

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

**MR W SCOBIE**

**v**

**THE TRANSPORT AND GENERAL WORKERS UNION  
(No.1)**

**Date of Decisions:**

**25 April 2005**

**DECISIONS**

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

- (1) I dismiss the complaint that on 23 January, 3 February and 26 February 2004 respectively the TGWU acted in breach of rule 3(9) by the prevention of the Committee of Region Seven of the Union from functioning in accordance with union rules.
- (2) I dismiss the complaint that on or about 23 January 2004 the TGWU acted in breach of rule 6(13) by the appointment of Mr D Stark as a ‘stand-down officer’.
- (3) I dismiss the complaint that during January and February 2004 the TGWU acted in breach of rule 8(3) by preventing the Committee of Region Seven of the Union from convening a special Regional Committee meeting.
- (4) I dismiss the complaint that on or about 23 January 2004 the TGWU acted in breach of rule 15(1) by the appointment of Mr D Stark who was not a member in full benefit.
- (5) I dismiss the complaint that on or about 23 January 2004 the TGWU acted in breach of rule 19(1) by appointing Mr D Stark as a ‘stand-down officer’ of the Union without prior consultation.
- (6) I dismiss the complaint that on or about 23 January 2004 the TGWU acted in breach of Schedule 1(1) by the appointment of Mr D Stark, a retired Officer of the Union, as a ‘stand-down officer’ who failed to meet the financial membership requirement of the Union.

- (7) I dismiss the complaint that on or about 23 January 2004 the TGWU acted in breach of the requirements of Schedule 1(5) by the appointment of Mr D Stark as a 'stand-down officer' of the Union who was not in compliance with the financial membership requirements of the Union and who continued to hold office.
- (8) I dismiss the complaint that on 20 January 2004 the TGWU acted in breach of Clause 4 of the Union's Officer Disciplinary Procedure in that three Officers of the Union were suspended without being given the opportunity to state their case before such a decision was made.
- (9) I dismiss the complaint that on 20 January 2004 the TGWU acted in breach of Clause 7 of the Unions' Officer Disciplinary Procedure in that three Officers of the Union were suspended without having been given full details of the charges/investigation levelled against them.

## **REASONS**

1. By applications dated 29 and 31 March 2004, the Claimant made numerous allegations against the Transport and General Workers Union ("TGWU", "the Union"). A number of the allegations were subsequently identified as complaints relating to the behaviour of Officers and Employees of the Union; the appointment of officers of the Union; and the application of the Union's disciplinary process. These are matters potentially within the jurisdiction of the Certification Officer by virtue of sections 108A(2)(a)(b) and (d) of the 1992 Act. The alleged breaches are:

### **Complaint 1:**

*"that on 23 January, 3 February and 26 February 2004 in breach of rule 3(9) Mr Ray Collins prevented the Committee of Region Seven of the union from functioning in accordance with rule 3(9) of the rules of the union".*

### **Complaint 2:**

*"that on or about 23 January 2004 in breach of rule 6(13) the General Secretary appointed Mr D Stark as a 'stand-down officer' of the union without prior consultation as required by rule 6(13) of the rules of the union".*

### **Complaint 3:**

*"that during January and February 2004 in breach of rule 8(3) the General Secretary, the Deputy General Secretary and the Assistant General Secretary prevented the Committee of Region Seven of the union from convening a special Regional Committee meeting in accordance with rule 8(3) of the rules of the union".*

**Complaint 4:**

*“that the appointment of Mr D Stark as a ‘stand-down officer’ of the union on or about 23 January 2004 was in breach of rule 15(1) in that Mr Stark was not a member in full benefit as required by rule 15(1) of the rules of the union”.*

**Complaint 5:**

*“that on or about 23 January 2004 in breach of rule 19(1) the General Executive Council allocated the appointment of Mr D Stark as a ‘stand-down officer’ of the union without prior consultation as required by rule 19(1) of the rules of the union”.*

**Complaint 6:**

*“that on or about 23 January 2004 in breach of Schedule 1(1) the General Executive Council allocated the appointment of Mr D Stark, a retired Officer of the union, as a ‘stand-down officer’ of the union even though Mr Stark by not having paid 26 weekly full contributions failed to meet the financial membership requirement of the union required under Schedule1(1) of the rules of the union”.*

**Complaint 7:**

*“that on or about 23 January 2004 the General Executive Council allocated the appointment of Mr D Stark as a ‘stand-down officer’ of the union who was not in compliance with the financial membership requirements of the union and who continued to hold office in breach of the requirements of Schedule1(5) of the rules of the union”.*

**Complaint 8:**

*“that on 20 January 2004 in breach of Clause 4 of the union’s Officer Disciplinary Procedure three Officers of the union, namely Mr Baird, Mr Farelly and Mr Bruce were suspended without being given the opportunity to state their case before such a decision was made”.*

**Complaint 9:**

*“that on 20 January 2004 in breach of Clause 7 of the unions’ Officer Disciplinary Procedure three Officers of the union, namely Mr Baird, Mr Farelly and Mr Bruce were suspended without having been given full details of the charges/investigation levelled against them”.*

The date of 26 March 2004 in complaints 2, 4, 5, 6 and 7 as originally submitted was amended by agreement at the hearing to *“on or about 23 January 2004 ”.*

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 of a formal hearing and such a hearing took place on 2, 3 and 15 March 2005. The Union was represented by Mr Auerbach of Pattinson & Brewer Solicitors. Mr Collins, TGWU, Assistant General Secretary attended and gave evidence, Ms Dykes, TGWU, Assistant to Mr Collins, was also in attendance. The Claimant acted in person. Messrs Hicks and Wilson were in attendance on one or all of the days of the hearing and gave evidence in support of the Claimant. Two bundles of

documents were prepared for the hearings by my office the first of which contained relevant exchanges of correspondence, the second contained case law and legal authorities. The rules of the Union were also in evidence. The Union submitted skeleton arguments.

