

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

**MR M FENTON**

**v**

**GMB**

**Date of Decision**

**22 October 2004**

**DECISION**

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

- (1) I dismiss the complaint that rule 6 and/or rule 27.7 of the rules of the GMB (“the Union”) were breached on or about 14 August 2003 by the decision of its branch, known as ‘16 Branch Blackburn’, to adjourn and take no further action on complaints under rule 6 made by Mr Fenton on 12 August 2003 about the conduct of the Regional Secretary.
- (2) I dismiss the complaint that rule 6.1 of the rules of the Union was breached by the alleged failure of the Regional Committee of the Lancashire Region of the Union, by its letter of 20 January 2003, to make a decision on Mr Fenton’s complaint under rule 6.
- (3) I dismiss the complaint that rule 20.9 of the rules of the Union was breached by the Regional Secretary of the Lancashire Region of the Union, Mr Jones, by his letter to Mr Fenton of 11 July 2003, allegedly making a decision on Mr Fenton’s claim under rule 27.
- (4) I dismiss the complaint that rule 6.1 of the rules of the Union was breached by the General Secretary, Mr Edmonds, refusing, by his letter of 31 January 2003, to submit Mr Fenton’s rule 6 complaint to the Union’s Central Executive Council.
- (5) I dismiss the complaint that rule 6 of the rules of the Union was breached by the amendment of that rule to its present form by the Union’s Annual Congress in 1999.

## REASONS

1. By an application received in the Certification Office on 29 July 2003, the Applicant made a number of complaints against his union, the GMB (“the Union”). The complaints, as agreed with the Applicant, were put to the Union in the following terms:
  - 1.1 *“That on or about 14 August 2003 by adjourning and taking no further action on complaints made by Mr Fenton on 12 August 2003 under rule 6 as to the conduct of the Regional Secretary, the union is in breach of rule 6 and/or rule 27.7 of the rules of the union and that this is a matter relating to disciplinary proceedings by the union (section 108A (2) (b) of the 1992 Act).”*
  - 1.2 *“That the Regional Committee of the union by its letter of 20 January 2003 failed to make a decision on Mr Fenton’s rule 6 complaint and that this breached rule 6.1 of the rules of the union.”*
  - 1.3 *“That the Regional Secretary, Mr Jones, by his letter to Mr Fenton of 11 July 2003 in making a decision on Mr Fenton’s rule 27 claim, breached rule 20.9 of the rules of the union as the nature of Mr Fenton’s claim against the GMB was one of a national character.”*
  - 1.4 *“That by his letter of 31 January 2003, in refusing to submit Mr Fenton’s rule 6 complaint to the union’s Central Executive Council, the General Secretary breached rule 6.1 of the rules of the union.”*
  - 1.5 *“In amending union rule 6 to its present form the union’s Congress in 1998 breached the implied terms of natural justice in rule 6 of the rules of the union and that, by the operation of rule 6 in its present form, the breach is on-going.”*
2. The matters were investigated in correspondence. As required by section 108B(2)(b) of the 1992 Act, the parties were given the opportunity of a formal hearing. Having ascertained the availability of the parties, a hearing was arranged for 2 July 2004. Approximately one week before the hearing, the Applicant sought a postponement on the grounds that his then employers, SAS Lawyers, would not permit him a day’s holiday on 2 July. The Applicant had qualified as a solicitor since leaving the Union’s employment in 2000. I granted the postponement, despite an objection from the Union. The Applicant was informed that “any further request for a postponement on similar grounds would be scrutinised with particular care”. Further hearing dates were canvassed. By a letter dated 29 June, the Applicant stated “I would request that the hearing be re-registered for Thursday 30 September.” The parties were informed by letter of 30 June that this matter had been re-listed for 30 September. Approximately one week before the re-listed hearing, the Applicant again sought a postponement. He did so on the grounds that he had been unable to secure a day’s leave from his current employer, Messrs Ellis Whittam, corporate support, and that, with more time, an amicable settlement of his complaints against the Union might be possible. The Union again

objected. In considering the Applicant's request for a further postponement, I had particular regard to the following matters. First, by Section 108B(2)(c) of the 1992 Act, I am under a duty to ensure that so far as is reasonably practicable, any application is determined within six months of being made. This application was received at my office on 29 July 2003. Second, the date of the hearing had been specifically agreed with the Applicant. Third, there had already been one postponement. Fourth, the Applicant was aware that any request for a postponement on similar grounds would be viewed with caution. Fifth, the Applicant gave no specific reason as to why his request for a day's leave had been refused, beyond enclosing a note from his employers stating that he worked in a two person team and that his colleague "is away from the office due to unforeseen reasons". It was said that without Mr Fenton the employer would be unable to service its clients on that day. I observed that no reasons were given for the colleague's absence, nor was there an indication as to whether any alternative solutions had been sought. On the application as presented to me, I was not persuaded that the Applicant had properly balanced his employer's difficulties and the seriousness of a judicial hearing. I had to consider, in the context of my statutory duty, not only the interests of the Applicant but also those of the Respondent and predominantly the interests of justice. Considering all these matters, I rejected the Applicant's request for a postponement.

3. The hearing on the 30 September proceeded in the absence of the Applicant. The Union was represented by Ms S Machin of Counsel, instructed by Mr C Hantom of Whittles Solicitors. Mr J. O'Hara, former legal officer of the Union, was in attendance. A 288 page bundle of documents was prepared for the hearing by my office. This bundle consisted of the documents submitted by the parties and relevant correspondence. The Union presented a skeleton argument, together with a chronology that had been prepared for other proceedings. By a letter dated 29 September, the Applicant sought to rely upon his earlier written submissions in the event that his request for a postponement was not granted. These were mainly to be found in the document attached to his complaints form (21 pages), the first addendum to that submission (5 pages), the second addendum to that submission (2 pages), a letter of 9 September 2003 (5 pages) and his formal response to the Union's Appearance (6 pages). I had regard to these submissions.

### **Findings of Fact**

4. The following facts emerge from the documents before me and the representations of the Union.
5. The factual background to this matter is complex but, at its heart, there is a relatively straightforward proposition. The Applicant performed services for the Union as a tutor for a number of years. For two of these years, 1992-1994, Mr Fenton asserts that he was entitled to participate in the Union's pension scheme for employees. The Union denies that he was so entitled on the basis that he was not then an employee. The present case is one of many brought by the Applicant to pursue, or arising out of his pursuit of, this matter. In order to

understand the Applicant's present complaint, it is necessary to set out some of the history.

