reason which they shall deem good and sufficient.*

*5.8 If the member subject to disciplinary proceedings under clause 5 or clause 7 of this rule by a Regional Council or a Regional Committee is not satisfied with the written decision, he/she may appeal in writing within one month to the General Secretary for reference of the case to the Central Executive Council, the decision of which shall be final. In giving its decision, the Regional Council or the Regional Committee must notify the member in writing of his/her right to appeal.*

*5.9 If the member subject to disciplinary proceedings by the Central Executive Council is not satisfied with the written decision, he/she may appeal in writing within one month to the General Secretary for reference of the case to the Appeals Tribunal, the decision of which shall be final. In giving its decision, the Central Executive Council must notify the member in writing of his/her right to appeal.*

*5.10 At each hearing before the Regional Council, the Regional Committee, the Central Executive Council or the Appeals Tribunal (as the case may be), the member shall have the right to hear evidence against him/her, to answer it and to question witnesses. He/she shall have a reasonable opportunity to present his/her case. He/she may put his/her case orally or in writing, and shall have the right to support his/her case by written statements, or to produce witnesses.*

#### **Rule 6 Appeals Procedure for Members**

*6.1 Should any member have any complaint to make he/she must do so to his/her Branch Secretary, who must submit the matter to the Branch. If any member is not satisfied with the decision of the Branch or the Branch decides it is beyond its remit to offer a remedy, he/she may appeal in writing within one month of the Branch meeting to the Regional Committee, the decision of which shall be final.*

*6.2 At each hearing before the Branch or the Regional Committee (as the case may be), the member shall have a reasonable opportunity to present his/her case. He/she may put his/her case orally or in writing, and shall have the right to support his/her case by written statements, or to produce witnesses. He/she shall have the right to hear contrary evidence, to answer it and to question witnesses.*

#### **Rule 10 Central Executive Council**

*10.16 Any matters not provided for in these Rules shall be decided by the Central Executive Council.*

## Complaint 1

25. Complaint 1 is in the following terms:

*‘On or around 15 March 2006 by confirming to Mr Irving that a complaint had been brought against him under rule 6 without a complaint having been made against him to the Branch Secretary, the Union acted in breach of rule 6.1 of the rules of the union.’*

26. Rule 6.1 is in the following terms:

*6.1 Should any member have any complaint to make he/she must do so to his/her Branch Secretary, who must submit the matter to the Branch. If any member is not satisfied with the decision of the Branch or the Branch decides it is beyond its remit to offer a remedy, he/she may appeal in writing within one month of the Branch meeting to the Regional Committee, the decision of which shall be final.*

## Summary of submissions

27. Ms Machin, for Mr Irving, accepted that there was an issue as to whether an alleged breach of rule 6 of the rules of the GMB falls within my jurisdiction under section 108A of the 1992 Act. She submitted that it was within my jurisdiction by virtue of section 108A(2)(b), namely that it is one which relates to “disciplinary proceedings by the Union”. Ms Machin noted that I had decided that rule 6 fell outside the scope of section 108A(2)(b) in **Fenton v. GMB (2004) D/16-20/04**, a case in which she appeared for the GMB. She accepted that in normal circumstances rule 6 does not relate to disciplinary proceedings and that **Fenton** was correctly decided on its facts. However, she argued that the facts of the present case required me to reach a different conclusion. In particular, Ms Machin referred to the confusion about the nature of the proceedings against Mr Irving and about which rule the complaints were being processed under. She pointed out that the hearing being arranged by Mr Ascough had all the appearances of a disciplinary hearing. It provided for Mr Irving to be represented, for him to be given the witness statements and for him to produce his own witnesses. Ms Machin maintained that a hearing set up in this way inevitably adopted the mantle of disciplinary proceedings. She further argued that rule 6 related to disciplinary proceedings whenever it involved one member complaining against another. She supported this submission by reference to the Union’s Guidance Note on the processing of grievances under rule 6. Appendix 2 to that document deals with the interface between a rule 6 grievance and disciplinary action. It requires that, where a grievance could give rise to a disciplinary matter, the grievance should be suspended pending an investigation by the Regional Secretary and a decision as to whether the facts give rise to a disciplinary issue. The Guidance Note continues that, if so, that issue should be processed by the Union under the disciplinary rules and the individual grievance left in abeyance. Ms Machin submitted that the existence of this procedure demonstrated that rule 6 could relate to disciplinary proceedings. She further submitted that the Union’s failure to follow this procedure in the present case left an allegation of misconduct to be processed under rule 6 and that, used in this way, rule 6 clearly related to disciplinary proceedings. In the alternative, Ms Machin