3. During my investigations into the alleged breaches the Union challenged the jurisdiction of the Certification Officer to determine complaints 1, 8 and 9 of breach of union rule as submitted by the Claimant under section 108A(1) of the 1992 Act. This was taken as a preliminary point at the hearing, and in the case of complaint 1 was further considered on 15 March 2005.

### **Findings of Fact**

4. Having considered the representations made to me by the parties and the relevant documents I make the following findings of fact.
5. In July 2003, with the endorsement of the General Executive Council (GEC), the then General Secretary, Bill Morris, appointed Professor Keith Ewing to conduct an independent examination into a number of complaints that had been received during the course of the 2003 election for a new General Secretary.
6. On 4 December 2003 Professor Ewing gave an oral presentation to the GEC. He indicated that there appeared to be evidence of serious wrongdoing in Scotland - the Union's Region 7. As a consequence the new General Secretary, Tony Woodley, appointed Jack Dromey (Deputy General Secretary) to undertake a formal investigation under the Union's disciplinary procedures. The investigation was to cover (a) issues relating to the conduct in Scotland of a 2003 General Secretary election (where Professor Ewing had found evidence of false nomination) and (b) concerns raised by Professor Ewing relating to allegations of intimidation of those co-operating with his investigation in Scotland.
7. Mr Dromey, in the course of his investigation concluded that there was a disciplinary case to answer. Consequently on 20 January 2004, three senior full-time officials of the Union, including the Regional Secretary (Andy Baird) were suspended.
8. On the same day, 20 January, Jim Hancock, the Regional Secretary for Region 4 (Wales) was appointed to also act as Regional Secretary for Scotland.
9. At this time, to provide some cover in a region unexpectedly denuded of three senior Officers, a stand-down officer, Mr D Stark, was appointed. Stand-down officers in this Union are experienced trade union members or officials who are appointed to cover the duties of full-time permanent Officers in cases of sickness, retirement or other circumstances where a post is temporarily vacant. In Scotland some stand-down officers are released temporarily by their employers, who may continue to cover their superannuation payments, with the Union covering the rest of their salary up to a point just below that of the most junior Officer in the Union.

10. The GEC has a six strand procedure covering such appointments. First there is an application from a Region. Second, the application is considered by the General Secretary who decides whether or not to grant the facility. Third, if the facility is granted, the Region is asked to nominate suitable candidates for appointment. Fourth, the General Secretary then decides whether to endorse the appointment and seeks the endorsement of a subsequent meeting of the GEC. Fifth, GEC policy requires that no individual should normally serve as a stand-down officer for more than a continuous period of six months in any two year period. Sixth, the GEC has delegated to the General Secretary its responsibility for stand-down appointments.
11. Mr Stark had been an Officer of the Union from August 1980 to July 2003 when he had retired and entered a category of membership from which no contributions were required to be paid. Mr Stark started work as a stand-down officer on 23 January 2004. He continued in that role, paying full Union subscriptions until 12 March 2004 when the Acting Regional Secretary replaced him with another stand-down officer.
12. At its meeting in April 2004 the GEC approved the General Secretary's provision of the stand-down facility under which Mr Stark was appointed.
13. The Regional Committee - composed of elected lay members - was decidedly unhappy with these events. In September 2003 following letters from Mr Baird to which it was alleged the General Secretary had not replied, the Regional Committee sought clarification from the GEC on the steps taken to ensure that Professor Ewing's terms of reference were fair and in line with proper procedure. It raised seven procedural points. By November no clarification had been forthcoming; its request did not appear to have been put before the GEC; and the General Secretary had not agreed to its request to meet with it. It therefore re-submitted its concerns and asked that the General Secretary be instructed to meet with the Region 7 Committee.
14. On Friday, 23 January 2004, following the suspension of the Regional Secretary and two other senior officers on 20 January, there was a special meeting of the Region 7 Committee called by the Acting Regional Secretary. Mr Dromey and Mr Collins were in attendance, as was Professor Ewing whom the Committee voted not to hear.
15. Mr Collins advised the Committee that they had no locus to suspend, dismiss or consider any matter relating to Officers' employment. The Committee continued to allege that proper procedures under the Union's 'Officers Disciplinary Procedure' (ODP) were not being followed. The meeting undertook to reconvene at an agreed time and date. On 27 January 2004, Mr Scobie made several attempts in vain to contact Mr Dromey about a date for the reconvened meeting.
16. On Tuesday, 3 February 2004 the Committee reconvened. As before, there was considerable discussion of the background to the Ewing report and of the procedures being followed by Mr Dromey. Attempts were made to discuss and rescind the three suspensions. Mr Collins re-iterated that these matters were out

of order and instructed Officers and advised GEC members present to leave the meeting if the Committee continued to take decisions which were not competent business. It was agreed to terminate the meeting and to reconvene at a time agreed by the Chair and Acting Regional Secretary. The following day, 4 February, Mr Scobie embarked on a series of telephone calls, emails and letters to Mr Dromey and Mr Collins designed to fix a date suitable to them and to Mr Hancock. Difficulties occurred over missed calls, diary commitments and Mr Dromey's wish to discuss issues with the General Secretary.

