

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

MS F LEE

v

**NATIONAL ASSOCIATION OF SCHOOLMASTERS
UNION OF WOMEN TEACHERS (NO 2)**

Date of Decisions:

28 April 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) I refuse to make the declaration sought that the National Association of Schoolmasters Union of Women Teachers (“the NASUWT” or “the Union”) by its letter of 4 March 2005 acted in breach of rule 26(3)(e) of the rules of the Union in that Mr Bartlett, the Deputy General Secretary, and not Ms Keates, the General Secretary, notified Ms Lee of the determination by the Disciplinary Committee of the complaint made against her by Mr Robbins.
- (ii) I declare that the NASUWT acted in breach of rule 26(4)(b)(i) of the rules of the Union in that the Appeals Committee which sat on 29 April 2005 was not comprised as required by rule 26(4)(b)(i). I refuse to make a declaration that the Union acted in breach of rule 26(4)(b)(ii) by the inclusion of Ms Lerew on the Appeals Committee.
- (iii) I refuse to make the declaration sought that the NASUWT by its letter of 31 March 2005 acted in breach of rule 26(4)(c)(iv) of the rules of the Union in that the Appeals Committee was convened by Mr Bartlett the Deputy General Secretary and not by Ms Keates the General Secretary.
- (iv) I refuse to make the declaration sought that the NASUWT by its letter of 29 April 2005 acted in breach of rule 26(4)(c)(vii) of the rules of the Union in that an Assistant Secretary, Ms Howard, and not the General Secretary, Ms Keates, notified Ms Lee in writing of the resolutions of the Appeals Committee.

- (v) I refuse to make the declaration sought that the NASUWT by its letter of 31 March 2005 acted in breach of rule 26(5)(b) of the rules of the Union in that Mr Bartlett, the Deputy General Secretary, and not Ms Keates, the General Secretary, sent Ms Lee written notice of the meeting of the Appeals Committee scheduled for 29 April 2005.
- (vi) I declare that the NASUWT acted in breach of rule 26(5)(c)(i) of the rules of the Union in that it did not specify in its notice of the appeal hearing dated 31 March 2005 the time and place of her appeal hearing.
- (vii) I refuse to make the declaration sought that the NASUWT by its letter of 31 March 2005 acted in breach of rule 26(5)(c) sub-sections (ii)-(x) of the rules of the Union in that its letter of 31 March was not sent by Ms Keates, the General Secretary, but by Mr Bartlett, the Deputy General Secretary.
- (viii) I refuse to make the declaration sought that the NASUWT by its letter of 7 February 2005 acted in breach of rule 26(5)(c)(iv) of the rules of the Union by informing Ms Lee that it was the intention of the Disciplinary Committee to meet on 24 February 2005 for the purpose of removing from the bundle all documentary and witness evidence that did not relate directly to the Rule 26 complaints of Mr Robbins and Mr Timpany respectively.
- (ix) I refuse to make the declaration sought that NASUWT by its letter of 29 April 2005 acted in breach of rule 26(5)(d) of the rules of the Union in that the decision to proceed with the appeal hearing in the absence of Ms Lee was made by the Chair of the Appeal Committee and not by the General Secretary.
- (x) I refuse to make the declaration sought that the NASUWT acted in breach of rule 26(5)(e) of the rules of the Union in that the General Secretary failed to send documentary evidence in her possession to Ms Lee at least seven days before the appeal hearing scheduled for 29 April 2005.
- (xi) I refuse to make the declaration sought that the NASUWT acted in breach of rule 26(5)(f) of the rules of the Union in that the General Secretary failed to send documentary evidence in her possession to the Complainant and to the members of the Appeals Committee at least seven days before the appeal hearing scheduled for 29 April 2005.
- (xii) I refuse to make the declaration sought that the NASUWT acted in breach of rule 26(6)(b) of the rules of the Union by Mr Robbins and Mr Timpany allegedly acting as Complainants at the Disciplinary Hearing of 25 February 2005 and the Appeal Hearing of 29 April 2005 without having been appointed by the National Executive and that Mr Wilkinson who had been appointed by the National Executive to act as Complainant acting instead as the representative of Mr Robbins and Mr Timpany.
- (xiii) I consider it inappropriate to make an enforcement order in respect of those complaints which I have upheld.

REASONS

1. By an application dated 14 August 2005 the Claimant made numerous allegations of breach of rules against her union, the National Association of Schoolmasters Union of Women Teachers. The Claimant's allegations related to internal disciplinary proceedings taken against her by another Union member, Mr Robbins. Following extensive clarification by my office, 12 alleged breaches were identified by Ms Lee as complaints in the following terms:-

Complaint 1

“that by its letter of 4 March 2005 the Association acted in breach of rule 26(3)(e) of the rules of the Association in that Mr Bartlett, the Deputy General Secretary, and not Ms Keates, the General Secretary, notified the respondent, with written notice of the Disciplinary Committee Determination of the Rule 26 Complaint of Mr Gregg Robbins.

Complaint 2

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(4)(b)(i) and (ii) of the rules of the Association in that the Appeals Committee scheduled to sit on 29 April 2005 was not appointed by the National Executive as required by rule 26(4)(b)(i) and should not have included Pat Lerew who was debarred by virtue of rule 26(4)(b)(ii).”

Complaint 3

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(4)(c)(iv) of the rules of the Association in that the Appeals Committee was convened by Mr Bartlett the Deputy General Secretary and not Ms Keates the General Secretary.”

Complaint 4

“that by its letter of 29 April 2005 the Association acted in breach of rule 26(4)(c)(vii) of the Association in that an Assistant Secretary, Ms Howard, and not the General Secretary, Ms Keates, notified Ms Lee, the respondent, in writing of the resolutions of the Appeals Committee.”

Complaint 5

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(5)(b) of the rules of the Association in that Mr Bartlett, the Deputy General Secretary, and not Ms Keates, the General Secretary, notified Ms Lee, the respondent, written notice of the meeting of the Appeals Committee scheduled for 29 April 2005”.

Complaint 6

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(5)(c)(i) of the rules of the Association in that the Association did not specify the time and place of Ms Lee's Appeal Hearing”.

Complaint 7

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(5)(c)(sub-sections (ii)-(x) of the rules of the Association in that its letter of 31 March was not sent by Ms Keates, the General Secretary as required by rule 26(5)(b), but by Mr Bartlett, the Deputy General Secretary”.

Complaint 8

“that by its letter of 7 February 2005 the Association acted in breach of rule 26(5)(c)(iv) of the rules of the Association in that the failure of the NASUWT to advise of which documents it had removed from the bundle for the hearing scheduled for 25 February 2005 prevented Ms Lee from calling witnesses as she did not know what documents remained and therefore which witnesses to call”.

Complaint 9

“that by its letter of 29 April 2005 the Association acted in breach of rule 26(5)(d) of the rules of the Association in that the decision to proceed with the Appeal hearing in the absence of Ms Lee was made by the Chair of the Appeal Committee and not by the General Secretary”.

Complaint 10

“that the Association acted in breach of rule 26(5)(e) of the rules of the Association in that the General Secretary failed to send documentary evidence in her possession to Ms Lee, the respondent, at least 7 days before the Appeal Hearing scheduled for 29 April 2005 and that such documentation was not sent two days in advance of the Hearing by the Deputy General Secretary.”.

Complaint 11

“that the Association acted in breach of rule 26(5)(f) of the rules of the Association in that the General Secretary failed to send documentary evidence in her possession to the complainant and the members of the Appeal Committee at least 7 days before the Appeal Hearing scheduled for 29 April 2005 and that such documentation was sent two days in advance of the Hearing by the Deputy General Secretary”.