submitted that, if I found that rule 6 was a rule which does not relate to disciplinary proceedings by the Union, the facts of this case are so exceptional as to entitle Mr Irving to argue that rule 6 was used against him by the Union for a disciplinary purpose, in accordance with my decision **Dennison v UNISON (2003) D/12/03**. Ms Machin went on to argue that, should I find the complaint to be within my jurisdiction, the actual breach of rule 6.1 is quite plain. Rule 6.1 requires a complaint to be made to a member's Branch Secretary. It was submitted that as Ms Metcalfe had not raised her complaint with her Branch Secretary the Union was clearly in breach by purporting to progress her complaint under rule 6.

28. Mr Galbraith-Marten, for the Union, submitted that this complaint is outside my jurisdiction as rule 6 is not a rule which relates to "disciplinary proceedings by the Union". He relied upon my decision in **Fenton v GMB**, which he argued is not distinguishable on its facts. Counsel maintained that the possibility that a disciplinary charge may follow a rule 6 investigation is not sufficient to bring rule 6 within my jurisdiction. In his submission, jurisdiction arises at the point that the complaint becomes a disciplinary matter and that Ms Metcalfe's complaint was never a disciplinary matter. Should I be against the Union on jurisdiction, Mr Galbraith-Marten argued that Mr Irving's case depended upon giving rule 6.1 an overly literal meaning. He submitted that I should not give it a meaning which might require a Regional Committee to hear a matter from which it is clearly conflicted. In his submission the CEC acted lawfully in authorising Ms Metcalfe's rule 6 complaint to be heard by the SRC, which secured for Mr Irving all his rights under rule 6.

### **Conclusion - Complaint 1**

29. My jurisdiction to determine complaints of breach of rule was conferred by the Employment Relations Act 1999, amending the 1992 Act. It is, however, a limited jurisdiction. I may only determine claims of a breach or threatened breach of those rules which relate to any of the matters mentioned in section 108A(2) of the 1992 Act. This includes within my jurisdiction rules which relate to "disciplinary proceedings by the union (including expulsion)". In previous decisions I have found that my jurisdiction under section 108A should be interpreted restrictively, having regard to the legislative history and the terms of section 108A(1) and (2).
30. In the case of **Fenton v GMB**, I considered whether an alleged breach of rule 6 of the rules of the GMB fell within my jurisdiction as a rule which related to disciplinary proceedings. I determined that it did not do so. Having heard further argument on rule 6, I am not persuaded that **Fenton** was wrongly decided or that it is distinguishable on the present facts. In my judgment a rule which relates to disciplinary proceedings is ordinarily one which is part of a process, the implementation of which may result in the imposition of a disciplinary sanction. In the rules of the GMB, rule 6 is in essence a grievance procedure for members. The disciplinary code is found essentially in rule 5 and rule 37.15. These are distinct mechanisms. One distinguishing feature is that members cannot trigger the disciplinary process, that function being

restricted to persons authorised by the Union to do so on its behalf. On the other hand, the grievance procedure in rule 6 is plainly aimed at enabling members to process any complaint. It is also significant that rule 6 is drafted in such a way that any person who is complained against would not have the right to be heard and that rule 6 contains no power for either the branch or Regional Committee to impose any sanction on a member.

31. In Appendix 2 to its Guidance Note on the rule 6 grievance procedure, the Union acknowledges that there may be an interface between a rule 6 grievance and disciplinary action where a member wishes to complain against a named individual. The Guidance Note sets out the recommended procedure to enable the Union to decide at a preliminary stage whether the grievance gives rise to a disciplinary case which it would then be appropriate for the Union to process under the disciplinary procedures. I find that the acknowledgment by the Union that the same conduct might be the subject of a rule 6 grievance procedure and a rule 5 disciplinary procedure is far from conclusive in Mr Irving's favour. The Guidance Note is not itself a rule of the Union and it does not establish that rule 6 is a rule relating to disciplinary proceedings. On the contrary, it highlights that the two processes are separate and establishes a cross-over mechanism for switching a potentially disciplinary matter to the correct track.
  