17. Eventually on 26 February 2004, the Committee met again and at its conclusion drew up a series of motions highly critical of the way the three Regional Officers had been treated and called for their reinstatement. There were also criticisms of Executive Officers for acting outwith the rules of the Union, delaying the date for the reconvened Regional Committee meeting and failing to consult on appointing stand-down officers, one of whom was a retired member. The Committee was also concerned that its views were not being put to the GEC.
18. The Committee agreed that before any further business could be transacted with the Region, "*the Administration should convene an immediate meeting to deal with unresolved matters still outstanding with Andy Baird (the Regional Secretary) and the General Secretary*". A requisition to that effect containing 25 signatures from the 38 members of the Regional Committee was handed to Mr Collins on 26 February 2004.
19. At the meeting of the GEC in March 2004 the Council had before it correspondence from Region 7 and heard a full report from the General Secretary explaining the procedures that had been followed by Officers and the Finance and General Purposes Committee. That report was accepted by the GEC which also concluded that the motions from the Region were not competent business.
20. Throughout this process Mr Collins had told the Regional Committee that the General Secretary was willing to meet with them but could not discuss the current investigation. It was agreed that the General Secretary would attend the requisitioned meeting.
21. Diary and communication difficulties caused some delay in setting the date for the requisitioned meeting. But it took place on 19 March 2004 with the General Secretary, the Deputy General Secretary and the Assistant General Secretary present. The Committee again refused to hear Professor Ewing's report. A number of less contentious issues were discussed. The General Secretary said that any remit from the Region which impinged on the investigation of wrongdoing would not be discussed by the GEC, but he agreed to attend the reconvened requisitioned meeting when a suitable date could be found.
22. On 21 April 2004 at the reconvened meeting the General Secretary urged the Committee to hear Mr Dromey's report on his investigation and what he had uncovered. This was agreed and at the conclusion it was also agreed that the matter should be resolved as soon as possible.

## **The Relevant Statutory Provisions**

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

### **S.108A Right to apply to Certification Officer**

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

*(2) The matters are –*

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

*(5) No application may be made regarding -*

- (a) the dismissal of an employee of the union;*
- (b) disciplinary proceedings against an employee of the union.*

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

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

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

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

## **The Union Rules**

24. Rule 3 CONSTITUTION AND GOVERNMENT

*9 “The general policy of the Union shall, subject to the Biennial Delegate Conference, be determined by the General Executive Council, but the policy of every region or trade shall, within the powers delegated to a Regional Trade Group or District Committee, Regional Industrial Sector Committee, Regional Committee, National Industrial Sector Committee or National Trade Group Committee by these rules or by the General Executive Council, be determined by such committees.”*

- Rule 6 GENERAL EXECUTIVE COUNCIL

*13 “The General Executive Council shall appoint all permanent and full-time officers of the Union (who shall have been financial members of this Union for at least two years immediately preceding the date of application or*

*nomination) other than the General Secretary, deputy General Secretary and such other executive officers as from time to time prescribed by the General Executive Council under rule 15 Clause 3 and trustees, but including all permanent or full-time secretaries, delegates or other officers of branches. No additional officers shall be appointed by the General Executive Council until after consultation with the National Industrial Sector and/or either Regional Committee or Regional Industrial Sector committee concerned. The General Executive Council shall fix the salaries attached to each official position. It shall have power to suspend and/or dismiss any officer.”*

#### Rule 8 REGIONAL COMMITTEES

*3 “The Regional Committee shall meet once a quarter or oftener if, in the opinion of the Regional Secretary, the business renders it necessary or by requisition of a majority of the members.”*

#### Rule 15 OFFICERS

*1 “The officers of the Union, who must all be members in full benefit, and must have worked in an industry embraced by the Union, shall include (1) General Secretary (2) Executive Officers including (a) Deputy General Secretary (b) Assistant General Secretaries (c) Executive Finance Director and other executive Officers from time to time determined by the General Executive Council (3) National Officials (4) Regional Secretaries (5) Regional and District Officers (6) Trustees, Delegates to constitutional committees and Branch officers.”*

#### Rule 19 OTHER PERMANENT OFFICIALS

*1 “All other permanent officials and staff, including all permanent or full-time branch officers, shall be allocated by the General Executive Council, after consultation with the respective sector or Regional Committee concerned. In the creation of new appointments the General Executive Council shall consult the National Industrial Sector committees, regional committees, regional sector, trade group or district committees, or branch, as the case may be, with reference to the nature and conditions of appointment.”*

#### Rule 20 MEMBERSHIP

*12 “A financial member is a member with not less than 26 weeks’ membership, having made 26 weekly payments, and who is less than six weeks in arrears.”*

#### Schedule 1 ELIGIBILITY AND REQUIREMENTS OF DELEGATES, OFFICERS, ETC.

*1 “Every candidate for any office in the Union, i.e., officers, whether paid or not, or delegates to a Delegate Conference, the Rules Conference, or for membership of the General Executive Council, or of a national trade group, or section, or a Regional Trade Group, or district, or a Regional Committee or other constitutional committee, shall have been a financial member of this Union for at least two years immediately preceding the date of application or nomination, subject to the provisions of Rule 16, Clause 1 in the case of the General Secretary, and the Executive Finance Director, respectively. A candidate must be employed in or in connection with the trade they desire to represent provided always that for the purpose of suitable and efficient discharge of the duties of a paid officer of the General Executive Council may, at its discretion, invite applications from other or all sections of the membership. A member who becomes unemployed is eligible to stand for office in the Union after they lose their employment, provided that they still retain their full membership as required by rule and continue to seek*