Complaint 12

“that the Association acted in breach of rule 26(6)(b) of the Association in that Gregg Robbins and Ian Timpany acted as complainants at the Disciplinary Hearing of 25 February 2005 and the Appeal Hearing of 29 April 2005 and had not been appointed by the National Executive and that Dave Wilkinson who had been appointed by the National Executive to act as complainant acted instead as representative to Mr Robbins and Mr Timpany”.

2. I investigated the alleged breaches in correspondence. As required by section 108B(2)(b) of the 1992 Act, the parties were offered the opportunity to be heard and a formal hearing took place on 10 March 2006. The Union was

represented by Mr Hudson of counsel, instructed by Mr Cooper of Russell Jones and Walker, solicitors. Evidence for the Union was given by Mr Bartlett (Deputy General Secretary), Ms Howard (Assistant Secretary) and Ms Lerew (a former President). Each provided a written witness statement. Ms Lee acted in person. Mr Arbuckle submitted a witness statement on her behalf. A 304 page bundle of documents was prepared for the hearing by my office which contained relevant exchanges of correspondence. At the hearing this bundle was supplemented by an additional letter submitted by the Union. Mr Hudson provided a skeleton argument. The Rules of the Association were also in evidence.

Findings of Fact

3. Having considered the representations made to me and the relevant documents I found the facts to be as follows:-
4. Ms Lee is a member of the Islington Local Association of the Union and was its Treasurer and Health and Safety Officer in the 2004/05 electoral period. Mr Lee explained that there is still a dispute over the elections in her Local Association for the 2005/06 electoral period. Between April 2004 and March 2005 Ms Lee was also a member of the National Executive of the Union.
5. On 22 June 2004 a written complaint about Ms Lee's conduct was made to the Union President at the time, Ms Lerew. The complaint was made by the then Secretary of the Islington Local Association, Mr G Robbins. In outline, he complained that Ms Lee was making it impossible for him to organise the members of the Local Association and had thereby acted in a manner prejudicial to the interests of the Association.
6. The Union has a detailed procedure for the processing of a disciplinary complaint made by one member against another. This is to be found in rule 26 of the rules of the Union. In accordance with this procedure, the then Acting General Secretary, Ms C Keates, wrote to Ms Lee on 21 July 2004 sending her a copy of the complaint. Ms Keates was Acting General Secretary following the premature death of the General Secretary Mr O'Kane. She was elected as General Secretary in November 2004. On 20 September the immediate past President, Mr T Bladen, decided that the disciplinary matter should proceed to a Disciplinary Committee without there being a preliminary investigation, exercising his discretion under rule 26(2).
7. The rules relating to the disciplinary procedure provide that further procedural steps are then to be taken by the General Secretary. It is common ground in this case that those steps were not taken by Ms Keates but by the Acting Deputy General Secretary Mr J Bartlett. Mr Bartlett gave evidence that he was responsible, as the nominee of the General Secretary, for the administration of Mr Robbins' complaint from its receipt to a time shortly before Ms Lee's appeal. He stated that this was common practice and that he had administered a number of other disciplinary complaints on the General Secretary's behalf in this way. Mr Bartlett explained, by way of background, that almost all letters dealing with membership issues go out in the name of the General Secretary

but, in the majority of cases, the letters are drafted by an official and stamped with the name of the General Secretary, without her necessarily having seen them. This is not an uncommon practice amongst trade unions in my experience.

8. In accordance with his customary practice, Mr Bartlett wrote to Ms Lee on 5 October 2004, informing her that he had been nominated by the Acting General Secretary to administer the rule 26 procedures. In this lengthy letter Mr Bartlett set out the relevant procedures and the timetable. He also enclosed a copy of rule 26 and the "*Protocol for progressing complaints under NASUWT Internal Association Discipline*" ("The Protocol"). In evidence Mr Bartlett explained that the Protocol had been approved by the National Executive in September 2003, following concern by some of its members that the rule 26 procedures were either unclear or had gaps. The initial paragraphs of the Protocol refer to the steps to be taken by the General Secretary but paragraph 5.1 states:

"The General Secretary may nominate a member of staff to provide advice and support and to administer the Rule 26 procedures. The General Secretary's nominee will normally be the Deputy General Secretary or Assistant General Secretary as appropriate".

Thereafter, the Protocol refers mainly to the "*General Secretary's nominee*".

9. The Union has a practice whereby a member bringing a disciplinary complaint appears before the Disciplinary Committee as a witness. The case for this member is put by a person appointed by the National Executive Committee (NEC) under rule 26(6)(b). This person is referred to in the rules as the Complainant. In the present case the NEC considered who should be the Complainant on 5 November 2004 and again on 3 December 2004. On the latter date it appointed Mr D Wilkinson. Mr Bartlett gave evidence that the use of the term Complainant to describe the person putting the complaint for the aggrieved member had caused some confusion. As a consequence, he had adopted the practice of referring in relevant minutes and correspondence to the member making the complaint as the complainant and to the person chosen by the NEC to put his or her case as the complainant's representative.
10. Ms Lee's disciplinary hearing was due to take place on 20 November 2004 but that hearing had to be postponed because of Ms Lee's ill health. She had a back problem. The documents for this hearing had been prepared by the Union's administration.
11. On 5 January 2005 Mr Bartlett sent a seven page letter to Ms Lee informing her that the disciplinary hearing would now take place on Friday 25 February. As before, the hearing would be at Rednal. This is the name used to indicate the address of the Union's headquarters at Hillscourt Education Centre, Rosehill, Rednal, Birmingham. Ms Lee was referred to the wording of paragraph 5.2 of the Protocol by way of the Union's response to her request for the hearing to be held on a Saturday. This provides that "*Other than in exceptional circumstances, Rule 26 hearings will be held at NASUWT*

Headquarters on week days.” Ms Lee was given a detailed timetable, which throughout referred to the steps to be taken by “the General Secretary’s nominee”. The members of the Disciplinary Committee were to be Mr McLoughlin, as Chair, with Mr Cole and Ms Percival.

12. Mr Timpany, another member of the Islington Local Association, had made further complaints against Ms Lee, which complaints were to be heard as a separate matter on 11 March. These are of no relevance to the present case, except that the bundle of documents that was prepared by the administration contained documents relevant to both matters.
13. On 7 February 2005 Mr Bartlett wrote to Ms Lee and Mr Robbins informing them that neither had complied with the procedural timetable contained in his letter of 5 January and that accordingly the hearing would proceed on the basis of the bundle prepared for the previously scheduled hearing. Mr Bartlett went on to state that the Disciplinary Committee intended to meet in the absence of the parties on the evening of Thursday 24 February for the purpose of removing from the bundle all documentary and witness evidence which did not relate directly to the complaints of Mr Robbins and Mr Timpany respectively. Ms Lee has complained to me that as a result of this matter she was unable to prepare her case properly as she did not know what the final bundle would contain. Mr Bartlett gave evidence that the intention was never to select from Ms Lee’s material but merely to remove those documents which related exclusively to Mr Timpany’s complaint. In the event, no documents were removed from the bundle.
14. The disciplinary hearing took place on Friday 25 February 2005. It began at 10.30 am and finished at 5.20 p.m. Mr Bartlett wrote to Ms Lee with the result on 4 March. The complaint was upheld and Ms Lee was debarred from holding office within the Union until 1 September 2005. Ms Lee was notified of her right to appeal.
15. On 4 March 2005, before Ms Lee had entered an appeal, the President, Ms Lerew, decided on the composition of any Appeals Committee, should Ms Lee in fact appeal. Ms Lerew decided this during a break at a meeting of the National Executive. The Appeals Committee was to consist of Ms Moore, Mr Kennedy, Mr Dawson, Mr Clooney and Ms Hopgood, with Ms Lerew as Chair. On 7 March Mr Bartlett wrote to the members of the putative Appeals Committee and to Ms Lee, advising that if an appeal were to be made the hearing would take place on Friday 29 April. Ms Lee was informed that the hearing would be at Rednal.
16. Ms Lee has complained to me that the Appeals Committee was not composed in accordance with the rules. These provide that the Appeals Committee “*shall comprise four members of the National Executive as nominated by the National Executive from time to time and the President who shall chair meetings of the Committee*”. Further, the rules provide that no member of the National Executive who sat on the original Disciplinary Committee shall be a member of the subsequent Appeal Committee. Mr Bartlett gave evidence that a practice had developed since about 1996 as to the way any particular appeals