6. For reasons which will become apparent, I should record that the Applicant was a member of the GMB between 1986 and March 1995. He was then a member of MSF between 1995 and January 2000. The Applicant rejoined the GMB on 3 February 2000 and, so far as I am aware, remains a member of that Union.
7. The Applicant's employment history with the Union is also relevant. There is no dispute that the Applicant performed services for the Union as a tutor at its National College in Whalley Range, Manchester between June 1992 and 10 August 2000. There has, however, been considerable dispute as to his employment status over this period. It is the Union's case that between 1992 and 31 March 1994 the Applicant worked part-time on a self-employed basis. Mr Fenton maintains that he was employed during this period. Thereafter, the Union accepts that Mr Fenton was an employee. The Union asserts that between 1 April 1994 and 31 March 1995 he was employed on a part-time basis on a non-standard, non-pensionable contract; that between 1 April 1995 and 31 August 1997 he was employed on a part-time basis on a standard contract with access to the pension scheme and that from 1 September 1997 to the 10 August 2000, when he resigned from the Union's employment, he was employed full time on a standard contract with access to the pension scheme. The Union further asserts that in 1999 the Applicant was offered the opportunity of buying back into the pension scheme for the years 1994-1995, but that he declined to do so.
8. A number of significant events occurred prior to the Applicant's resignation on 10 August 2000. First, as noted above, the Applicant rejoined the Union on 3 February 2000. Second, the Applicant commenced proceedings in the Employment Tribunal to pursue his argument for entry into the pension scheme in the disputed years. He claimed a breach of the Equal Pay Act 1970 and the Sex Discrimination Act 1986 ("the SDA"). Third, he sought to bring a personal injury action against the Union. During the course of investigating the Applicant's eligibility for legal assistance to bring such a claim, an attempt was made by the Union to transfer the Applicant to a staff branch. He successfully resisted this transfer, with the result that, at all relevant times, he remained a member of the '16 Branch, Blackburn'.
9. After having resigned as an employee, the Applicant commenced further Employment Tribunal proceedings against the Union, claiming unfair constructive dismissal. Indeed, from 2000 the Applicant has litigated or threatened litigation against the Union on a number of occasions. As far as I am aware, these are as follows: (a) a personal injuries case was threatened, but no proceedings were issued; (b) an Equal Pay Act/SDA claim in relation to the pension issue; (c) an unfair constructive dismissal claim; (d) a claim that he had been unjustifiably disciplined by his union; and (e) a claim that he had been victimised for having commenced claims under the Equal Pay Act/SDA.

10. The outcome of the above applications can be summarised as follows:
  - 10.1 The Applicant's claims for breach of the Equal Pay Act/SDA were consolidated with his unfair constructive dismissal application. These were heard between 10 and 14 March 2003. The Applicant withdrew his Equal Pay/SDA claim during the hearing and his unfair dismissal case was dismissed. The Union was awarded costs of £2,874. The Applicant has not appealed that decision. These were claims brought by the Applicant against the Union as his employer. As such, the Union agreed to pay his legal costs.
  - 10.2 The Applicant's complaints of unjustifiable discipline and victimisation were also consolidated. These were heard by the Employment Tribunal between 17 and 21 June 2002. The complaint of unjustifiable discipline was dismissed. The victimisation complaint made six separate allegations of detrimental treatment. The Employment Tribunal dismissed five of these allegations but upheld the Applicant's complaint that the Union had unlawfully victimised him by its failure to give him industrial relations support on the pensions issue. The Applicant was awarded £1,000 compensation. The Union appealed this decision and the Applicant cross-appealed on quantum. At the Employment Appeal Tribunal (EAT) there was a preliminary hearing before Lord Johnston and members and an adjourned hearing before Mrs Justice Cox and members, at which the Union was given leave to amend. The substantive appeal came before Mr. Justice Burton and members on the 7 October 2003. The EAT ordered that a key issue be remitted to the Employment Tribunal, all other issues being adjourned. At the remitted hearing on 1 April 2004, the Employment Tribunal decided this single issue in the Applicant's favour and the appeal went back to the EAT on 12 October 2004, together with a further appeal by the Union against the Employment Tribunal's latest decision. These were complaints which, in the main, were brought against the Union by the Applicant in his capacity as a member. As such, the Union did not agree to pay his legal costs.
11. Many of the Applicant's present complaints concern rule 6 of the Union rules. This is one of a group of rules which appears under the general heading of "Membership". Rule 6 has the heading "Appeals Procedure for Members". The Union's Annual Congress in 1999 amended rule 6 to remove the right of appeal to the CEC, save in the case of a member of a staff branch. Since 1999 rule 6 has provided that any member wishing to appeal the decision of a branch on a complaint made by the member under rule 6 must appeal to the Regional Committee, "... *the decision of which shall be final...*".
12. I now set out the chronology relevant to these complaints. In or about August 2001, the Applicant made a rule 6 complaint to his branch against both the Union, as his employer, and the Trustees of the GMB Pension Trust Board. By a letter of 4 September 2001 the President of the Lancashire Region of the Union, Mr Mel Beaumont, informed the Applicant that the rule 6 procedure

concerned membership issues and was inappropriate to employment issues, which should be pursued through the grievance procedure under the individual contract.

13. On 26 March 2002, the Applicant made a further rule 6 complaint to his branch. He sought a re-examination of his pension issue pursuant to a relatively recent ruling of the Inland Revenue. At some time in or about 2001, the Inland Revenue had considered the employment status of tutors at the Union's National College and concluded that they were employees, required to have tax deducted under the PAYE scheme. Acting upon the Applicant's rule 6 complaint, the Branch Secretary wrote to the Regional Secretary, Mr Gary Jones, stating that the branch "recommends that an approach be made to Mr Fenton with a view to reaching a settlement in his favour".
14. On 10 July 2002, the decision of the Employment Tribunal on the Applicant's complaints of unjustifiable discipline/victimisation was sent to the parties. The Union was found to have unlawfully victimised the Applicant by not having provided him with industrial relations support on his pensions issue. As a result the Union allocated a senior organiser, Mr Phil Wright, to represent the Applicant.
15. On 5 August 2002, the Regional President, Mr Beaumont, wrote to the Applicant, noting the outcome of the Employment Tribunal application. In this letter Mr Beaumont pointed out that by rule 50.2 "*Any member who is more than 6 weeks in arrears with contribution at the time when a cause to benefit arises, shall forfeit all rights to benefit respecting that claim*". He indicated that the Applicant's employment dispute had its origins at a time before he rejoined the Union in February 2000 and that accordingly he may not be entitled to legal benefit, as he had been a lapsed member when the cause of action had arisen. Mr Beaumont stated that he was seeking a proper interpretation of the relevant rule. The Applicant regarded this letter as a continuation of the disciplinary action / victimisation of him by the Union.
16. On 24 September 2002 the Applicant made a further seven complaints to his branch under rule 6. These are difficult to summarise, but broadly complain that:
  - 16.1 the General Secretary had flagrantly and contemptuously disregarded GMB policy on pensions and employment status;
  - 16.2 the General Secretary should be disciplined by the CEC under rule 17F for failure to carry out the instructions of the CEC and/or failure to observe Union rules;
  - 16.3 the CEC should be required to provide an explanation for the making of ex gratia payments to branch secretaries and that the architect(s) of the discrimination against him in this regard should be disciplined;
  - 16.4 the General Secretary had wilfully and maliciously victimised him by misapplying GMB funds in the pursuit of a legal victory;