*employment. Members not seeking employment are not eligible. Notwithstanding this Clause, the General Executive Council shall have the power to allow members who are beyond the age of retirement to continue in post as Branch officials.”*

5 *“Every member holding an official position in the Union, or members of the General Executive Council, or any other constitutional committee, not being in compliance as a financial member of the Union as per Rule 20, Clause 12, shall forthwith cease to hold office in the Union for the term for which they were elected.”*

## **The Union’s Officers Negotiating Committee (ONC) Officer Disciplinary Procedure**

4 *“At each stage of the procedure prior to the hearing the Officer will be advised, in writing, of the nature of the complaint and will be given an opportunity to state their case before any decision is made.”*

7 *“In cases of serious misconduct the Designated Investigating Officer may, where it is felt necessary, suspend an Officer on full pay prior to a formal disciplinary hearing. In these circumstances the Officer must be given full details of the charges/investigation that have been levelled against him/her. The Officer will have the right to make formal representations to the Designated Investigating Officer on the decision. In such a meeting the Officer will have the right to be represented.”*

### **Complaint 1:**

*“that on 23 January, 3 February and 26 February 2004 in breach of rule 3(9) Mr Ray Collins prevented the Committee of Region Seven of the union from functioning in accordance with rule 3(9) of the rules of the union”.*

### **Jurisdiction Issues**

#### **The Union’s Submission**

25. The Certification Officer’s jurisdiction to entertain this complaint could only be under section 108(A)(2)(d) of the 1992 Act, which would require rule 3(9) to relate to the “*constitution or proceedings*” of the Regional Committee. However in *Fradley v TSSA(D/28-30/03.CO)* the Certification Officer stated:

*“In my judgement, section 108A(2)(d) describes two types of rule. These are (i) rules which relate to the constitution of the executive committee or of any decision making body (“relevant committees”), such as rules about the membership or quorum of those committees or other such issues relating to their constitution, and (ii) rules which relate to the proceedings of relevant committees, such as the procedural rules as to the way business must be conducted...I...reject the proposition that the word “proceedings” in subsection (2)(d) gives the Certification Officer jurisdiction over any decision made by a relevant committee. A decision may arise during the course of the proceedings of such a committee but rules relating to proceedings are those rules which guide the proceedings to a decision, not the decision itself...”*

26. In the Union’s view, rule 3(9) does not relate to the “*constitution or proceedings*” of the Regional Committee.

27. Further and in any event, section 108A(5)(b) of the 1992 Act applies to an application under any of the heads in section 108A(2). This is to the effect that no application may be made regarding disciplinary proceedings against an employee of the Union. In the Union's view, precautionary suspensions form part of disciplinary proceedings. It argues that the natural meaning of "*regarding*" is broad, that is; 'touching', 'having reference to', 'relating to'. Moreover, in context it requires a broad interpretation because sub-section 5 is a prohibition that bites on any complaint of a breach of rule listed in sub-section 2. Also it is not 'regarding a rule relating to' but simply "*regarding*". The issues giving rise to the complaint are clearly ones regarding the disciplinary proceedings against three senior employees of the Union and the application is not one the Certification Officer can entertain.
28. The Union raised similar jurisdictional issues, though with less emphasis, in relation to complaint 3.

### **Substantive Issues**

#### **The Union's Submission**

29. Even if neither of these jurisdictional points are taken, the Union contends that rule 3(9) is about policy and the subject matter of the meetings complained about had nothing to do with policy. Therefore, it argues there is no case to answer.
30. Rule 3(9) is concerned with the policy of every region or trade. The subject matter of the special meetings of the Regional Committee was the disciplinary proceedings that had been started by the precautionary suspensions of the three employed Officers of the Union. These proceedings are not a matter of policy, nor a matter on which the Regional Committee had power to take a decision. Such decisions lie within the province of the GEC under rule 6(13)
31. The Regional Committee was not in any way prevented from functioning. The purpose of Mr Collins' contributions was to help ensure that the Union complied with its obligations under its rule book and to the individuals concerned and to advise the Committee accordingly. Ultimately, Mr Collins did not have the power to prevent the Regional Committee from following any particular course. Throughout the period complained about the Regional Committee met, carried out its business and issued its own minutes recording its views and decisions.

#### **The Claimant's Submission**

32. The meetings of the Committee referred to in the complaint were of the Regional Committee which has decision-making powers in terms of rule 3(9), the decision-making process being to determine whether the Union had breached its own rules in relation to its ODP. As the ODP was accepted by the GEC, it is a policy of the Union and therefore falls to be discussed by the Regional Committee under rule 3(9).