committee was selected. He stated that a panel of 12 potential members was elected as the “*Rule 26 Appeal Committee*” at the first meeting of a newly elected National Executive, usually each April/May. When the person administering the disciplinary process anticipated that an appeal would be lodged, usually Mr Bartlett, he would inform the President. The President would use the opportunity of a break at the next monthly meeting of the National Executive to call together those members of the Appeals Panel, as it became known, who were present. By this time various dates would have been ascertained when rooms were available at the headquarters in Rednal. The members of the specific Appeals Committee would be selected by the President having regard to availability, gender balance and potential conflicts of interest.

17. By a letter dated 15 March 2005 Ms Lee appealed the decision of the Disciplinary Committee in accordance with the Union’s Rules. The appeal had the effect of suspending the penalty imposed by the Disciplinary Committee, pending the determination of the appeal.
18. On 31 March 2005 Mr Bartlett wrote to Ms Lee informing her that her appeal had been scheduled for Friday 29 April. This letter does not give the time or place of the hearing but it did enclose a copy of rule 26 and the Protocol. This letter was copied to the members of the Appeals Committee and the “*Complainant’s Representative*”.
19. The Union’s annual conference took place in the week beginning 28 March 2005 and a new President, Mr McLoughlin took up office. At a meeting of the new National Executive on Friday 1 April a new Appeals Panel was elected. However, Ms Lee’s appeal was still to be heard by the Appeals Committee that had been appointed on 4 March 2005.
20. By a letter dated Friday 22 April Mr Bartlett informed Ms Lerew that neither party had followed his advice regarding the preparation of the bundle to be used at the appeal and that he was accordingly reissuing the bundles used at the disciplinary hearing. The letter enclosed a copy of the bundle. Copies of the letter and its enclosures were sent to Ms Lee, Mr Robbins, Mr Wilkinson and the members of the Appeals Committee.
21. After sending the bundle on 22 April 2005, the Union received further documents from Mr Robbins. A copy of these documents was sent by Mr Bartlett to Ms Lerew by letter dated Monday 25 April. Mr Bartlett recommended that the documents should not be considered by the Appeals Committee as they referred to incidents that occurred after the alleged offences. Also on 25 April, a copy of the letter to Ms Lerew but not its enclosures, was sent to Ms Lee, Mr Robbins, Mr Wilkinson and members of the Appeals Committee. It later transpired that the Appeals Committee did not consider these late submitted documents.
22. Also on Monday 25 April the Union received a further bundle of documents from Ms Lee. As a consequence, Mr Bartlett wrote a second letter to Ms Larew dated 25 April enclosing a copy of this bundle. He advised that a

decision would have to be taken as to their admissibility at the beginning of the appeal hearing. A copy of this letter and Ms Lee's additional bundle was sent to Ms Lee, Mr Robbins, Mr Wilkinson, and the members of the Appeals Committee. It later transpired that the Appeals Committee did consider Ms Lee's late submitted documents.

23. Ms Lee gave evidence that she received Mr Bartlett's letter of Friday 22 April in the early part of the following week and the two letters of 25 April on or about 27 April.
24. Mr Bartlett was unable to attend the hearing of the appeal as the General Secretary's nominee and the General Secretary arranged for Senior Assistant Secretary Ms M Howard to act as her nominee at that hearing.
25. The Appeals Committee convened on Friday 29 April. However, Ms Lee was ill during the previous night and unable to attend. Her husband sent a fax early that Friday morning for the attention of Ms Lerew and Ms Howard, asking for an adjournment. Ms Lerew was informed of the fax at about 8.15 am. She spoke to Ms Lee's husband on the telephone. He said that his wife had been ill during the night with stomach problems, which he thought had been caused by the stress of the hearing. Ms Lerew discussed Ms Lee's request for an adjournment with members of the Appeal Committee and it was decided that the appeal would proceed in her absence.
26. At the conclusion of the appeal on 29 April, Ms Howard wrote to Ms Lee informing her that the Appeals Committee had overturned two of the findings made against her by the Disciplinary Committee but had upheld a third complaint. The Appeals Committee also upheld the penalty given by the Disciplinary Committee, namely that Ms Lee be debarred from holding office within the Union until 1 September 2005.

The Relevant Statutory Provisions

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

Section 108A Right to apply to Certification Officer

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

(2) The matters are -

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

Section 108B Declarations and orders

(2) *If he accepts an application under section 108A the Certification Officer-*

- (a) ...
- (b) ...
- (c) ...
- (d) *may make or refuse the declaration asked for, and*
- (e) *shall, whether he makes or refuses the declaration, give reasons for his decision in writing*

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

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

The Relevant Union Rules

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

Rule 26 Internal Association Discipline

(2) **Disciplinary Complaint**

- (a) *If a member believes another member (the respondent), has committed a disciplinary offence and that member wishes to make a complaint, he/she shall submit his/her complaint in writing setting out details of the respondent's conduct to the General Secretary.*
- (b) *Upon receipt of such a complaint the General Secretary shall send a copy of the complaint to the respondent who shall within 14 days of the date it was sent to him/her notify the General Secretary in writing whether the complaint is admitted or denied.*
- (c)
 - (i) *Upon receipt of a denial... or upon the expiry of 14 days... the General Secretary shall refer the complaint to the Ex-President who shall consider whether a preliminary investigation of the complaint is necessary.*
 - (ii) *If the Ex-President is of the opinion that a preliminary investigation is necessary he/she shall conduct such an investigation.*
 - (iii) ...
- (d) *Upon conclusion of a preliminary investigation under c(ii) above the Ex-President shall report in writing to the General Secretary that: either*
 - (i) ...
 - (ii) *that in the opinion of the Ex- President the complaint should proceed further whereupon the General Secretary shall convene a Disciplinary Committee meeting for the purpose of a hearing to consider the complaint.*