- 16.5 that the Lancashire region had wilfully and wantonly misapplied GMB funds in the hope of overturning a legal defeat in the Employment Tribunal;
- 16.6 the Regional Secretary had irrationally, unreasonably and contrary to rule refused to provide him with rule 27 legal assistance in connection with the EAT appeal, which refusal was compounded by Mr Beaumont's letter of 5 August 2002. The Branch was called upon to resolve to support this complaint up to full CEC level if necessary and
- 16.7 that the Regional Committee had intimated an intention to withdraw rule 27 legal assistance. The branch was urged to support his request that any decision to withdraw rule 27 legal assistance be stayed pending the final determination of his complaint in front of the full CEC, should it be necessary to appeal to that body.
17. It is not clear from the material before me what became of the seven complaints when they were raised by the Applicant at his branch on 24 September 2002. Nevertheless, by a letter dated 14 October, the Applicant submitted grounds of appeal to the Regional President under rule 6.2. This letter refers to only three complaints and it is not certain to which three of the seven complaints they refer. Mr Beaumont responded to the three matters by a letter dated 12 November. On the first complaint, he informed the Applicant that legal advice was awaited. This would appear to relate to the rule 50 point, concerning the Applicant's eligibility for legal assistance. On the second complaint, Mr Beaumont stated that rule 27 (legal assistance) did not apply to assist members to take legal action against their union. On the third complaint, Mr Beaumont informed the Applicant that this would be put before the Regional Committee. Mr Beaumont concluded the letter by stating that there was no provision in the rule book to place the Applicant's complaints before the CEC, as the decision of the Regional Committee was final. By a further letter of 13 January 2003, Mr Beaumont informed the Applicant that the Union did not intend taking any further action on the rule 50 issue until the current litigation was at an end and even then further legal advice would be needed. On the second complaint Mr Beaumont confirmed his view that the Applicant was not entitled to legal funding under rule 27 to take legal proceedings against his Union in his capacity as a member. Nevertheless, Mr Beaumont stated that the Applicant could put his case to a meeting of the Regional Committee on Friday 24 January.
18. The Applicant wrote to Mr Beaumont on 13 and 15 January 2003, neither of which letters is in the bundle. However, it appears that in his letter of 15 January, the Applicant requested that "*all my complaints, including one relating to the General Secretary, which has been before you since mid October, be referred to the General Secretary for consultation by the CEC in full session*". Mr Beaumont responded to these letters on 20 January, quoting the above extract from the Applicant's letter of 15 January. He stated that he acceded to the Applicant's request, that the purpose of the Applicant's attendance before the Regional Committee was therefore redundant and that

accordingly the proposed meeting on 24 January was cancelled. Mr Beaumont's letter to the Applicant of 20 January 2003 is the subject of a specific complaint to me by the Applicant.

19. The Regional Secretary copied the relevant correspondence to the then General Secretary, Mr Edmonds, and the General Secretary responded by a letter dated 31 January 2003. He stated that he would not comment on the merits of the complaints but would respond in relation to procedural matters. He commented that two of the Applicant's complaints related to the provision of legal assistance and that, by rule 27.7, the decision of the Regional Secretary could not be appealed. Further, he commented that any rule 6 complaint could only be progressed as far as the Regional Committee, the decision of which was final, save in the case of a member of a staff branch. The General Secretary concluded that, in these circumstances, he could not agree to refer the Applicant's complaints to the CEC. This letter is also the subject of a specific complaint to me by the Applicant.
20. The Applicant's complaints under the Equal Pay Act/SDA and his unfair dismissal case were heard between 10 and 14 March 2003, as stated above. Each of the complaints was unsuccessful and the Applicant was ordered to pay the Union costs of £2,874. There has been no appeal against this decision.
21. A copy of the General Secretary's letter of 31 January 2003 was forwarded to the Applicant, who then wrote to Mr Beaumont demanding that his complaints be placed before the Regional Committee. By a letter dated 8 April, Mr Beaumont informed the Applicant that his complaints in relation to rule 27 could not be appealed, as the decision of the Regional Secretary was final. With regard to the Applicant's complaint against the General Secretary, Mr Beaumont stated that this would not be considered by the Regional Committee in view of the vindication of the stance taken by the Union, as evidenced by the fact that he had withdrawn his Equal Pay Act/SDA claim.
22. On 30 April 2003, the Applicant made a further rule 6 complaint to his branch. This complaint concerned the comment in the General Secretary's letter of 31 January that the Regional Committee was the final stage of the rule 6 procedure. The Applicant contended that this view was perverse and contrary to the rules of natural justice. The branch considered this complaint and expressed deep concern that the Applicant appeared not to have a path to the CEC. The branch recommended that the complaints that had been made at the branch meeting be forwarded to the CEC.
23. On 1 July 2003 the Region's solicitors, Messrs. Whittles, wrote to the Applicant. In this letter the Applicant was informed that the Regional Committee had endorsed a decision that steps be taken to recoup all the legal costs arising out of the Equal Pay/SDA claim, which, it would appear, may be in the region of £50,000. The Union considered it was entitled to recoup these costs by the operation of rule 27.5. This rule provides, inter alia, that where a member wilfully provides false information to his or her solicitor, the Union shall be entitled to recover from the member any costs incurred by the Union. It was alleged that the collapse of the Applicant's Equal Pay claim arose

because of false information given by the Applicant to his then solicitors. The Applicant regarded this letter as a further example of disciplinary action/victimisation by the Union.

24. At or about this time the Union's appeal to the EAT from the decision of the Employment Tribunal on victimisation came before Mrs Justice Cox and members and the Union was given leave to amend to include, as a ground of appeal, an allegation that the Equal Pay/SDA case had not been brought in good faith and was not therefore a protected act for the purposes of the victimisation provisions of the Sex Discrimination Act 1975.
25. On 9 July 2003, the Applicant wrote to the Regional Secretary asking ten questions aimed at highlighting the fact that the decision to seek recoupment of his legal costs had been made without his views being sought. The Regional Secretary responded to this letter on 11 July, confirming that, in his view, the decision to recoup costs had been properly made. The Regional Secretary's letter of 11 July 2003 is the subject of specific complaint to me by the Applicant.
26. On the same date, 11 July 2003, the Applicant made a further rule 6 complaint to his branch. The precise terms of this complaint were not in the bundle before me. It would nevertheless appear that the complaints concerned the conduct and professional standing of the Region's legal advisers and other matters arising out of the ongoing issues before the Employment Tribunal and Employment Appeal Tribunal.
27. On the 25 July 2003 the Applicant made his complaint to me.
28. The branch considered the Applicant's latest complaints on 12 August 2003 and, in a letter dated 14 August, the Branch Secretary informed Mr Fenton that the branch believed that *"It would be against the interests of all concerned that we make any decision other than to adjourn and consider your complaints after the appeal cases are finalised"*. This letter is the subject of specific complaint to me by the Applicant.
29. On 25 August 2003, the Applicant replied to his Branch Secretary asking that his letter be placed before the Regional Committee by way of appeal. The major point made by the Applicant was his belief that the Branch Committee was not empowered to adjourn a hearing of a rule 6 complaint brought by one of its members. However, this appeal was not pursued. The Applicant stated in his response to the Union's Appearance in this complaint that he saw no point in doing so. He instead amended his existing complaint to the Certification Officer to include a complaint about the Branch Secretary's letter of 14 August