33. The Claimant recognised that, in spite of some members attempting to do so, the Regional Committee could not decide on the suspensions. What the Committee wanted to do was to discuss debate and question the Officers of the Union on the procedures that had been followed in the investigations of Professor Ewing and the Deputy General Secretary. These procedures were the policy of the Union and therefore fell to be considered by the Regional Committee under rule 3(9). The Committee also wished to consider the knock-on effects on the running of the Region following the disciplinary action taken against three senior Officers.
34. In the case of *McKay v TGWU* (D/2002/02.NICO) the Northern Ireland Certification Officer accepted jurisdiction to hear a similar case. Moreover, he had decided for the claimant who alleged the Union had failed to call a special meeting of the Irish Regional Committee when requested to do so by a majority of members. The purpose of that meeting had been to consider issues surrounding the suspension of Officers in Northern Ireland.
35. By September 2003, if not earlier, Mr Collins had undermined the functioning of the Regional Committee under its delegated powers. He had refused to put its concerns about Professor Ewing's investigation to the GEC. He had bullied the Committee by saying that if the Union did not investigate the concerns about the 2003 General Secretary election the Certification Officer would do so. However, the Certification Office had told enquirers that it did not have a complaint before it in respect of this election. Mr Collins had also instructed Union Officers (and advised Regional Committee members who were members of the GEC) that they should leave the meeting if business was conducted against his advice.
36. In addition, Mr Collins had interfered in the drafting of the Regional Committees minutes which had to be substantially revised before the Regional Committee would approve them.
37. All of these actions prevented the Regional Committee from performing the functions given to it under rule 3(9)

## **Conclusion - Complaint 1**

### **Jurisdictional Issues**

38. The first question for me to consider is "*Do issues about whether or not a meeting of an executive committee of the union was called as it should have been and allowed to discuss the issues that it was competent to discuss, fall within the Certification Officer's jurisdiction?*" A shorter way of putting the same point is can the Certification Officer consider whether meetings have been called according to the rule and whether their remit has been properly interpreted according to the rule. Are these issues of "*constitution or proceedings*"?
39. On a first reading of *Fradley v TSSA* the examples given would suggest that "*constitution*" is confined to rules relating to membership or quorum of those bodies, and "*proceedings*" to the rules as to the way business must be conducted. Such an interpretation is clearly in line with Parliament's intention to

restrict the Certification Officer's jurisdiction to specific aspects of the Union's rule book.

40. Without questioning that intention or undermining the principle it embodies, it is my view that "*constitution*" has a wider meaning than 'composition'. Indeed, in *Fradley* the Certification Officer referred to "*other such issues relating to constitution*". In my judgment some issues relating to the proper functioning of decision-making bodies are embraced by the term "*constitution or proceedings*". One such issue falling within the definition of "*constitution*" is rules relating to when and how meetings of executive bodies are called.
41. Similarly "*proceedings*" or 'procedural rules' in my view include issues about the remit, vires, or, in the Union's terms, 'competent business', of executive bodies. To decide whether or not a constituent body within the Union had the power under rule to reach a decision or discuss a particular matter appears to me to be an issue falling within the definition of rules relating to the "*constitution or proceedings*" of that body.
42. In my view Complaint 1, which refers to rule 3(9), does fall to be dealt with under sub-section 108A(2)(d) of the 1992 Act as it is a rule relating to the vires and hence to the "*constitution or proceedings*" of the Regional Committee and is therefore within the jurisdiction of the Certification Officer.
43. Sub-section 108A(5)(b) of the 1992 Act raises a different and in my view more difficult issue, the issue being, according to the Union, is Mr Scobie's first complaint "*an application regarding disciplinary proceedings against an employee of the union*"? This section means such a complaint does not fall to be decided by the Certification Officer.
44. The Union argue that it is such an application as it is clear that the matters which the meetings were intended to debate were almost wholly concerned with the disciplining of three senior employees of the Union. The application must therefore be held to be "*regarding*" the disciplining of Union employees.
45. "Regarding" is a vague word. It could, on the Union's argument, embrace a wide range of issues. But it must be interpreted on the facts of a particular case. In this case the Claimant alleges that the Regional Committee was prevented from discussing among other things the consequences on the operation of Region 7 flowing from the disciplinary proceedings. I do not find that such an application is one made regarding those disciplinary proceedings.
46. I have had regard to a theme running throughout the 1992 Act in relation to the Certification Officer and the Courts. Namely, the Certification Officer is given powers to determine specific issues but anyone taking that route may only do so if they have not been to the Courts on the same issue. Similarly, anyone applying to the Certification Officer may not apply to the Courts on the same matter, save where there is a right of appeal. The Claimant can and must choose which route to follow in many of the Certification Officer's jurisdictions.

47. Against that background, the purpose of sub-section 108A(5) of the 1992 Act would seem to be to say in this instance that Parliament has already provided a route via Employment Tribunals for dealing with complaints from all employees about discipline and dismissal and Union employees must follow that route. The Certification Officer may not go down it. Sub-section 108A(5)(b) is intended, in my view, to prevent the Certification Officer from considering any issues relating to the merits of disciplinary proceedings against employees of the Union. On the alleged facts of this case (which are the proper ones to take into account in determining the matter of jurisdiction), although the Regional Committee strayed into the merits of the suspensions, the Claimant avoided so doing.
48. In my judgment subsection (5)(b) of section 108A does not rule out from the Certification Officer's jurisdiction other complaints about the ability or otherwise of union committees to meet to debate, to seek information and generally to discuss issues surrounding the application of the Union's disciplinary procedures, even where those procedures have been invoked against an employee of the Union. On that view, I conclude that I do have jurisdiction to determine this complaint.