- (3) ***Discipline at a Disciplinary Committee Level***
 (e) *As soon as is practicable the General Secretary shall notify the respondent in writing of the resolution(s) of the Disciplinary Committee and of any right of appeal.*
- (4) ***Appeals***
 (b) *Appeals Committee*
 (i) *The Appeals Committee shall be a Committee of the National Executive and shall comprise four members of the National Executive as nominated by the National Executive from time to time and the President who shall chair meetings of the Committee.*
 (ii) *No member of the National Executive who was a member of the Disciplinary Committee against whose resolution(s) the appeal has been made shall be a member of the Appeals Committee considering that appeal.*
- (c) *The Appeal*
 (iv) *Upon receipt of a Notice of Appeal the General Secretary shall convene a meeting of the Appeals Committee for the purpose of a hearing to consider the appeal;*
- (vii) *As soon as is practicable, the General Secretary shall notify the respondent in writing of the resolutions of the Appeals Committee.*
- (5) ***Convening of Meetings***
 (b) *The General Secretary shall send to the respondent at his/her last known address written notice of the meeting by ordinary first-class post not less than 21 days before the date of the meeting.*
 (c) *The notice of the meeting sent to the respondent shall be dated and shall specify:*
- (i) *the date, time and place of the meeting;*
 - (ii) *the purpose of the hearing;*
 - (iii) *details of the complaint sufficient to enable the respondent to appreciate the nature of the case against him/her;*
 - (iv) *his/her right to attend, make verbal submissions, call witnesses and submit documentary evidence;*
 - (v) *his/her right to make written submissions;*
 - (vi) *that his/her reasonable travelling expenses will be met;*
 - (vii) *that the proceedings may ultimately lead to his/her expulsion from membership of the Association, and that if the respondent is an Officer of the Association that the proceedings may lead to him/her being permanently debarred from office;*
 - (viii) *that the meeting may proceed in his /her absence unless he/she submits written reasons showing good cause why he/she cannot attend;*
 - (ix) *that he/she is requested to acknowledge receipt and state within 10 days of the date of the notice whether he/she intends to attend at the meeting;*
 - (x) *that he/she is requested to forward copies of any documents to which he/she will refer to the General Secretary; and shall enclose a copy of any report submitted by the Ex-President under (2)(d)(ii) above.*

- (d) *If, in the opinion of the General Secretary, the respondent has submitted written good cause why he/she cannot attend, the hearing shall be adjourned to a future date.*
- (e) *Copies of the complaint, relevant minutes of any previous hearing, and any documentary evidence in his/her possession shall be sent to the respondent by the General Secretary as soon as is practicable and in any event at least seven days before the meeting.*
- (f) *The General Secretary shall send written notice of the meeting at least seven days before the meeting to the complainant and to those who are members of the Committee holding the meeting. This notice shall include copies of the notice sent to the respondent, any Notice of Appeal, the complaint, relevant minutes of any previous hearing and any documentary evidence in the General Secretary's possession.*

(6) Hearings

- (a) ...
- (b) *The complainant shall be a member appointed by the National Executive to put the case in support of the complaint.*
- (c)-(f) ...

Complaint 1

29. Complaint 1 is in the following terms:

“that by its letter of 4 March 2005 the Association acted in breach of rule 26(3)(e) of the rules of the Association in that Mr Bartlett, the Deputy General Secretary, and not Ms Keates, the General Secretary, notified Ms Lee, the respondent, with written notice of the Disciplinary Committee Determination of the Rule 26 Complaint of Mr Greg Robbins.”

30. Rule 26(3)(e) provides as follows:

26 Internal Association Discipline
(3)Discipline at Disciplinary Committee Level
 (e) *As soon as is practicable, the General Secretary shall notify the respondent in writing of the resolution(s) of the Disciplinary Committee and of any right of appeal.*

31. This complaint is the first of five complaints brought by Ms Lee which essentially raised the same point. Each of them alleged the breach of a rule which required action to be taken by the General Secretary. It is common ground that the actions complained about were not taken by Ms Keates, the General Secretary, but by Mr Bartlett, the Deputy General Secretary, or by Ms Howard, as the General Secretary's nominees.

32. As to this particular complaint, it was common ground that Mr Bartlett notified Ms Lee of the determination of the Disciplinary Committee and of her right to appeal by his letter of 4 March 2005. Ms Lee argued that rule 26(3)(e) required this notification to be given personally by the General Secretary and that notification by anyone else was a breach of the rule. She observed that

this rule was very specific and unambiguous noting, in particular, the use of the mandatory word “*shall*”. Ms Lee submitted that, in as much as the Union might seek to rely on the Protocol or custom and practice, neither prevailed over the rules and should be ignored in as much as they were inconsistent with the rules. Ms Lee did not accept that any of the rules about which she made this particular complaint could be categorised as administrative in nature, merely requiring the carrying out of an administrative or clerical task. Ms Lee sought support for her argument from a case decided by the Northern Ireland Certification Officer in May 2005 involving the same union; **Arbuckle v NASUWT** (D/1-7/2005). The position and jurisdictions of the Northern Ireland Certification Officer mirror my own in Great Britain but are to be found in the Industrial Relations (Northern Ireland) Order 1992 and the Trade Union and Labour Relations (Northern Ireland) Order 1995. In the Arbuckle case the Assistant Certification Officer in Northern Ireland upheld complaints that the Union had breached rule 26(2)(b) and (c) by Mr Bartlett having undertaken a task at the outset of the disciplinary procedure which was reserved to the General Secretary. Ms Lee noted that the Union had not appealed that decision to the Northern Ireland Court of Appeal.

33. For the Union, Mr Hudson submitted that it was appropriate and necessary to adopt a purposive construction to the rules and referred to the guidance in **Heatons Transport (St Helens) Limited v TGWU** (1972) 3 All ER 101 and in **Jacques v AUEW** (1987) 1 All ER 621. He observed that rule 18(d) provides that the General Secretary shall have conduct of the day-to-day administration of the Association and shall manage its officials and staff. He further observed that the General Secretary carries out major negotiations, liaises with other unions, lobbies government and discharges other major responsibilities appropriate to the elected leader of an important national union. In these circumstances, he submitted that it was not possible for the General Secretary personally to attend to all the matters for which she is responsible under the rules and that there is an implied power to delegate matters where appropriate. It was argued that this applied particularly to tasks which are administrative in nature, rather than those which involved decision making. Mr Hudson maintained that by naming the General Secretary the rules made her responsible for ensuring certain tasks were performed but did not preclude her from arranging for them to be performed by the Deputy General Secretary. He pointed out that if this were otherwise such routine tasks as receiving or sending documents could not be carried out in the absence of the General Secretary, for example when on holiday. He further argued that this approach is reflected in paragraph 5.1 of the Protocol for progressing complaints under the disciplinary procedure, which expressly provides for the General Secretary to appoint a nominee to administer the rule 26 procedures.
34. In construing the Rules of the Union, I start from the position that words should be given their ordinary literal meaning, unless there is good reason not to do so. The ordinary literal meaning of rule 26(3)(e), and the other rules which give rise to the same issue, require the task in question to be performed by the General Secretary personally. I accept, however, Mr Hudson’s submission that the rules of the Union are not to be construed as if they were a statute. The correct approach to the interpretation of the rules of trade unions

has been considered by the courts on a number of occasions. The effect of these decisions is perhaps best summarised by Warner J in **Jacques v AUEW**, in which he stated

“The effect of the authorities may I think be summarised by saying that the rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court’s view they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they are addressed.”