32. Ms Machin submitted that on the facts of this case I should find that rule 6 was operated by the Union as a rule relating to disciplinary procedures, having regard to the confusion caused to Mr Irving by the Union's conduct. There is some substance to this argument. It is astonishing that Mr Irving was suspended on 11 January 2006 and an investigation ordered, into his alleged misconduct, which would '*follow the rule book procedures covering the discipline of members*' with no specific consideration having been given to the rules. It is also astonishing that such action was taken in the absence of a written complaint by Ms Metcalfe. The decision to submit Ms Metcalfe's complaint to a SRC, as a rule 6 issue, may have had its merits but it took no apparent account of the cross-over mechanism in the Guidance Note on rule 6. No investigation was carried out as to whether the complaint gave rise to a disciplinary matter which the Union should adopt and pursue under the disciplinary procedures. Further, whilst this matter was expressly pursued as a rule 6 grievance, the chosen procedure was adversarial in nature and more appropriate to a disciplinary hearing. I have little difficulty in understanding why Mr Irving was confused by the procedure. Nevertheless, despite Mr Irving's confusion, I find that the rule 6 procedure adopted by the Union was not operated as, or as part of, a disciplinary procedure with the intention of putting Mr Irving in jeopardy of a disciplinary sanction. It cannot be said that, by the rule 6 procedure, the Union was purporting to subject Mr Irving to a disciplinary process. For the same reasons, I find that this is not a case which can properly be considered as falling within my jurisdiction by an application of the approach adopted in **Dennison v UNISON** (see above), especially having regard to the decision of the Employment Appeal Tribunal in **Gallagher v UNISON** (2005) EAT 280/05.

33. Had I jurisdiction in this matter, I would have found that there had been a breach of rule 6.1 by the Union's action in processing Ms Metcalfe's complaint under rule 6 without Ms Metcalfe having first submitted the matter to her Branch Secretary. I would not, however, have considered it appropriate to have made an enforcement order. The Union made a telling point in its submission that the rules should not be interpreted so as to require the Regional Committee to determine any matter in which it is clearly conflicted. However, the residual power of the CEC under rule 10.16, which was invoked to create the SRC, only arises when there are matters not provided for in the rules. In my judgment, the processing of a grievance by one member against another is provided for in rule 6 and there was, therefore, no requirement for the CEC to effectively remove from rule 6.1 the requirement for the member to initiate his/her complaint to his/her branch secretary. Indeed, given the manner in which the differences between Ms Metcalfe and Mr Irving were eventually resolved, the injection of some dialogue and common sense at local level may have been beneficial. The Union would have been on firmer ground if the matter had been first submitted to the branch and then the CEC had used its residual powers to substitute the SRC for the Regional Committee, should the member have chosen to appeal and the Regional Committee have been conflicted. This, however, is not a matter I have to determine on the facts of this case.
34. For the above reasons I refuse to make the declaration sought by the Claimant that the GMB breached rule 6.1 of its rules on or about 15 March 2006 by confirming to the Claimant that a complaint had been brought against him under rule 6 without a complaint having been made against him to the Branch Secretary.

## **Complaint 2**

35. Complaint 2 is in the following terms:

*'On or around 15 March 2006 in breach of rule 6.2 of the rules of the union, the union failed to hold a hearing before the Branch or the Regional Committee of the alleged rule 6 complaint brought against Mr Irving.'*

36. Rule 6.2 is in the following terms:

*6.2 At each hearing before the Branch or the Regional Committee (as the case may be), the member shall have a reasonable opportunity to present his/her case. He/she may put his/her case orally or in writing, and shall have the right to support his/her case by written statements, or to produce witnesses. He/she shall have the right to hear contrary evidence, to answer it and to question witnesses.*

37. Mr Galbraith-Marten, for the Union, again submitted that this complaint is outside my jurisdiction as rule 6.2 is a part of a rule, the whole of which does not relate to "disciplinary proceedings of the union" within the meaning of section 108A(2) of the 1992 Act. Both Mr Galbraith-Marten and Ms Machin relied upon the submissions they had made in this regard in relation to the first complaint. Should I find that I have jurisdiction, Ms Machin argued that rule 6.2 requires the Branch and/or Regional Committee (as the case may be) to

hold a hearing and give the complaining member a reasonable opportunity to present his/her case. She submitted that Ms Metcalfe's complaint was processed as a rule 6 complaint but that she was not given an opportunity to present her case as required by rule 6.2. Mr Galbraith-Marten submitted that rule 6 must be given a reasonable and purposive interpretation which would permit a complaint to be raised internally at an appropriate level. He argued that, interpreted in this way, there had been no breach of rule 6.2 as Ms Metcalfe's complaint was to be heard fully by the SRC with a possible appeal to the CEC.