### **Substantive Issues**

49. The essential question for me is "*was the Regional Committee prevented from doing anything on which it was empowered to act by rule 3(9)*"?
50. It is the Claimant's contention that it was the circumstances surrounding the suspension of three senior employees that the Regional Committee was prevented from discussing. Rule 3(9) sets out the Regional Committee's powers in relation to policy issues delegated to it. In my judgment the circumstances and issues raised by the Claimant do not constitute a policy so delegated. The GEC has not delegated to Regional Committees powers on disciplinary matters relating to employees.
51. Moreover, in spite of Mr Collins' efforts to persuade the Regional Committee of this view, it did have prolonged discussions about the suspensions at its meetings throughout the period in question. When the Regional Committee's views reached the GEC in March 2004, the GEC decided that the Regional Committee had no status to make decisions on those issues.
52. In short, the Regional Committee does not seem to have been prevented from doing anything, and certainly not anything falling within the remit of rule 3(9). I therefore dismiss this complaint.

### **Complaint 3:**

*"that during January and February 2004 in breach of rule 8(3) the General Secretary, the Deputy General Secretary and the Assistant General Secretary prevented the Committee of Region Seven of the union from convening a special Regional Committee meeting in accordance with rule 8(3) of the rules of the union".*

53. I am taking this out of order as it raises jurisdictional issues and concerns similar to those in complaint 1.

## **The Union's Submission**

### **Jurisdictional Issues**

54. The Union argued on similar lines as in complaint 1 (see paragraphs 25-28). In its view rule 8(3) is not a rule relating to the "*proceedings*" or "*composition*" of the Regional Committee as set out in Fradley. The rule concerns how often and how meetings are convened. It says nothing about its composition or procedures to guide it to decisions when it does meet.

### **Substantive Issues**

55. The Union contends that if it is wrong on the jurisdictional issues, the complaint should still be dismissed.
56. Rule 8(3) deals with three types of meeting of the Regional Committee: routine quarterly meetings; other meetings instigated by the Regional Secretary; and other meetings instigated by members' requisition. The first meeting was not instigated by members' requisition. It was instigated by the Acting Regional Secretary and started within three days of the suspensions taking place. The second meeting was instigated by members requisition dated 26 February 2004. Neither the convening nor re-convening of either meeting was prevented. All the meetings the Regional Committee wanted actually took place. At all stages the meetings took place on the earliest practical dates having regard to the availability of the relevant individuals. Accordingly, there was no breach of rule 8(3).

## **The Claimant's Submission**

### **Jurisdictional Issues**

57. In the Claimant's view, Rule 8(3) provides the circumstances in which a Regional Committee shall meet. That is clearly a rule relating to the "*constitution or proceedings*" of that body. The Northern Ireland Certification Officer had treated a similar complaint against the Union as being within his remit (*McKay v TGWU D/2002/02.NICO*).

### **Substantive Issues**

58. There was a conspiracy involving the Deputy General Secretary (Mr Drome) and the Assistant General Secretary (Mr Collins) aided and abetted by the General Secretary, to prevent the Regional Committee meeting. On the morning of 20 January 2004 the Claimant says that Mr Collins told him there could not be a meeting of the Regional Committee. The Claimant saw this as a threat to break rule 8(3). By 3pm the same day a meeting had been arranged.

59. At every stage the Claimant felt that his attempts to find an early date for meetings was obstructed. Telephone calls were not returned, emails not answered and his attempts to secure agreement on meeting dates were blocked. At one point the Acting Regional Secretary said that he could not fix a meeting as these meetings were “*under the auspices of the Deputy and Assistant General Secretary*”. These barriers constituted a continuing threat to break rule 8(3).
60. The General Secretary was refusing to meet the Committee or to consider its concerns over the way the three Officers had been treated and the effects this was having on the Region. In particular the Region was operating with an Acting Regional Secretary in the Region for just two days a week. That was why the Regional Committee members had requisitioned a meeting to be attended by the General Secretary. The requisition was made and handed over on 26 February 2004 but the meeting called for under rule 8(3) did not take place until 19 March. Again all efforts at reaching accommodation on dates were blocked by the Assistant General Secretary, the Deputy General Secretary and the General Secretary. All this constituted a breach or threatened breach of rule 8(3).

### **Conclusion: Complaint 3**

#### **Jurisdiction Issues**

61. In my view the arguments I advanced in relation to jurisdiction on complaint 1 apply even more strongly in this case (see paragraphs 38-48). Rule 8(3) is clearly about when a decision-making body meets and in my judgment falls within the scope of “*constitution or proceedings*”. Furthermore, although the question of disciplining employees of the Union was a key issue to be discussed at these meetings, in this complaint it is the calling of the meeting not the substance of them that is at issue. This means there is even less reason to rule the complaint out on the grounds that it is ‘regarding disciplinary proceedings’ against employees of the Union. This is a complaint within the jurisdiction of the Certification Officer, and falls to be determined on the facts of this case which differ from those in *McKay v TGWU*.

#### **Substantive Issues**

62. The fact that five meetings of the Regional Committee took place in one quarter of the year constitutes fairly clear evidence that the Committee was not prevented from meeting.
63. The first meeting was held within three days of the events giving rise to the need for it. The fact that there were difficulties getting the Regional Council, the General Secretary, his Deputy and Assistant to meetings on the same day is understandable. Moreover, as there was no obligation under rule for these Officers to attend meetings called by the Regional Committee, that Committee could have met, without the National Officers, at any time it wished. The Regional Committee was not prevented from meeting in contravention of rule 8(3).