35. An examination of the Rules of the Union as a whole is helpful in determining the intention of its authors. The General Secretary is required by the rules to undertake a wide variety of tasks. She is required, inter alia, to attend the National Executive (rule 7(a)), she or a nominee is required to attend at disciplinary hearings (rule 26(6)(c)), she is required to authorise industrial action (rule 21(a)), she has power to dismiss a complaint of electoral misconduct (rule 19(h)(ii)), and she has power to grant an adjournment of a disciplinary hearing (rule 26(5)(d)). Elsewhere, the rules provide in numerous places for documents to be sent to or sent by the General Secretary; for example in rules 5(e), 6(d)(vii), 6(j), 19(b)(iii) and (iv), rule 19(d)(ii), rule 19(f)(i), rule 19(h)(i) as well as in rule 26 itself. In my judgment, a clear line can be drawn between those rules which require the personal attendance of or decision making by the General Secretary and those which are administrative in nature. The administrative tasks are defined by reference to their routine or mechanical nature, being tasks which generally do not require the exercise of a discretion by the Union’s most senior elected official or her personal attendance before others.
36. I am assisted in construing the rules of this Union by evidence that it is the practice of the Union for much routine correspondence to be carried out in the name of the General Secretary by the appropriate members of staff or officials. I was informed that it is well known to the membership that not all letters which are formally addressed to the General Secretary are read by Ms Keates and similarly that not all letters from the Union under the stamp of the General Secretary have been written by Ms Keates. I am further assisted by the description in the Protocol of how the disciplinary procedures are in fact administrated. Past and current practices of the Union, as set out in its Protocol, do not necessarily create a custom and practice which varies the rules of the Union, but they provide a framework against which the rules can be construed and are an indication of how they are likely to be understood by their readership.
37. In my judgment, the purpose of rule 26(3)(e) is to ensure that notice of the determination by the Disciplinary Committee is sent to the respondent as soon as is practicable. This purpose is put into effect by placing responsibility for it on the General Secretary, who would be in breach of that rule were the notification not to be sent as soon as is practicable. The purpose is not furthered, however, by requiring the letter giving such notification to be sent personally by the General Secretary.

38. I have given respectful consideration to the decision of the Northern Ireland Assistant Certification Officer. Whilst I am not bound by his decisions, I note that he was concerned with a rule that I am not called upon to construe in this case. Nevertheless, had I been required to do so, I would not have come to the same conclusion as him for the above reasons.
39. In conclusion therefore, bearing in mind the authorship and readership of the rules as a whole and of rule 26(3)(e) in particular and having regard to the intended purpose of that rule, I find that rule 26(3)(e), properly construed, imposes a responsibility on the General Secretary to ensure that the respondent is notified in writing of the resolution of the Disciplinary Committee and any right of appeal. It does not, in my judgment, impose a mandatory requirement on the General Secretary personally to give such notification.
40. For the above reasons, I find that the Union did not breach rule 26(3)(e) of the rules of the Union by reason of Mr Bartlett, the Deputy General Secretary, and not Ms Keates, the General Secretary, having notified Ms Lee of the determination by the Disciplinary Committee of the complaint made against her by Mr Robbins

Complaint 2

41. Complaint 2 is in the following terms:

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(4)(b)(i) and (ii) of the rules of the Association in that the Appeals Committee scheduled to sit on 29 April 2005 was not appointed by the National Executive as required by rule 26(4)(b)(i) and should not have included Pat Lerew who was debarred by virtue of rules 26(4)(b)(ii).

42. Rule 26(4)(b)(i) and (ii) provides as follows:

26. Internal Association Discipline.

(4) Appeals.

(b) Appeals Committee

(i) The Appeals Committee shall be a Committee of the National Executive and shall comprise four members of the National Executive as nominated by the National Executive from time to time and the President who shall chair meetings of the Committee.

(ii) No member of the National Executive who was a member of the Disciplinary Committee against whose resolution(s) the appeal has been made shall be a member of the Appeals Committee considering that appeal.

43. Ms Lee submitted that the Appeals Committee that heard her appeal was improperly constituted. She argued that members of her Appeals Committee should have been members of the National Executive at the time her appeal was heard; that they should have been nominated by the National Executive to sit on her appeal; and that the Chair of her Appeals Committee should have been the President of the Union at the time of the appeal hearing. Ms Lee maintained that the practice of nominating members of the newly elected National Executive on to a so-called Appeals Panel was not in conformity with

the rules and, in as much as the Standing Orders of the National Executive supported such a practice, they should be ignored. She argued that her Appeals Committee had been nominated on 4 March 2005 in the electoral period 2004/05, by the then President, Ms Lerew, whereas the decision as to who sat on her Appeals Committee should have been taken by the National Executive after she had in fact appealed on 15 March. She further argued that the members of her Appeals Committee which met on 29 April 2005, should have been members of the National Executive in the 2005/06 electoral period. Ms Lee accepted that Ms Lerew had not sat on her Disciplinary Panel and was not thereby debarred from sitting on her Appeals Committee by reason of rule 26(4)(b)(ii).

44. For the Union, Mr Hudson submitted that the members of the rule 26 Appeals Committee were nominated and elected at the meeting of the National Executive on 16 April 2004, the first meeting of the National Executive in the 2004/05 electoral period. At this meeting the members of an Appeals Panel were elected and it was five members from this Panel, as selected by Ms Lerew as President on 4 March 2005, that constituted Ms Lee's Appeals Committee. Accordingly, Mr Hudson argued, the members of Ms Lee's Appeals Committee were all members of the National Executive and had been nominated by the National Executive to sit on the Appeals Committee. He also pointed out that Mr McLoughlin was elected President of the Union on 28 March 2005 for the 2005/06 electoral period but, as he had chaired Ms Lee's Disciplinary Committee, he was debarred by rule 26(4)(b)(ii) from sitting on her Appeals Committee.
45. I heard evidence that since about 1996 it had been the practice of the National Executive to elect from its membership a twelve person 'Rule 26 Appeals Committee'. The membership of any specific Appeals Committee would then be determined from amongst these twelve persons by the President, as and when the need arose. I find that, in reality, the National Executive elected an Appeals Panel from which the members of any particular Appeals Committee would be chosen on a case by case basis by the President. Indeed, this body was referred to at the hearing and in the documents as the Appeals Panel. On the facts of the present case, it is common ground that, at the time the membership of Ms Lee's Appeals Committee was determined on 4 March 2005, its members were members of the National Executive and that they had been elected by the National Executive in April 2004 to the so-called 'Rule 26 Appeals Committee'. There may well be much common sense in this arrangement, but is it an arrangement contemplated by the rules?
46. In my judgment rule 26(4)(b)(i) most obviously contemplates the Appeals Committee being constituted in one of two ways. First, it contemplates the nomination of a single Appeals Committee which would hear all appeals for the duration of its mandate. Such a process would, however, meet with the practical problems of member unavailability and possible conflicts of interest. Secondly, it contemplates the members of each Appeals Committee being specifically nominated by the National Executive for each appeal on a case by case basis. It was said that this also meets with practical problems, arising out of the fact that the National Executive normally meets only once a month. It

could cause delay and would create additional business for the National Executive. The Union has adopted neither of these courses.

47. In my judgment, it is significant that rule 26(4)(b)(i) refers to the Appeals Committee being nominated by the National Executive “*from time to time*”. This is consistent with the Appeals Committee being nominated annually or on a case by case basis but it is not consistent with the annual nomination of an Appeal Panel. It requires the periodical nomination of the Appeals Committee which will actually hear the appeal. Further 26(4)(b)(i) refers to “*The Appeals Committee*”. This is a further indication that the rule refers to the Appeals Committee which is to hear a specific appeal, whether nominated annually or on a case by case basis.
48. In the present case, it is argued that the National Executive purported to elect a standing Rule 26 Appeals Committee. However, the Appeals Committee which heard Ms Lee’s appeal was not specifically nominated by the National Executive to hear her appeal. It was selected by the President from the members of the Appeal Panel, a body which is unknown to the rules. There is therefore a prima facie case that the Appeals Committee in question was not nominated by the National Executive in accordance with rule 26(4)(b)(i). I have asked myself whether the rule might not have been intended or understood to have such a meaning, having regard to the practical problems to which it could give rise. I have decided that there is no sufficient reason to depart from the obvious and straightforward meaning of the rule. The composition of the Appeals Committee is an important matter within the constitution of the Union and for those members who may be subject to discipline. There is much weight in the argument that the authors of the rules meant precisely what they said in providing that the National Executive shall nominate not a Panel but the actual Appeals Committee which will either sit throughout the relevant period or on a particular case. Practical problems, such as those to which I have alluded, could be overcome by a procedure similar to that currently in use but with the names of the persons selected being placed before the National Executive for its consideration and probable nomination.
49. I have also considered the Standing Orders of the National Executive. Under these, the Appeals Committee is constituted as a committee of the National Executive but it is specifically not included in the list of those committees the term of membership of which shall be one year (paragraph 20(a)). Further, paragraph 21 provides that

“Save for the Officers members of the Disciplinary and Appeals Committee who shall be members of those Committees ex-officio, the National Executive shall appoint members to those Committees as and when the Committees are required to meet, which members’ term of membership shall be one meeting”.