38. For the reasons given in relation to complaint one, I find that I do not have jurisdiction in relation to the alleged breach of rule 6.2. In my judgment, rule 6.2 is not a rule relating to "disciplinary proceedings by the union (including expulsion)" within the meaning of section 108A(2) of the 1992 Act, as was argued by Ms Machin.
39. Had I jurisdiction, I would not have found that there had been a breach of rule 6.2 by the fact of Ms Metcalfe's rule 6 complaint not having been considered at a hearing at the Branch. The purpose of rule 6.2 is to impose certain procedural requirements in the event of the merits of a complaint being considered by a Branch or Regional Committee. In this case the merits of Ms Metcalfe's complaint were never considered by her Branch or Regional Committee. Rule 6.1 obliges a Branch Secretary to submit any rule 6 complaint he/she receives to the Branch. Rule 6.2 is only engaged if the complaint reaches the stage of being considered on its merits by the Branch or Regional Committee (as the case may be). On the facts of this case, Ms Metcalfe did not complain to her Branch Secretary. The Branch Secretary did not put her complaint to the Branch and therefore the rule 6.2 procedure was never engaged.
40. For the above reasons, I refuse to make the declaration sought by the Claimant that the GMB breached rule 6.2 of its rules on or about 15 March 2006 by failing to hold a hearing before the Branch or the Regional Committee of the alleged rule 6 complaint brought against him.

### **Complaint 3**

41. Complaint 3 is in the following terms:

*'On or around 20 June 2006 by continuing to debar Mr Irving from office as the Regional President for no good and sufficient reason the union breached rule 5.7 of the rules of the union,'*

42. Rule 5.7 is in the following terms:

*5.7 The Central Executive Council, a Regional Council or a Regional Committee shall have power to debar any member from holding any office or representative position in the Union, for such period as the Council or Committee concerned shall specify or from participating in the conduct of the business of the Union where in their opinion such member is acting contrary to the policy of the Union or against the best interests of the Union, or for any other reason which they shall deem good and sufficient.*

## Summary of submissions

43. Ms Machin, for Mr Irving, submitted that when he was suspended from his position as Regional President on 11 January 2006 it must have been under rule 5.7, by necessary implication. Ms Machin accepted that the REC had the power to suspend but that in the absence of the suspension being for a defined period, it was Mr Irving's reasonable expectation that the suspension would last for only so long as the complaint made by Ms Metcalfe remained a live issue. Ms Machin observed that the complaint was amicably resolved on 20 June and submitted that reinstatement should then have been automatic. She argued that the Union was in breach of rule 5.7 by preventing Mr Irving being restored to office forthwith. She further argued that Mr Nelson had indulged in delaying tactics in securing the removal of the suspension. It was suggested that an emergency REC meeting might have been held by Mr Nelson telephoning each of its members. It was further argued that the decision to suspend was taken at a REC meeting which was inquorate and that the suspension therefore only had effect by consent, such consent being withdrawn on 20 June.
44. Mr Galbraith-Marten, for the Union, submitted that no decision was taken by the Union in accordance with rule 5.7 on or about 20 June 2006. He further argued that Mr Nelson did take all reasonable steps to convene a meeting of the REC as soon as possible after 20 June. Additionally, Mr Galbraith-Marten submitted that the suspension had been imposed by the REC and that it could therefore only be lifted by the REC, which it did at the earliest practicable opportunity.

## Conclusion - Complaint 3

45. This complaint is presented to me as a breach of rule 5.7 on or about 20 June 2006. As Mr Galbraith-Marten observed, it is not a complaint about the validity of Mr Irving's original suspension on 11 January. I must therefore examine what if anything occurred on or about 20 June which could constitute a breach of rule 5.7. Having regard to the precise terms of rule 5.7, I am not persuaded that this rule was breached by anything that the Union did, or failed to do, on 20 June.
46. I observe that rule 5.7 gives certain bodies of the Union the power to debar members from office in certain circumstances, one of those being "any other reason which they shall deem good and sufficient". The phrase 'good and sufficient' is the one which Mr Irving has used in formulating this complaint. However, it is far from clear that his suspension was carried out under rule 5.7, having regard to Mr Nelson's concession that the REC had no regard to the rules in suspending Mr Irving. Nevertheless, this complaint takes the fact of Mr Irving's suspension as a *fait accompli* and looks to the events on or about 20 June as constituting a breach of rule 5.7.
47. The suspension of Mr Irving on 11 January 2006 was carried out by the Regional Committee. It would therefore be expected that the removal of the