## **The Relevant Statutory Provisions**

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

*108A(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) the balloting of members on any issue other than industrial action;*
- (d) the constitution or proceedings of any executive committee or any decision-making meeting.*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

## **The Union rules**

The provisions of the GMB rules relevant for the purposes of this application are –

### **Rule 5 Membership**

- 5.5 *The Central Executive Council, a Regional Council, or a Regional Committee shall have the power to suspend from benefit, or expel from membership, or prohibit from holding any Branch Office, any member who in their judgement is guilty of attempting to injure the Union or act contrary to the rules or who makes or in any way associates himself or herself with defamatory, scurrilous or abusive attacks whether in any journal, magazine or pamphlet or by word of mouth, on any Official of the Union or Committee of the Union, or who acts singly or in conjunction with any other members or persons in opposition to the policy of the Union as declared by its Committee or Officials under these rules, or for any reason they deem good and sufficient. No expelled member shall be eligible for re-entrance into membership without the consent and approval of the Central Executive, or a Regional Committee.*
- 5.6 *The Central Executive Council, a Regional Council or a Regional Committee shall have power to debar any member from holding any office or representative position in the Union, for such period as the Council or Committee concerned shall specify or from participating in the conduct of the business of the Union where in their opinion such member is acting contrary to the policy of the Union or against the best interests of the Union or for any other reason which they shall deem good and sufficient.*
- 5.7 *If the member subject to disciplinary proceedings by a Regional Council or Regional Committee is not satisfied with the written decision, he/she may appeal in writing within one month to the General Secretary for reference of the case to the Central Executive Council, the decision of which shall be final. In giving its decision, the Regional Council or the Regional Committee must notify the member in writing of his/her right of appeal.*
- 5.8 *If the member subject to disciplinary proceedings by the Central Executive Council is not satisfied with the written decision, he/she may appeal in writing within one month to the General Secretary for reference of the case to the Appeals Tribunal, the*

*decision of which shall be final. In giving its decision the Central Executive Council must notify the member in writing of his/her right to appeal.*

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

#### Rule 6 Appeals Procedure for Members

- 6.1 *Should any member have any complaint to make he/she must do so to his/her Branch Secretary, who must submit the matter to the Branch. If any member is not satisfied with the decision of the Branch or the Branch decides it is beyond its remit to offer a remedy, he/she may appeal in writing within one month of the Branch meeting to the Regional Committee, the decision of which shall be final.*
- 6.2 *At each hearing before the Branch or the Regional Committee (as the case may be), the member shall have a reasonable opportunity to present his/her case. He/she may put his/her case orally or in writing, and shall have the right to support his/her case by written statements, or to produce witnesses. He/she shall have the right to hear the contrary evidence, to answer it and to question witnesses.*
- 6.3 *Notwithstanding the other provisions of this Rule, any complaint by a member of a staff branch shall be heard and determined by his/her own staff branch and any appeal from such branch shall lie to the Central Executive Council direct.*

#### Rule 20 Regions and their Management

- 20.9 *The Regional Council shall administer the business and affairs of the Region, and shall take every means to secure the observance of these Rules, perform all duties allotted to it by these Rules, and protect the funds of the Union from misappropriation.*

*A Regional Council shall not be empowered to reach decisions or determine policy on questions of a national or international character that may affect other Regions or the Union as a whole, and any such questions that may be raised in a Region shall be referred to the General Secretary for submission to the Central Executive Council.*

#### Rule 27 Legal Assistance

- 27.1 *The Central Executive Council shall have the power to authorise any Regional Secretary of the Union, subject to such terms and conditions as it may from time to time specify, to provide legal assistance for any financial member in any matter connected with his/her employment provided the Regional Secretary is satisfied that the member should take legal action.*
- 27.2 *Any member desiring the assistance of the Union in connection with any matter must notify the Branch Secretary or Regional Organiser with the least possible delay.*
- 27.3 *The Regional Secretary shall have the right to decide whether to nominate a solicitor or other representative to represent a member under this rule.*
- 27.4 *Where legal assistance has been granted to any member, it shall be obligatory upon that member at all times to observe the terms and conditions attached thereto, and in particular to*

- (1) *remain a member of the Union and continue to pay Union contributions as provided by these rules, provided however that if the member changes employment or is unemployed while legal assistance is being provided, the Regional Secretary may decide to limit the period for which full contributions will be required.*
  - (2) *and act on the advice of the solicitor or other representative acting for him/her.*
  - (3) *co-operate with the solicitor or other representative, and in particular reply to correspondence, attend arranged appointments, provide them as far as possible with all relevant information, and inform them of any change of address or name.*
- 27.5 *Provided a member in receipt of legal assistance complies with the conditions set out in paragraph (4) above, the Union shall indemnify him/her against all legal costs arising from his/her claim. However, should the member fail to comply with any such condition, or should he/she wilfully provide false information to the Union or the solicitor or other representative nominated to act for him/her or to any doctor, engineer or other expert concerned in the claim, whether on the application form for legal assistance or otherwise, such assistance may be withdrawn. In that event, the member will not be entitled to any indemnity for his/her liability for costs incurred in the course of his/her claim and the Union shall be entitled to recover from the member any costs already incurred by the Union.*
- 27.6 *Upon application by a Regional Secretary, the Central Executive Council may approve a scheme for the provision by him/her of legal assistance in any class of matter in the Region concerned. If the Central Executive Council approves a scheme under this clause, it may do so with or without amendment, and may attach such conditions as it may specify. Where the Central Executive Council has approved a scheme under this clause, it may at any time withdraw its approval or vary the conditions (if any) it has attached, provided that any withdrawal of approval shall not affect assistance granted to any person before the date of such withdrawal.*
- 27.7 *Notwithstanding anything in these rules, and in particular Rule 6, any decision of a Regional Secretary under this rule shall be final.*

## **Complaint 1**

*“That on or about 14 August 2003 by adjourning and taking no further action on complaints made by Mr Fenton on 12 August 2003 under rule 6 as to the conduct of the Regional Secretary, the union is in breach of rule 6 and/or rule 27.7 of the rules of the union and that this is a matter relating to disciplinary proceedings by the union (section 108A(2)(b) of the 1992 Act).”*

## **Brief summary of submissions**

31. The Applicant submitted that his branch had breached rule 6 by failing to make any decision on his complaint that was heard by the Branch Committee on 12 August 2003. He argued that the Branch had no right to adjourn its decision but that in any event, the branch had not adjourned, but effectively refused to hear, his complaint. The Applicant argued that the Regional Secretary’s discretion to give legal assistance under rule 27 must be capable of being appealed, notwithstanding rule 27.7. He commented that without such an appeal, the Regional Secretary could act without any fetter, even in the case of a claim concerning a decision by the Regional Secretary himself, which would be against natural justice. The Applicant maintained that the branch’s decision not to consider his complaint was related to disciplinary action

against him, namely the imposing of a financial penalty by the Regional Secretary.