Whilst a Standing Order cannot displace a rule, it can supplement the rules and act as a guide to their construction. I find that the Standing Orders support my construction that it is a requirement of the rule that the Executive Committee

nominates the members of the actual Appeals Committee which is to hear a case.

50. During the course of argument, a subsidiary issue arose as to whether a properly nominated Appeals Committee which was established during one electoral period could continue to sit in a subsequent electoral period, when its members may no longer be members of the new National Executive and a new President has been elected. The practical issue to which this situation gives rise is whether an appeal which is part-heard during one electoral period must be discontinued and started afresh before a new Appeals Committee if the adjournment takes the appeal into a new electoral period. In my judgment this difficulty does not arise as, once an Appeals Committee is properly constituted for the purpose of a particular appeal, it remains the Appeals Committee for that appeal until it has discharged its function. As a matter of good practice, however, it would be sensible for consideration to be given to the postponement of the nomination of an Appeals Committee if an electoral period is about to end, in order to promote the objective, so far as practicable, as having appeals heard by existing members of the National Executive.
51. For the above reasons I find that the NASUWT acted in breach of rule 26(4)(b)(i) of the rules of the Union by reason of the Appeals Committee which sat on Ms Lee's appeal on 29 April 2005 not having been comprised as required by that rule.
52. Ms Lee also complained of a breach of rule 26(4)(b)(ii) on the basis that Ms Lerew had been a member of the Disciplinary Committee against whose decision the appeal had been made and was to sit on her Appeals Committee. However, Ms Lee conceded at the hearing that Ms Lerew had not been a member of her Disciplinary Committee and accordingly this complaint fails.

Complaint 3

53. Complaint 3 is in the following terms:

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(4)(c)(iv) of the rules of the Association in that the Appeals Committee was convened by Mr Bartlett the Deputy General Secretary and not by Ms Keates the General Secretary”.

54. Rule 26(4)(c)(iv) provides as follows:

(4)Appeals

(c)The Appeal

(iv)Upon receipt of a Notice of Appeal the General Secretary shall convene a meeting of the Appeals Committee for the purpose of a hearing to consider the appeal.

55. This complaint raises the same point of construction as I considered in respect of Ms Lee's first complaint, save that rule 26(4)(c)(iv) deals with the administrative act of convening a meeting of the Appeals Committee. I find no material difference for present purposes between the construction of this rule and rule 26(3)(e). Accordingly for the reasons given in relation to the

first complaint, I find that the Union did not breach rule 26(4)(c)(iv) as alleged.

Complaint 4

56. Complaint 4 is in the following terms:

“that by its letter of 29 April 2005 the Association acted in breach of rule 26(4)(c)(vii) of the rules of the Association in that an Assistant Secretary, Ms Howard, and not the General Secretary, Ms Keates, notified Ms Lee, the respondent, in writing of the resolutions of the Appeals Committee”.

57. Rule 26(4)(c)(vii) provides as follows:

(4) Appeals

(c) The Appeal

(vii) As soon as is practicable, the General Secretary shall notify the respondent in writing of the resolutions of the Appeals Committee.

58. This complaint again raises the same point of construction as I considered in respect of Ms Lee’s first complaint, save that rule 26(4)(c)(vii) deals with the administrative act of notifying the respondent, Ms Lee, in writing of the result of the hearing before the Appeals Committee. I find no material difference for present purposes between the construction of this rule and rule 26(3)(e). Accordingly for the reasons given in relation to the first complaint I find that the Union did not breach rule 26(4)(c)(vii).

Complaint 5

59. Complaint 5 is in the following terms:

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(5)(b) of the rules of the Association in that Mr Bartlett, the Deputy General Secretary, and not Ms Keates, the General Secretary, notified Ms Lee, the respondent, written notice of the meeting of the Appeals Committee scheduled for 29 April 2005”.

60. Rule 26(5)(b) provides as follows:

(5) Convening of Meetings

(b) The General Secretary shall send to the respondent at his/her last known address written notice of the meeting by ordinary first-class post not less than 21 days before the date of the meeting”.

61. This complaint once again raises the same point of construction as I considered in respect of Ms Lee’s first complaint, save that rule 26(5)(b) deals with the administrative act of sending to the respondent, Ms Lee, notice of her hearing before the Appeal Committee. I find no material difference for present purposes between the construction of this rule and rule 26(3)(e). Indeed, the wording of this rule adds support to the construction to which I have arrived. As Mr Hudson argued, the requirement for the General

Secretary to “send” written notice to the respondent might, on Ms Lee’s construction, be read as requiring Ms Keates to participate in the physical process of sending, a meaning which it is unlikely the authors of the rule had intended or the membership understood and one which does not further the purpose of the rule. Accordingly, for the reasons given in relation to the first complaint I find that the Union did not breach rule 26(5)(b).

Complaint 6

62. Complaint 6 is in the following terms:

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(5)(c)(i) of the rules of the Association in that the Association did not specify the time and place of Ms Lee’s Appeal hearing”.

63. Rule 26(5)(c)(i) provides as follows:

(5) Convening of Meetings

(c) The notice of the meeting sent to the respondent shall be dated and shall specify:

(i) the date, time and place of the meeting.”

64. Ms Lee contended that she received notice of her appeal hearing by a letter from Mr Bartlett dated 31 March 2005 but that this letter did not inform her of the time or place of the hearing, as required by rule 26(5)(c)(i).

65. For the Union, Mr Hudson accepted that Mr Bartlett’s letter of 31 March 2005 did not specify the time of the hearing. He contested, however, that Ms Lee had been notified of the place of the hearing. He referred to a letter from Mr Bartlett to Ms Lee of 7 March 2005, in which Ms Lee was advised that the hearing would be at Rednal and he referred to the Protocol, a copy of which was enclosed in Mr Bartlett’s letter of the 31 March, which referred to such hearings being held at NASUWT headquarters.

66. I find as a fact that Ms Lee was aware that her appeal would take place at the Rednal headquarters of the Union and further find that she was not legally prejudiced by the omission from Mr Bartlett’s letter of 31 March of an express reference to the place or the time of her hearing. Nevertheless, Ms Lee was entitled to complain of a breach of this rule. In my judgment the Union did not satisfy the requirements of rule 26(5)(c)(i) by either its letter of 7 March or by enclosing the Protocol with its letter of 31 March. Rule 26(5)(c) sets out the mandatory content of the notice of the meeting. The notice of the meeting was Mr Bartlett’s letter of 31 March. His letter of 7 March was written before Ms Lee had appealed, which she did by her letter of 15 March. Mr Bartlett’s letter cannot therefore be sensibly construed as the notice of the meeting in accordance with rule 26(5)(c). As to the Protocol enclosed with Mr Bartlett’s letter of 31 March, I observe that there is no reference in the body of the letter to the place of meeting being found in that document and I note that the Protocol itself does not expressly state without qualification that the hearing will take place at the Union’s headquarters.