suspension would also be a matter for the Regional Committee and not an executive decision that could be taken by the Regional Secretary. Furthermore, if as pleaded, the suspension was imposed by the Regional Committee under rule 5.7 on the basis that it had a “good and sufficient reason” to do so, it would be for the Regional Committee, not the Regional Secretary, to determine if that reason no longer existed. It is possible that the Regional Committee could still have taken a serious view of the alleged misconduct, even if those involved in the incident might not have wished it to be taken any further. In my judgment, the duty on the Union following the joint statement of Mr Irving and Ms Metcalfe on 20 June was to convene the Regional Committee to consider Mr Irving’s continued suspension as soon as reasonably practicable and for the Regional Committee to reach a decision in accordance with the rules which was not legally perverse. I find that the steps taken by Mr Nelson with a view to convening a special meeting of the Regional Committee on 30 June and, when this was not possible, to put the matter over to the next scheduled meeting of the Regional Committee on 12 July were reasonable in all the circumstances and that the decision of the REC to remove Mr Irving’s suspension was manifestly not perverse.

48. For the above reasons I refuse to make the declaration sought by the Claimant that the GMB breached rule 5.7 of its rules on or about 20 June 2006 by allegedly continuing the Claimant’s suspension from office as Regional President for no good and sufficient reason.

#### **Complaint 4**

49. Complaint 4 is in the following terms:

*‘On or around 12 July 2006, by bringing a formal complaint as an individual member of the union under rules 5.5 and 5.6 against Mr Irving, the Regional Secretary Mr Nelson acted in breach of rule 5.5 of the rules of the union.’*

50. Rule 5.5 is in the following terms:

*5.5 The Central Executive Council, a Regional Council, or a Regional Committee shall have the power to suspend from benefit, or prohibit from holding any Branch Office, any member who in their judgement is guilty of attempting to injure the Union or acting contrary to the rules or who makes or in any way associates himself or herself with any defamatory, scurrilous or abusive attacks whether in any journal, magazine or pamphlet or by word of mouth, on any Official of the Union or Committee of the Union, or who acts singly or in conjunction with any other members or persons in opposition to the policy of the Union as declared by its Committee or Officials under these rules, or who gives encouragement to, or participates in, the activities of any organisation, faction or grouping whose policies or aims have expressed or implied promotion of racial supremacy or racial hatred at their core, or for any reason they deem good and sufficient.*

#### **Summary of submissions**

51. Ms Machin, for Mr Irving, submitted that when Mr Nelson lodged disciplinary charges against Mr Irving on 12 July 2006 he did so in a personal capacity and

not as Regional Secretary. She argued that Mr Nelson raised the charges on his own volition and in relation to his own personal standing. She sought support for this submission from the fact that the Regional Committee itself questioned the manner in which the complaints were brought at the meeting on 12 July. Ms Machin argued that the proper procedure would have been for Mr Nelson, as an individual member, to have made a rule 6 complaint against Mr Irving. At the very least, Ms Machin submitted, Mr Nelson should have permitted an impartial investigation before the charges were laid. She maintained that the disciplinary procedure failed to meet the standards required by natural justice as Mr Nelson had laid the charges himself in respect of his personal position and had refused to allow a preliminary investigation. It was Ms Machin's case that individual members are not entitled to lay disciplinary charges under rule 5 and that, as this is what Mr Nelson did; he acted in breach of rule 5.5.

52. Mr Galbraith-Marten, for the Union, invited me to examine the precise terms of rule 5.5. He submitted that it is a rule which is there to give certain bodies of the Union the power to impose certain disciplinary sanctions and that, accordingly, it had no application to the Regional Secretary's decision to lay charges against Mr Irving on 12 July 2006. He also relied upon the Guidance Note prepared by the Union on the procedure to be followed in the disciplinary proceedings. This guidance states that "*The Regional Secretary triggers formal disciplinary proceedings under rule 5.5 ... either on his/her own initiative, or on instruction from the Regional Committee*". He submitted that the disciplinary charges were laid by Mr Nelson in his capacity as Regional Secretary as demonstrated by the fact that they were on Union headed notepaper. Mr Galbraith-Marten emphasised that the role of the Regional Secretary was not to make any final determination and that the requirements of natural justice were satisfied by the safeguards set out in the rules and the guidance note. He further submitted that the role of the Certification Officer is primarily to examine the decision-making process, not its outcome, but that it was appropriate that I had regard to the fact that the majority of the charges against Mr Irving were subsequently upheld both by the Regional Committee and the Appeals Committee of the CEC.