32. For the Union, Ms Machin submitted that this application fell outside my jurisdiction under section 108A of the 1992 Act. As to the merits, Ms Machin submitted that, the Applicant's complaint to the branch was in effect seeking to have the Union's present counsel and solicitors removed from the legal proceedings, following their recent successes against him in the courts. She argued that, given the ongoing litigation, there was much common sense in the branch's decision to adjourn. Ms Machin further argued that there was nothing in rule 6 which provided that the branch could not adjourn or that it was obliged to reach a decision within a specific time. With regard to the Applicant's argument that he should have a right to raise the question of legal assistance by way of a rule 6 appeal, Ms Machin submitted that rule 27.7 made it clear that this could not be done. Ms Machin further argued that no financial penalty had been imposed on Mr Fenton by way of discipline. In counsel's submission, the decision to recoup the legal costs incurred by the Applicant was made under rule 27, which provided expressly for such recoupment in certain defined conditions. It was not disciplinary action.

### **Conclusion – Complaint 1**

33. The Applicant complained that on or about 14 August 2003 the Union breached rule 6 and/or rule 27.7 of its rules by adjourning and taking no further action on complaints made by him on 12 August. I understand this complaint to concern the letter from the Applicant's Branch Secretary, Mr Fallows, to him of 14 August. I set out below the terms of that letter in full:

*"Dear Mr Fenton,*

*Further to your appeals, the Branch Committee's decision is appended below. Please note that you have one month from the date of the Branch Committee meeting in which to appeal, should you wish to do so.*

*'The Branch Committee has read your complaints. There are a number of issues you raise which concern the conduct and professional standing of the Region's legal advisers.*

*We are also asked to consider the complaints to ongoing issues before the Employment Tribunal and the Appeal Tribunal. We understand the appeal relating to some of your concerns is to be heard in early October. We believe it would be against the interests of all concerned that we make any decision other than to adjourn and consider your complaints after the appeal cases are finalised.*

*Yours sincerely  
Tom Fallows  
Branch Secretary"*

34. I consider first the issue of my jurisdiction. Each of the Applicant's complaints in this case concerns a breach of rule, for which my jurisdiction is to be found in section 108A of the 1992 Act. This provides as follows:

108A(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) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting.
- (e) such other matters as may be specified in an order made by the Secretary of State

35. The Applicant submits that my jurisdiction to determine this complaint arises out of the fact that rule 6 and/or rule 27.7 are rules relating to “*the disciplinary proceedings by the Union (including expulsion)*”. On first impression, however, neither rule 6 nor rule 27.7 appears to relate to disciplinary proceedings. Such proceedings are dealt with expressly elsewhere within the rules; namely rules 5(5) to (9). In my judgment, a rule contained in a Union rule book cannot properly be described as a rule relating to disciplinary proceedings just because its operation may result in a decision contrary to the wishes of a particular member or in some detriment to that member. Any other conclusion would open up to scrutiny by the Certification Officer many union rules patently outside the intended scope of section 108A, including those relating to the discretionary provision of services and benefits. The jurisdiction given to the Certification Officer by Parliament is a limited one but one which can be extended in a manner provided for in section 108A, namely by order of the Secretary of State. In these circumstances I consider that the jurisdictions set out in section 108A should be interpreted restrictively and that alleged breaches of rules which do not overtly relate to disciplinary proceedings are ordinarily outside my jurisdiction. I can see no basis on the facts of this case for me to conclude that either rule 6 or rule 27.7 is a rule relating to “*disciplinary proceedings by the Union (including expulsion)*”.

36. I have also considered whether this complaint might come within my jurisdiction under Section 108A(2)(d) of the 1992 Act, on the basis that rule 6 and rule 27.7. are rules relating to “*the constitution or proceedings of any executive committee or of any decision-making meeting*”. I note, however, that the Applicant’s complaint relates to a decision taken by the ‘16 Branch Blackburn’ of the Union. In my judgment this branch is not an executive committee of the Union within the meaning of section 108A(10) nor a decision-making meeting within the meaning of section 108A(11), having less than 1,000 members. I therefore find that I do not have jurisdiction to hear this complaint under section 108A(2)(d) of the 1992 Act.

37. Should I be wrong about the issue of my jurisdiction, I have considered whether the Union was in fact in breach of rule 6 or rule 27.7 by the decision of its 16 Branch Blackburn to adjourn its consideration of the Applicant’s rule 6 complaint. I am not assisted in this task by the Applicant’s failure to include in the bundle before me the precise wording of his rule 6 complaints, which I am left to deduce from the terms of the branch’s letter of 14 August. I observe

first that there is nothing in rule 6 which prevents a branch from adjourning its consideration of a complaint or which requires a decision to be reached within a prescribed period. There may nevertheless be an implied requirement that a branch cannot so delay its consideration of a matter as to frustrate the purpose of the rule. Any such implied limitation on the branch's discretion in disposing of complaints would be breached if the branch exercised its discretion perversely, as no reasonable branch could have done. On the facts of this case, having regard to the nature of the complaint and the ongoing litigation, I am not satisfied that the decision of the branch was perverse. I accordingly find the branch did not breach rule 6 in deciding to adjourn its consideration of the Applicant's complaint.

38. As to the alleged breach of rule 27.7, I have difficulty in understanding the relevance of this rule to the adjournment by the branch of the Applicant's complaint. Rule 27 deals with the discretion to give legal assistance to members and rule 27.7 provides:

*Rule 27.7 "Notwithstanding anything in these rules, and in particular Rule 6, any decision of a Regional Secretary under this rule shall be final"*

The Applicant makes a general point that it cannot be correct that the Regional Secretary has an unfettered right to determine if legal assistance is given. I observe in passing that this is precisely what rule 27.7 appears to provide, subject to any question of perversity. Be this as it may, the branch did not rely upon rule 27.7 in deciding to adjourn the Applicant's complaint and I find that rule 27.7 is simply not engaged by the branch's decision to adjourn.