67. In these circumstances I find that the Union acted in breach of rule 26(5)(c)(i) of the rules of the Union in that it did not specify in its notice of the appeal hearing dated 31 March 2005 the time and place of Ms Lee’s appeal hearing.

Complaint 7

68. Complaint 7 is in the following terms:

“that by its letter of 31 March 2005 the Association acted in breach of rule 26(5)(c) sub-sections (ii)-(x) of the rules of the Association in that its letter of 31 March was not sent by Ms Keates, the General Secretary as required by rule 26(5)(b), but by Mr Bartlett, the Deputy General Secretary”.

69. Rule 26(5)(c)(ii-x) provide as follows:

- (5) **Convening of Meetings**
- (c) *The notice of the meeting sent to the respondent shall be dated and shall specify:*
- (ii) *the purpose of the hearing;*
- (iii) *details of the complaint sufficient to enable the respondent to appreciate the nature of the case against him/her;*
- (iv) *his/her right to attend, make verbal submissions, call witnesses and submit documentary evidence;*
- (v) *his/her right to make written submissions;*
- (vi) *that his/her reasonable travelling expenses will be met;*
- (vii) *that the proceedings may ultimately lead to his/her expulsion from membership of the Association, and that if the respondent is an Officer of the Association that the proceedings may lead to him/her being permanently debarred from office;*
- (viii) *that the meeting may proceed in his /her absence unless he/she submits written reasons showing good cause why he/she cannot attend;*
- (ix) *that he/she is requested to acknowledge receipt and state within 10 days of the date of the notice whether he/she intends to attend at the meeting;*
- (x) *that he/she is requested to forward copies of any documents to which he/she will refer to the General Secretary; and shall enclose a copy of any report submitted by the Ex-President under (2)(d)(ii) above.*

70. I find this complaint to be misconceived. The particulars of the alleged breach make it plain that Ms Lee’s complaint is that Mr Bartlett wrote the letter of the 31 March and not the General Secretary. However, the rule that allegedly has been breached sets out the mandatory content of the notice of the meeting. It does not prescribe who should send the notice. Ms Lee sought leave to amend her complaint at the hearing to allege that the notice of meeting did not contain the mandatory information contained in sub paragraphs (ii)-(x) of rule 26(5)(c). Mr Hudson objected to this application and referred to correspondence between Ms Lee and the Certification Office on the precise wording of this complaint. It appeared from this correspondence that Ms Lee had given specific and careful consideration to the precise formulation of this complaint which had subsequently been put to the Union and on the basis of which the Union had prepared its case. Mr Hudson stated that he had not come

prepared to deal with the complaint that Ms Lee now wished to make. In these circumstances I declined Ms Lee's application to amend.

71. For the above reasons I find that the Union did not breach rule 26(5)(c)(ii)-(x) as alleged. In as much as it is alleged that rule 26(5)(b) was breached by the letter of 31 March 2005 having been written by Mr Bartlett, not the General Secretary, I find that this is in substance the same complaint as complaint number 5, which I have dismissed.

Complaint 8

72. Complaint 8 is in the following terms:

“that by its letter of 7 February 2005 the Association acted in breach of rule 26(5)(c)(iv) of the rules of the Association in that the failure of the NASUWT to advise of which documents it had removed from the bundle for the hearing scheduled for 25 February 2005 prevented Ms Lee from calling witnesses as she did not know what documents remained and therefore which witnesses to call”

73. Rules 26(5)(c)(iv) provides:

- 26. *Internal Association Discipline*
- (5) *Convening of Meetings*
- (c) *The notice of the meeting sent to the respondent shall be dated and shall specify:*
 - (iv) *his/her right to attend, make verbal submissions, call witnesses and submit documentary evidence;*

74. I reject Mr Hudson's submission that this complaint was made out of time, having regard to the steps taken by Ms Lee to resolve the matter internally.
75. Rule 26(5)(c) concerns the mandatory content of the notice of a meeting, in this case the disciplinary hearing. The Union originally gave notice of the disciplinary hearing by Mr Bartlett's long letter of 5 October 2004. In that letter Mr Bartlett stated, *“You have the right to attend the hearing scheduled for 26 November 2004, to make written submissions, to make verbal submissions, to call witnesses and to submit documentary evidence”*. The hearing of 26 November 2004 was later postponed to 25 February 2005. By a further long letter of 5 January 2005 Mr Bartlett gave notice of this postponed hearing. Although not expressed in the same terms as the letter of 5 October 2004, a fair reading of Mr Bartlett's letter of 5 January 2005, especially when read together with the earlier letter, clearly conveys to the respondent, Ms Lee, the right to attend, make verbal submissions, call witnesses and submit documentary evidence. In any event, the letter of the 7 February 2005 about which complaint is now made, is not the notice of the disciplinary meeting and is therefore not subject to the requirements of rule 26(5)(c). Further, the particulars of breach given by Ms Lee in her complaint do not relate to a potential breach of that rule. Inasmuch as Ms Lee is alleging a breach of her substantive right to call witnesses, I observe that this is not the way in which her complaint was put. I also refer to my finding of fact that no

documents were removed from the bundle, which Ms Lee alleges is the means by which she was denied her right to call witnesses.

76. For the above reasons I find that the Union did not breach rule 26(5)(c)(iv) by its letter of 7 February 2005.

Complaint 9

77. Complaint 9 is in the following terms:

“that by its letter of 29 April 2005 the Association acted in breach of rule 26(5)(d) of the rules of the Association in that the decision to proceed with the Appeal hearing in the absence of Ms Lee was made by the Chair of the Appeal Committee and not by the General Secretary”

78. Rule 26(5)(d) provides as follows:

(5) ***Convening of Meetings***

(d) If, in the opinion of the General Secretary, the respondent has submitted written good cause why he/she cannot attend, the hearing shall be adjourned to a future date.

79. Ms Lee stated that she had been unable to attend the appeal hearing on the 29 April 2005 by reason of ill health and had made an application for an adjournment by a letter faxed to the Union’s headquarters on the morning of the hearing. She submitted that the refusal of this application by the Chair of the Appeals Committee was a breach of rule 26(5)(d) as, by that rule, only the General Secretary could decide whether or not to grant an adjournment.
80. For the Union, Mr Hudson argued that rule 26(5)(d) must be understood in the context of the immediately preceding rules 26(5)(c)(viii) and (ix). These rules concerned the original notice of hearing sent to the respondent and in effect give the respondent an opportunity to apply for an adjournment for good cause within ten days of receipt of that notice. Mr Hudson argued that, in this context, rule 26(5)(d) was not intended to apply to situations which arose on the morning of a hearing. He suggested that Ms Lee must have been aware of this as her fax was addressed for the attention of Ms Lerew and Ms Howard, not to the General Secretary.
81. I find it significant that rule 26(5)(d) appears in the section of the rules dealing with the convening of meetings and not in the section dealing with hearings. It is also significant that the expression “*good cause*” appears in both rule 25(c)(viii) and rule 25(5)(d). This serves to demonstrate a link between the notice of hearing and the General Secretary’s discretion to grant an adjournment. However, the right of the General Secretary to grant an adjournment is not restricted by the rules to those applications for adjournment made by respondents within ten days of receipt of a notice of hearing. The General Secretary’s discretion can be exercised at other times. It does not follow from this, however, that the General Secretary has an exclusive power to grant an adjournment. Following the logic of her argument, Ms Lee was obliged to argue that if an adjournment were necessary after the first day of a

two day hearing the General Secretary would have to be found, by mobile phone if necessary, to consider the application. This is plainly not the intention of rule 25(5)(d). In my judgment a Disciplinary or Appeals Committee has an implied right to regulate its own procedures from the time it is seized of a matter, in as much as there is no express rule to the contrary. At the time that Ms Lerew refused Ms Lee's application for an adjournment, the Appeals Committee was seized of the appeal and accordingly the decision to proceed with it was one made within the discretion afforded the Appeals Committee under its implied powers.