#### **Conclusion - Complaint 4**

53. Rule 5.5 of the rules of the Union is of limited scope. It provides for certain disciplinary powers to be exercised by various senior bodies in the Union. It does not explicitly address such procedural matters as the bringing of disciplinary charges or the conduct of disciplinary hearings. The circumstances in which rule 5.5 would be breached include, for example, the imposition of a disciplinary penalty other than one of those permitted by the rule or for a reason other than one or more of those reasons stated in the rule. I am not persuaded that rule 5.5 is engaged by an allegation about the status or the Regional Secretary when laying disciplinary charges. Should I be wrong about the scope of rule 5.5, I consider the facts in more detail.
54. As noted above, Rule 5.5 says nothing about who may institute disciplinary proceedings in the Union. This aspect of the process is covered in the

Guidance Note prepared by the Union on the procedure to be followed in disciplinary proceedings. Paragraph 5 of the Guidance Note provides as follows:

*"The Regional Secretary triggers formal disciplinary proceedings under rule 5.5, 5.6 or 37.15, either on his/her own initiative, or on instruction from the Regional Committee. [In the latter case, the instruction should be for the Regional Secretary to investigate the circumstances and proffer charges if he/she deems it appropriate.] Individual members and Branches do not have the right to proffer disciplinary charges".*

The Claimant accepted that the Union was correct in not allowing individual members to proffer disciplinary charges.

55. Having regard to the whole of rule 5, the content of the Guidance Note and the common position of the parties, I find that the initiation of disciplinary proceedings under rule 5 can only be undertaken by a person or body authorised to do so under the rules of the Union. I find that the Regional Secretary is a person so authorised.
56. It is not unusual (or inappropriate) that those in positions of responsibility in trade unions are from time to time subject to criticism. Sometimes, however, that criticism may go too far and be such as to bring the union into disrepute and be actionable under the union's disciplinary procedures. The determination of when any such criticism becomes actionable is a matter for the union to determine under its rules.
57. On the facts of this case, Mr Irving was critical of Mr Nelson's conduct as Regional Secretary in his letters or e-mails of 20 February and 3 March 2006. Whether he was so critical as to merit disciplinary action being taken against him is not for me to determine. That is a matter of substance and has been decided against Mr Irving by the Regional Committee and the Appeals Committee of the CEC. The issue before me is whether the Regional Secretary acted in breach of rule 5.5 in laying charges against Mr Irving on 12 July 2006.
58. The circumstances in which Mr Nelson laid these charges against Mr Irving gave rise to an understandable suspicion by Mr Irving that Mr Nelson was not acting in good faith but with the intention of removing Mr Irving from his position as Regional President come what may. Mr Irving had been suspended from office since January 2006 without any consideration having been given to the rules and on the basis of an unwritten complaint. He was reinstated at a REC meeting on 12 July only to find that the first item of business was disciplinary action to be taken against him, on what he considered to be flimsy grounds. On the other hand, Mr Nelson considered that there were elements in his Region which were seeking to undermine the Union itself and his position within it. He considered that Mr Irving was being influenced and misled by those elements.
59. Notwithstanding Mr Irving's understandable suspicions, I find that the charges laid by Mr Nelson were in respect of allegations made by Mr Irving about Mr

Nelson's conduct as Regional Secretary. I further find that Mr Nelson laid the charges in his capacity as Regional Secretary and presented them to the Regional Committee as Regional Secretary. I find as a fact that Mr Nelson did not bring the charges against Mr Irving on 12 July 2006 in his capacity as a member but as the Regional Secretary and that, as Regional Secretary, he was authorised so to do.

60. For the above reasons I refuse to grant the declaration sought by the Claimant that the GMB breached rule 5.5 of its rules on or about 12 July 2006 by the actions of its Regional Secretary, Mr Nelson, in bringing a formal complaint against Mr Irving under rules 5.5 and 5.6, which complaint was allegedly brought by Mr Nelson as an individual member.

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