39. For the above reasons, I dismiss the Applicant's complaint that rule 6 and/or rule 27.7 of the rules of the the Union were breached on or about 14 August 2003 by the decision of its '16 Branch Blackburn' to adjourn and take no further action on complaints under rule 6 made by Mr Fenton on the 12 August 2003 about the conduct of the Regional Secretary.

## **Complaint 2**

*"That the Regional Committee of the union by its letter of 20 January 2003 failed to make a decision on Mr Fenton's rule 6 complaint and that this breached rule 6.1 of the rules of the union."*

## **Brief summary of submissions**

40. The Applicant maintained that rule 6 requires the Regional Committee to determine any appeal he might make from a decision of a branch on a rule 6 complaint and that the Regional Committee cannot dispose of that appeal by simply passing it to the CEC. He argued that even if the Regional Committee passed his complaint to the CEC, it should first have considered the complaint and passed it to the CEC with its decision or recommendation. The Applicant argued that the Regional Committee must have accepted his rule 6 appeal to them as it had previously agreed a hearing date. In the Applicant's submission, this matter was within my jurisdiction by virtue of Section 108A(2)(d) of the 1992 Act.

41. For the Union, Ms Machin submitted that this complaint was not within my jurisdiction under Section 108A of the 1992 Act. On the facts of this complaint, Ms Machin argued that all the Regional Committee did was to accede to the Applicant's request to put the matter before the General Secretary and CEC and that this could not amount to a breach of rule. Counsel further submitted that in as much as the Applicant's complaints related to potential breaches of rule 27, these were not admissible as a rule 6 complaint by virtue of rule 27.7.

## **Conclusion – Complaint 2**

42. The Applicant complained that the Regional Committee had, by its letter of 20 January 2003, failed to make a decision on his rule 6 complaint and that this breached rule 6.1 of the rules of the Union. I set out below the full terms of the letter of 20 January:

*"Dear Mr. Fenton,*

*I am in receipt of your correspondence dated 13 January 2003 and the 15<sup>th</sup> January 2003.*

*I note in particular, your comments in the letter dated 15 January that you will "be requesting that all my complaints, including one relating to the General Secretary, which has been before you since mid October, be referred to the General Secretary for consultation by the CEC in full Session".*

*I accede to your request and in the circumstances, the purpose of your attendance before the Regional Committee is now redundant.*

*Accordingly, I have cancelled the proposed meeting that was due to be held on the 24 January 2003.*

*I am sure that you will be hearing from the General Secretary in due course.*

*Yours sincerely,  
Mel Beaumont  
President, Lancashire Region "*

43. I consider first the issue of my jurisdiction. For the reasons set out above, I do not find that, in the circumstances of this case, rule 6 is a rule relating to disciplinary proceedings by the Union for the purposes of section 108A(2)(b) of the 1992 Act. I do find, however, that section 108A(2)(d) is potentially engaged by rule 6. This sub-section brings within my jurisdiction rules relating to "*the constitution or proceedings of any executive committee or of any decision-making meeting*". The Union did not dispute that the Regional Committee is a decision-making meeting within the meaning of section 108A(2)(d) but it did dispute that the decision in question was one which related to "*the constitution or proceedings*" of the Regional Committee. It is unfortunate that this matter was not subject to detailed argument as the expression "constitution or proceedings" is capable of more than one meaning. In my judgment, however, Parliament did not intend that these words should grant jurisdiction to the Certification Officer over all substantive decisions reached by such bodies. Having regard to the limited nature of my jurisdiction

in respect of union rules, as discussed above, I find that these words relate more to the process of decision-making than its outcome.

44. On the facts of this case, it is alleged that the Regional Committee failed to carry out its duty to make a decision under the rule 6 procedure. I find that a rule which requires a relevant body to make a decision on a particular matter is a rule which relates to the constitution or proceedings of that body. It is not a complaint about a substantive decision. Accordingly, I find that I have jurisdiction to consider this complaint under section 108A of the 1992 Act.
45. I am not assisted in my understanding of the facts of this complaint by the Applicant's failure to supply me with the text of the appeals that he sought to raise before the Regional Committee. From his letter to the Regional President of 14 October 2002, it would appear that he appealed three out of the seven matters he raised with the branch on 24 September. Of these, it would again appear that two related to the giving of legal assistance under rule 27 and one was critical of the General Secretary. I am also not assisted by not having before me copies of the Applicant's letters of 13 and 15 January 2003, referred to in the Union's letter about which complaint is made. However, on the material before me, I have to decide whether the Regional Committee breached rule 6.1 by its letter of 20 January 2003 in failing to make a decision on the Applicant's appeal. I observe that, by a letter dated 13 January, Mr Beaumont, the Regional President, had invited the Applicant to a hearing of his appeal on 24 January and that, by his letter of 20 January, he cancelled that hearing. However, the reason why the hearing was cancelled was that Mr Beaumont saw no further need for it, having acceded to the request in the Applicant's letter of 15 January to refer his complaints to the General Secretary for consideration by the CEC. This request was consistent with the Applicant's strongly expressed opinion that the issues he wished to raise were of national significance and should therefore be considered at national level. On these facts, Mr Beaumont's letter of 20 January is not evidence of the Regional Committee failing to discharge its duty under rule 6 to determine an appeal. It is the Union's response to a specific request by the Applicant as to how he wished his appeal to be dealt with. I find that by acceding to the Applicant's request, the Regional Committee was not in breach of its rule 6 duty to determine the appeal.
46. For the above reasons, I dismiss the Applicant's complaint that rule 6.1 of the rules of the Union was breached by the alleged failure of the Regional Committee of the Lancashire Region of the Union, by its letter of 20 January 2003, to make a decision on Mr. Fenton's complaint under rule 6.

### Complaint 3

*“That the Regional Secretary, Mr Jones, by his letter to Mr Fenton of 11 July 2003 in making a decision on Mr Fenton’s rule 27 claim, breached rule 20.9 of the rules of the union as the nature of Mr Fenton’s claim against the GMB was one of a national character.”*

#### Brief Summary of Submissions

47. The Applicant submitted that his complaints against the Union were of a national character and that accordingly the decision of the Region with regard to his legal assistance was also of a national character. In these circumstances, he argued that rule 20.9 required the decision on his rule 27 claim for legal assistance to have been made by the CEC and not by the Regional Committee. The Applicant submitted that as the CEC had delegated its powers to give legal assistance to the Regional Secretary, the CEC must also have the authority to investigate whether the Regional Secretary had acted within his powers. He further argued that natural justice prevented the Regional Secretary from having an unfettered discretion under rule 27 and that a Regional Secretary’s decision about the granting of legal assistance under rule 27 must be both fettered by the CEC and subject to an implied right of appeal under rule 6.
48. For the Union, Ms Machin submitted that this complaint was not within my jurisdiction under section 108A of the 1992 Act. She further submitted that rule 20.9 simply did not apply when the Regional Secretary makes a decision on legal assistance within rule 27. Ms Machin argued that the Applicant was wrong to assert that the Regional Secretary was accountable to the Regional Committee in relation to every decision he makes. She also pointed out that the Regional Secretary’s letter of 11 July 2003 did not concern the granting or refusal of legal assistance, but the potential recoupment of legal assistance already given. Counsel argued that in considering the recoupment of legal assistance, the Region was acting in accordance with rule 27.5.