82. For the above reasons I find that the Union did not breach rule 26(5)(d) by the decision to proceed with Ms Lee's appeal being made by the Chair of the Appeals Committee and not by the General Secretary.

Complaint 10

83. Complaint 10 is in the following terms:

“that the Association acted in breach of rule 26(5)(e) of the rules of the Association in that the General Secretary failed to send documentary evidence in her possession to Ms Lee, the respondent, at least 7 days before the Appeal Hearing scheduled for 29 April 2005 and that such documentation was sent two days in advance of the Hearing by the Deputy General Secretary”

84. Rule 26(5)(e) provides as follows:

(5) **Convening of Meetings**
(e) *Copies of the complaint, relevant minutes of any previous hearing, and any documentary evidence in his/her possession shall be sent to the respondent by the General Secretary as soon as is practicable and in any event at least seven days before the meeting”*

85. Ms Lee submitted that the requirement in rule 26(5)(e) that the relevant documents be sent to her *“as soon as practicable and in any event at least seven days before the hearing”* imposed a requirement on the Union that they be sent so that they were received by her at least seven days before the hearing. Ms Lee stated that the documents posted on Friday 22 April for a hearing on the 29 April were not received by her until early the next week, with further documents which were sent on Monday 25 April being received on or about the 27 April.

86. For the Union, Mr Hudson referred to the Union's attempts to compile the relevant documents and submitted that the Union had sent Ms Lee the relevant documents *“as soon as was practicable and at least seven days before the meeting”*. He argued that the term *“sent”* referred to the act of sending and not the act of receiving. He further submitted that the documents despatched on 25 April were sent in time as they could not have been sent any earlier because they were not then in the possession of the General Secretary. He stated that they were sent as soon as practicable upon receipt by the General Secretary.

87. I find Ms Lee's construction of the word "sent" to be untenable. Rule 26(5)(e) imposes a requirement on the Union to despatch the relevant documents at a certain time. It does not stipulate a time by which they must be received. I also accept the Union's further submissions regarding the documents which were despatched on Monday 25 April and find that they also were sent in time in accordance with the rules.
88. For the above reasons I find that the Union did not breach rule 26(5)(e) by allegedly failing to send the documentary evidence in the General Secretary's possession to Ms Lee at least seven days before the appeal hearing.

Complaint 11

89. Complaint 11 is in the following terms:

"that the Association acted in breach of rule 26(5)(f) of the rules of the Association in that the General Secretary failed to send documentary evidence in her possession to the complainant and the members of the Appeal Committee, at least 7 days before the Appeal Hearing scheduled for 29 April 2005 and that such documentation was sent two days in advance of the Hearing by the Deputy General Secretary"

90. Rule 26(5)(f) provides as follows:

(5) Convening of Meetings

(f) The General Secretary shall send written notice of the meeting at least seven days before the meeting to the complainant and to those who are members of the Committee holding the meeting. This notice shall include copies of the notice sent to the respondent, any Notice of Appeal, the complaint, relevant minutes of any previous hearing and any documentary evidence in the General Secretary's possession.

91. Ms Lee submitted that whereas complaint 10 had been directed towards the late submission of documents to the respondent under rule 26(5)(e), this complaint was directed towards the late submission of documents to the complainant and members of the Appeal Committee under rule 26(5)(f). Ms Lee stated that in all other respects the complaints were identical.
92. For the Union, Mr Hudson repeated the submission he had made in respect of complaint 10, whilst referring me to the letters in which the relevant documents to the complainant and the members of the Appeals Committee were enclosed.
93. For the reason set out in relation to complaint 10, I find that the Union did not breach rule 26(5)(f) by allegedly having failed to send documentary evidence in the possession of the General Secretary to the complainant and members of the Appeals Committee at least seven days before the appeal hearing.

Complaint 12

94. Complaint 12 is in the following terms:

“that the Association acted in breach of rule 26(6)(b) of the rules of the Association in that Greg Robbins and Ian Timpany acted as complainants at the Disciplinary Hearing of 25 February 2005 and the Appeal Hearing of 29 April 2005 and had not been appointed by the National Executive and that Dave Wilkinson who had been appointed by the National Executive to acts as complainant acted instead as representative to Mr Robbins and Mr Timpany”.

95. Rule 26(6)(b) provides as follows:

- (6) Hearings**
- (a)
- (b) *The complainant shall be a member appointed by the National Executive to put the case in support of the complaint.*

96. Ms Lee submitted that at her disciplinary hearing on 25 February 2005 Mr Wilkinson had acted as the complainant’s representative and not as the Complainant. She pointed out that Mr Wilkinson had been described as the complainant’s representative in various minutes and letters prepared by Mr Bartlett. She further pointed out that, in breach of the Protocol, Mr Robbins had been permitted to remain in the hearing throughout whereas, in the capacity of a witness, he was required not to be in attendance other than when giving evidence.

97. For the Union, Mr Hudson submitted that Mr Wilkinson had been properly appointed as the Complainant in this matter at a meeting of the National Executive on 3 December 2004. He further submitted that Mr Wilkinson had put the case in support of the complaint at both the disciplinary hearing on 25 February 2005, and the Appeal hearing on 29 April 2005, as demonstrated by the minutes of the hearing on 25 February. Mr Hudson was unable to comment on whether the presence of Mr Robbins during the whole of the hearing was in breach of the Protocol but he submitted that this was irrelevant to the present complaint.

98. The use of the word complainant in rule 26(6)(b) has caused some confusion within the Union. This is evidenced by Mr Bartlett’s decision to refer in various minutes and correspondence to Mr Robbins as the complainant and to Mr Wilkinson as the complainant’s representative. These descriptions may have made more sense to the reader but they are strictly inaccurate under the rules. It is to be noted, however, that rule 26(6)(b) does not regulate who is to be present at a hearing, which would appear to be a major plank of Ms Lee’s complaint. Rule 26(6)(b) regulates how the Complainant is appointed and the function to be undertaken by that person. On the facts of this case I accept the Union’s evidence that Mr Wilkinson was properly appointed as the Complainant by the National Executive at its meeting on 3 December 2004 and that he did put the case in support of the complaint at the disciplinary and appeal hearing.

99. For the above reasons I find that the Union is not in breach of rule 26(6)(b) in respect of the conduct of Mr Robbins at the disciplinary hearing on the 25 February 2005 or the appeal hearing on 29 April 2005.

Enforcement Order

100. I have made declarations in Ms Lee's favour in respect of complaints two and six. I have accordingly considered whether it would be appropriate for me to make an enforcement order in respect of those matters. I note that the period of Ms Lee's suspension from holding office within the Union terminated some eight months ago, on 1 September 2005. I have also had regard to the nature of the breaches of rule which have been found and the circumstances in which they occurred. I consider it inappropriate to make an enforcement order on the facts of this case.

David Cockburn
The Certification Officer