64. At the hearing, the Claimant asked me to treat attempts to prevent meetings taking place as threats to break rule 8(3). He had picked up on the phrase in section 108A(1) of the 1992 Act relating to complaints “*that there has been a breach or a threatened breach of the rules of a trade union*”. This point was not argued before me as it was not in the complaint as submitted. But in my view the examples given of supposed threats in the circumstances of this case are not capable of being classed as such for the purpose of section 108(A)(1) of the 1992 Act.
65. It is for these reasons that I dismiss the complaint.

## **Complaints 8 and 9**

### **Complaint 8:**

*“that on 20 January 2004 in breach of Clause 4 of the union’s Officer Disciplinary Procedure three Officers of the union, namely Mr Baird, Mr Farelly and Mr Bruce were suspended without being given the opportunity to state their case before such a decision was made”.*

### **Complaint 9:**

*“that on 20 January 2004 in breach of Clause 7 of the unions’ Officer Disciplinary Procedure three Officers of the union, namely Mr Baird, Mr Farelly and Mr Bruce were suspended without having been given full details of the charges/investigation levelled against them”.*

## **The Union’s Submission**

### **Jurisdiction Issues**

66. Sub-section 108A(5)(b) of the 1992 Act is clear in that the Certification Officer may not entertain an application regarding disciplinary proceedings against employees of the Union.
67. There is no dispute that the three Officers who were suspended were employees of the Union. Similarly ‘precautionary suspensions’ fall within the natural meaning of the term “*disciplinary proceedings*”, and both the Certification Officer and his counterpart in Northern Ireland have accepted that to be the case (*Michie v MSF* (D/38-42/01.CO) and *McKay v TGWU*).
68. Moreover, were precautionary suspensions held not to be within the ambit of disciplinary proceedings for the purposes of sub-section 108A(5)(b) of the 1992 Act then nor would they be so for sub-section 108A(2)(b) and the applications would not satisfy the requirement to be about rules relating to disciplinary proceedings. If ‘precautionary suspensions’ are not “*disciplinary proceedings*” the application is not within the jurisdiction given to the Certification Officer in sub-section 108A(2)(b) of the 1992 Act. If they are disciplinary proceedings then sub-section 108A(5)(b) excludes them from the Certification Officer’s jurisdiction.

69. Further, and in any event, the Certification Officer can only determine complaints about alleged breaches of relevant rules of the Union and the ODP are not rules of the Union.

### **The Claimant's Submission**

#### **Jurisdiction Issues**

70. The ODP are rules of the Union. They are endorsed by the lay GEC and are made in terms of the Rule Book.
71. The complaints that have been made do not refer to the individuals as employees but to the fact that the Union failed to comply with its own rules.
72. An employee with a grievance has rights and recourse under employment law but the complaints made do not relate to those employment law points. The complaints relate to the rights of members of the Union to pursue a claim that there has been a fundamental breach of the Union's own rules and that proper procedures have not been followed.

### **Conclusion - Complaints 8 and 9**

#### **Jurisdiction Issues**

73. I have no doubt that the precautionary suspensions taken against three senior employees of the Union were part of a disciplinary procedure. It follows that sub-section 108A(5)(b) of the 1992 Act precludes me from entertaining the applications which are the source of these two complaints. They are outwith the jurisdiction of the Certification Officer. I do not therefore have to decide whether or not the ODP are rules of the Union for the purpose of section 108A of the 1992 Act.

### **Complaints 2, 4, 5, 6 & 7**

#### **Complaint 2:**

*“that on or about 23 January 2004 in breach of rule 6(13) the General Secretary appointed Mr D Stark as a ‘stand-down officer’ of the union without prior consultation as required by rule 6(13) of the rules of the union”.*

#### **Complaint 4:**

*“that the appointment of Mr D Stark as a ‘stand-down officer’ of the union on or about 23 January 2004 was in breach of rule 15(1) in that Mr Stark was not a member in full benefit as required by rule 15(1) of the rules of the union”.*

### **Complaint 5:**

*“that on or about 23 January 2004 in breach of rule 19(1) the General Executive Council allocated the appointment of Mr D Stark as a ‘stand-down officer’ of the union without prior consultation as required by rule 19(1) of the rules of the union”.*

### **Complaint 6:**

*“that on or about 23 January 2004 in breach of Schedule 1(1) the General Executive Council allocated the appointment of Mr D Stark, a retired Officer of the union, as a ‘stand-down officer’ of the union even though Mr Stark by not having paid 26 weekly full contributions failed to meet the financial membership requirement of the union required Schedule 1(1) of the rules of the union”.*

### **Complaint 7:**

*“that on or about 23 January 2004 the General Executive Council allocated the appointment of Mr D Stark as a ‘stand-down officer’ of the union who was not in compliance with the financial membership requirements of the union and who continued to hold office in breach of the requirements of Schedule 1(5) of the rules of the union”.*

### **The Claimant’s Submissions**

74. Each of these complaints falls to be decided by the Certification Officer under sub-section 108A(2)(a) being complaints which relate to *“the appointment or election of a person to, or the removal of a person from, any office”*.
75. Stand-down officers are not mentioned as such in the Union rules. When they are appointed, however, they are expected to do exactly the same work as the Officer whose post they are covering. They act with the same authority as that Officer in dealing with employers and workers. Their pay is a little less than that of the most junior Union Officer. Their service is not pensionable. They are provided with the same facilities and support as full-time officers.
76. The procedures for appointing stand-down officers should be similar to those filling other offices in the Union.
77. In Scotland there are established procedures for consulting the Union’s districts on the need for stand-down officers and the person to serve in such a capacity. Those procedures would have been triggered if the Region had been consulted. All of the breaches of the rule involved in Mr Stark’s appointment would, therefore, have been avoided.
78. Complaint 2 refers to rule 6(13) which requires the GEC to appoint additional officers only after consultation with the relevant Regional Committee and to appoint only those who have been financial members of the Union for at least two years immediately preceding their application. A financial member is a

member having made 26 weekly payments and who is less than 6 weeks in arrears.