#### Conclusion – Complaint 3

49. The Applicant complains of a breach of rule 20.9 in that the Regional Secretary, Mr Jones, allegedly made a decision on the Applicant’s claim for legal assistance by his letter of 11 July 2003. The Applicant maintains that his case was of a national character and that, by rule 20.9, any decision thereon should have been referred to the General Secretary for submission to the CEC. The Regional Secretary’s letter of 11 July is in the following terms:

*"Dear Mr. Fenton,*

*RE: RULE 27 ISSUES*

*Thank you for your letter of 9<sup>th</sup> July. I do not understand the basis of your request, bearing in mind Rule 27 and the discretion given to the Regional Secretary in relation to the granting of legal assistance. Further, I am mindful of what has happened in relation to the claims handled by SAS Lawyers and the provisions in the sub-rule 5 of rule 27, to recoup costs.*

*The decision to recoup the costs for the equal value claim is on the basis of correspondence from SAS Lawyers and by reference to the Tribunal’s extended reasons given on 28<sup>th</sup> May this year.*

*In relation to those findings, I refer to paragraph 143 of the Decision.*

*There is evidence that you knowingly mislead the Tribunal at the preliminary stage and continue to mislead those acting for you to the point you informed the full Tribunal that your equal value claim was nothing to do with gender.*

*In my view the decision to recoup costs has been properly made and subject to quantification. steps will be taken to recover monies from you.*

*I note the observation you make in your letter but I do not see the relevance of them to the issue of costs.*

*Yours sincerely  
Gary Jones  
Regional Secretary”*

50. I consider first the issue of my jurisdiction. The Applicant contended that the decision to seek the recoupment of his legal costs was a disciplinary measure taken against him and that this brings his complaint within section 108A(2)(b) of the 1992 Act. However, by section 108A, I must consider whether the rule allegedly breached (or threatened to be breached) was one relating to “*disciplinary proceedings by the Union (including expulsion)*”. In my judgment, rule 20.9 is not such a rule. I also find that this complaint, having been made specifically against the Regional Secretary in the exercise of his personal responsibility to decide applications for legal assistance, cannot be a complaint within section 108A(2)(d) relating to “*the constitution or proceedings of any executive committee or of any decision-making meeting*”.
51. Should I be wrong on the issue of jurisdiction, I observe that the Regional Secretary’s letter of 11 July was the third in a series of letters. This series began with a letter from the Region’s solicitors to the Applicant of 1 July 2003 in which they claimed the recoupment of certain legal costs, as it appeared that the Applicant had misled his own solicitors in relation to his equal pay claim. This letter prompted the Applicant to write to the Regional Secretary on the 9 July asking ten questions about why there had been no hearing prior to the solicitor’s letter being sent. The Regional Secretary’s response of 11 July, which is the subject matter of this complaint, confirms that the decision to recoup costs from the Applicant had been properly made and states that there was evidence that the Applicant had knowingly misled the Tribunal. Having regard to the terms of this letter, I find that it does not constitute a decision on the Applicant’s rule 27 claim for legal assistance. The Applicant is a solicitor and therefore knowledgeable in the formulation of complaints. It is not my duty to formulate the Applicant’s complaint in any other way than that which he has expressly agreed with my office. Indeed, if I were to do so, the Union could legitimately complain. I therefore find that, on the facts, the Applicant’s complaint of a breach of rule 20.9 by the Regional Secretary’s letter of 11 July is not made out.
52. For the above reasons, I dismiss the complaint that rule 20.9 of the rules of the Union was breached by the Regional Secretary of the Lancashire Region of the Union, Mr. Jones, by his letter to Mr. Fenton of 11 July 2003, allegedly making a decision on Mr. Fenton’s claim under rule 27.

## Complaint 4

*“That by his letter of 31 January 2003, in refusing to submit Mr Fenton’s rule 6 complaint to the union’s Central Executive Council, the General Secretary breached rule 6.1 of the rules of the union.”*

### Brief summary of the submissions

53. The Applicant submitted that the decision of the General Secretary not to forward his complaint to the CEC was a breach of rule 6, as it was contrary to the rules of natural justice that the region should sit in judgment on itself. In the Applicant’s submission, rule 6 cannot be interpreted as excluding members of branches other than staff branches from the right of appeal to the CEC. He argued that his complaints about the failure of GMB officers to comply with Union policy was not a complaint he had made in his capacity as a former employee, but in his capacity as a member. The Applicant further argued that his complaint about his right to legal assistance under rule 27 should also have been referred to the CEC because the Regional Secretary’s decision under rule 27 must be open to challenge under rule 6.
54. For the Union, Ms Machin submitted that I did not have jurisdiction to hear this complaint under section 108A of the 1992 Act. In her submission, rule 6 does not relate to the constitution or proceedings of the CEC or the Regional Committee as, at the material time, there were no disciplinary proceedings in train against the Applicant. Ms Machin argued that in any event there was no breach of rule 6.1 as there was no basis in law for implying into rule 6 any provision of natural justice. She stated that it was not a disciplinary rule. Counsel stated that, properly interpreted, complaints could not be brought under rule 6 if they were excluded by rule 27.7 or if they were brought in the capacity of an employee or ex-employee.

### Conclusion – Complaint 4

55. The Applicant complains of a breach of rule 6.1 by the General Secretary’s letter to the Regional Secretary, Gary Jones, of 31 January 2003. I set out below the terms of that letter in full:

*“Dear Gary,*

*MIKE FENTON*

*Thank you for your letter of the 24<sup>th</sup> January enclosing copy correspondence between Mike Fenton and yourself, Mel Beaumont, Phil Wright and Tom Fallows. I note the suggestion that I should refer Bro. Fenton’s complaints to the Central Executive Council.*

*I will not comment on the merits of the complaints, but will respond in relation to procedural matters.*

*Rule 6 provides that the decision of a Regional Committee is final. No appeal lies beyond the Regional Committee to the Central Executive Council or the Appeals Tribunal. The only exception, under clause 3, is for a complaint*

*from a member of a staff branch. I understand that Bro. Fenton's branch is a general branch and not a staff branch.*

*In any event, it appears that two of Bro. Fenton's complaints relate to the provision of legal assistance under rule 27. As rule 27.7 makes clear, the decision of a Regional Secretary under that rule is final.*

*In the light of these rules I cannot agree to refer Bro. Fenton's complaint to the Central Executive Council.*

*Yours sincerely,  
John Edmonds  
General Secretary"*

56. I deal first with the issue of my jurisdiction. As I have found above, rule 6 does not relate directly or, on the facts of this complaint, indirectly to disciplinary proceedings by the Union for the purposes of Section 108A(2)(b) of the 1992 Act. As to my jurisdiction under section 108A(2)(d), I find that I would have jurisdiction if the Applicant's construction of rule 6 is correct. By that construction, rule 6 gives a member a right to appeal to the CEC, which right the Applicant maintains he has been denied by the General Secretary's letter of 31 January 2003. If this were to be the correct interpretation of rule 6, the Applicant's complaints would relate to the constitution or proceedings of an executive committee or decision-making meeting in that he would have been improperly denied access to that body. I must therefore examine the Applicant's interpretation of rule 6.
57. A straightforward and literal reading of rule 6 does not support the Applicant's contention that it gives him a right of appeal to the CEC. Indeed, rule 6 provides expressly that the decision of the Regional Committee shall be final. A further guide to the correct construction of rule 6 is that, in the case of members of staff branches, there is an express right of appeal to the CEC. This demonstrates that the body which approved the rules gave thought to whether there should be an appeal to the CEC and restricted it to a certain category of member. As to the implication of a term giving a right to appeal to the CEC, it is a general rule of construction that an implied term cannot prevail over an express term. Rule 27.7 provides expressly that any such decision by a Regional Secretary shall be final "*Notwithstanding anything in these rules, and in particular Rule 6...*". I find that rule 27.7 is not subject to any overriding implied term permitting the Regional Secretary's discretion under rule 27 to be questioned through the rule 6 internal appeal procedure by way of appeal to the CEC or otherwise. Many members of the Union may wish their legal claims to be pursued irrespective of cost, legal merit or whether their claims are connected with their employment. It is therefore understandable that a union may wish to give itself a broad discretion as to which cases it is prepared to fund with its members' money. A union may also decide to exclude the exercise of that discretion from its internal grievance procedure. On the facts of this case, the rules of the Union give the Regional Secretaries a complete discretion on the granting of legal assistance, subject only to considerations of perversity, which do not apply on these facts. Further, I reject the argument that the rules of natural justice impose an overriding requirement that such a term be implied. In my judgment, rule 6 is

in effect an internal grievance procedure, not a disciplinary process. Similarly, the decisions taken by the Union to grant or not to grant legal assistance under rule 27 were decisions of an administrative nature, not disciplinary decisions. In my judgement, therefore, rule 6.1 does not provide the Applicant with the right to submit his rule 6 complaint to the CEC and this complaint is accordingly not within my jurisdiction under section 108A(2)(d).

58. For the above reasons, I dismiss the complaint that rule 6.1 of the rules of the Union was breached by the General Secretary, Mr Edmonds, refusing, by his letter of 31 January 2003, to submit Mr Fenton's rule 6 complaint to the Union's Central Executive Committee.

## **Complaint 5**

*"In amending union rule 6 to its present form the union's Congress in 1998 breached the implied terms of natural justice in rule 6 of the rules of the union and that, by the operation of rule 6 in its present form, the breach is on-going."*

### **Brief summary of submissions**

59. The Applicant observed that prior to the Union's Annual Congress in 1998, or as it would now appear, more accurately, 1999, rule 6 provided a general right for the members of all branches to appeal to the CEC. He submitted that this right was wrongly removed by rule amendment that year. He argued that this amendment breached the fundamental right to appeal, that it contravened natural justice and that it cannot have been the intention of Congress to disallow such a fundamental democratic right, leaving members with no legal resort other than judicial review. The Applicant contended that this alleged breach was in time, as it is a continuing breach.
60. For the Union, Ms Machin submitted that there had been no Congress in 1998 and that the Applicant must be referring to the amendments which were made to the rules by Congress in June 1999. She contended that the Applicant's complaint was out of time. Ms Machin noted that rule 6 retains the right of members of staff branches to appeal to the CEC and that the Applicant had refused the opportunity of transferring to a staff branch. Counsel further argued that Congress is the "supreme authority" of the Union and that, in the absence of any breach of rule governing the proceedings of Congress, the adoption of a rule amendment cannot of itself constitute a breach of rule.

### **Conclusion – Complaint 5**

61. I find that this complaint correctly refers to the amendments made to rule 6 by Congress in 1999, not 1998.
62. I deal first with my jurisdiction. As I have found above, rule 6 does not in my judgment relate directly or, on the facts of this complaint, indirectly to the disciplinary proceedings by the Union for the purposes of section 108A(2)(b). As to my jurisdiction under section 108A(2)(d), the Applicant does not allege that the Congress in 1999 was improperly constituted nor that its process of decision making was defective, so as to render its proceedings open to

complaint. The Applicant's complaint is rather that Congress should not have amended rule 6 in the way that it did. As stated earlier, however, section 108A(2)(d) does not confer on me jurisdiction to examine the nature or quality of decisions reached by "any executive committee or any decision-making meeting", unless those decisions concern other rules over which I have jurisdiction by virtue of section 108A(2). On the facts of this case, I have asked myself whether the Applicant's allegation involves a possible breach of rule relating to the "*constitution or proceedings of any executive committee or of any decision-making meeting*", on his construction of rule 6. The construction upon which the Applicant appears to rely is that rule 6 contains an implied restriction on the authority of Congress to amend that rule so as to remove the right to appeal to the CEC that existed prior to 1999. Put in this way, I must again examine the Applicant's interpretation of rule 6 to test whether I have jurisdiction under section 108A(2)(d).

63. The Union's Congress is described in rule 8 as being vested with the supreme authority of the Union. Express provision is made for the amendment of rules, by Congress, in rules 3 and 9. In my judgment, there would need to be an express provision in the rules, or the clearest possible implied term, prohibiting the amendment by Congress of its otherwise unrestricted powers of rule amendment. There is no such express provision. Further, in my judgment, there is no basis upon which such a provision can properly be implied into rule 6 at the date of the 1999 Congress, preventing Congress from amending rule 6 to its present form. Accordingly I find that I do not have jurisdiction to adjudicate on this complaint.
64. Were I to be wrong about my jurisdiction, I find that this complaint was brought out of time. By section 108A(6) of the 1992 Act, applications to the Certification Officer must normally be brought within 6 months of the date on which the breach is alleged to have taken place. On the Applicant's case, this breach took place in 1998 or 1999. The present complaint was brought in July 2003 and was clearly out of time, unless I accept the Applicant's argument that the breach is a continuing act. I find that even if there had been an implied term in rule 6 to the effect that it could not be amended by Congress, which I reject, such an implied term would have been breached in 1999, at the time of the amendment. Thereafter, the effect of that alleged breach may have continued but the breach itself would have been a specific act on a specific date.
65. For the above reasons, I dismiss the Applicant's complaint that rule 6 of the rules of the Union was breached by the amendment of that rule to its present form by the Union's Annual Congress in 1999.

**DAVID COCKBURN**  
**The Certification Officer**