79. Mr Stark's appointment fell foul of this rule in two respects. There was no consultation with the Region about the vacancy or about who should fill it. Moreover, Mr Stark had been a retired member for around six months; he was a 'free' member not a financial member during that time.
80. Complaint 4 refers to rule 15(1) which requires all Officers of the Union to be members in full benefit. As Mr Stark was not a financial member (see above) he could not be a member in full benefit.
81. Complaint 5 refers to rule 19(1). This says that permanent officials and staff shall be allocated by the GEC after consultation with the Regional Committee concerned. There was no such consultation in respect of Mr Stark's allocation.
82. Complaint 6 refers to Schedule1(1) which says that every candidate for office in the Union "*shall have been a financial member of this union for at least two years immediately preceding the date of application or nomination*". Mr Stark was not a financial member so his appointment breached this rule.
83. Complaint 7 refers to Schedule1(5) which requires every member holding an official position within the Union to be in compliance as a financial member. Mr Stark was not a financial member when he was appointed.

### **The Union's Submissions**

84. Stand-down officers are people retained by the Union to provide temporary cover for an Officer who is for some reason unable to perform his or her duties. Such temporary employees are not Officers of the Union under its rule book. They are recruited differently, have different terms and conditions which are not negotiated by the Officers Negotiating Committee, accordingly the rules cited in complaints 2, 4 and 5 do not apply.
85. Furthermore, on complaint 2, even if it were held that Mr Stark's appointment as a stand-down officer was that of an Officer, there was no breach of rule 6(13). This was not the appointment of an additional Officer, but the provision of temporary cover specifically requested of the Union by the Region. There is no obligation under rule to consult the Regional Committee over the identity of the particular person provided.
86. Complaint 4: If, contrary to the Union's primary submission, Mr Stark were held to be an Officer of the Union, there was no breach of rule 15(1). Immediately prior to his employment as a stand-down officer, Mr Stark was a retired member from whom no contributions were due. He had been an Officer and full member for many years before retirement; he had previously made more than 26 weekly contributions and while a stand-down officer, had paid full subscriptions. He was not in arrears.

87. Complaint 5: If contrary to the Union's primary submission Mr Stark were held to be an Officer of the Union there was no breach of rule 19(1). This rule is about the allocation of resources or posts to particular areas of responsibility whether geographical or industrial. If the GEC wished to alter the area covered by the particular post that might require consultation under rule 19(1). But in this case certain Officers whose allocations were already defined were not available for work and the Region through the Acting Regional Secretary requested some stand- down cover including Mr Stark. As no change in allocation was involved, no consultation was required under rule 19(1). The rule had not been breached.
88. Complaint 6: Schedule1(1) has no application in this case as Mr Stark was neither a nominee for an elected position or office nor an applicant competing in accordance with selection procedures for permanent employment as an Officer, but was retained to provide temporary cover for Officers. Moreover, it is the Union's contention (see above) that Mr Stark was a financial member in compliance with the 26 weekly payments requirement (rule 20(12)). There was no breach of Schedule1(1).
89. Complaint 7: Schedule1(5) by implication relates only to elected positions and Mr Stark was not elected to any such position. In any event Mr Stark throughout the period of his employment as stand-down officer, was a financial member of the union in accordance with rule 20(12) (see above) and there was no breach of Schedule1(5).

#### **Conclusion - Complaints 2, 4, 5, 6 and 7**

90. Complaints 2, 4 and 5 all relate to rules governing the appointment and/or deployment of Officers of the Union. I recognise that stand-down officers act with the same authority as the Officers for whom they are covering. However, in certain key respects they are not the same as Officers. Appointment methods are different; terms and conditions are differently determined and slightly less favourable; and they are temporary appointments. In the light of this I am of the view that stand-down officers are not Officers of the Union and therefore the rules cited in Complaints 2, 4 and 5 do not apply to them. Mr Stark's appointment, did not therefore breach any of them. I dismiss these three complaints.
91. Complaint 6 refers to Schedule1(1). In my view this sub-rule relates to all candidates for office in the Union and not just to Officers. But to be a candidate for office implies that there is or might be an election or that there is a competition between candidates or applicants for a particular post. Whilst there is on occasion more than one person considered for a stand-down post, the common method of appointment involves neither elections nor competing applicants. In that case the requirements of Schedule1(1) do not apply to the stand-down appointments and no breach occurred by Mr Stark's appointment. I therefore dismiss this complaint.

92. Complaint 7 refers to Schedule1(5) which states that anyone not being a financial member shall forthwith cease to hold office in the Union for the term for which they were elected. As stand-down officers are not elected, this rule cannot be applied to them and Mr Stark's appointment cannot breach it. I therefore dismiss this complaint.

**E G WHYBREW**  
**Assistant Certification Officer**