

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

MR G PAUL

v

UNION OF CONSTRUCTION, ALLIED TRADES AND TECHNICIANS

**Date of Decision:
Written Reasons Sent to the Parties**

**15 July 2004
20 August 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 refuse to make the declaration sought by the Applicant that the Union of Construction, Allied Trades and Technicians (“the Union”) acted in breach of rule 26(1) of its rules on or about 28 November 2002 by its alleged failure to investigate allegations laid before the Scottish Regional Secretary of the Union by the Applicant.
2. I refuse to make the declaration sought by the Applicant that the Union acted in breach of rule 26(5) of its rules on or about 28 November 2002 by its alleged failure to investigate allegations laid before the Scottish Regional Secretary of the Union by the Applicant.
3. I refuse to make the declaration sought by the Applicant that Mr Farrell acted in breach of rule 28.9 of the rules of the Union on or about 28 June 2002 by his alleged use of his official position to further the candidature of a person in the election for the Scottish Regional Council in 2002.
4. I refuse to make the declaration sought by the Applicant that Mr Green acted in breach of rule 28.9 of the rules of the Union on or about 12 September 2002 by his alleged use of his official position to further the candidature of a person in the election for the Scottish Regional Council in 2002.
5. I refuse to make the declaration sought by the Applicant that Mr Ritchie acted in breach of rule 28.9 of the rules of the Union on or about 19 October 2002

by the alleged use of his official position to further the candidature of a person in the election for the Scottish Regional Council in 2002.

6. I refuse to make the declaration sought by the Applicant that Mr Green acted in breach of rule 28.10 of the rules of the Union by allegedly circulating false and misleading statements concerning a candidate in the election for the Scottish Regional Council in 2002.

REASONS

1. By an application received in my office on 23 September 2003, the Applicant made allegations against his union, the Union of Construction, Allied Trades and Technicians (“UCATT” or “the Union”) claiming breaches of the rules of the Union in respect of the elections for its Scottish Regional Council held in December 2002. Following correspondence with my Office the complaints were identified as being potentially within my jurisdiction under section 108A of the 1992 Act. The complaints were:

1.1 *“that on 28 November 2002, the union breached rule 26(1) of the rules of the union in that Mr Alan Ritchie, the Scottish Regional Secretary of the union failed to investigate the allegations laid before him by Mr George Paul in respect of the actions of Mr Farrell, Mr Green and Mr Ritchie, and thereby failed to invoke the procedures provided by rule 26(5) and 25(1) (i) of the rules of the union.”*

1.2 *“that on 28 November 2002, the union breached rule 26(5) of the rules of the union in that Mr Alan Ritchie, the Scottish Regional Secretary of the union failed to investigate the allegations laid before him by Mr George Paul in respect of the actions of Mr Farrell, Mr Green and Mr Ritchie, and thereby failed to invoke the procedures provided by rule 26(5) of the rules of the union.”*

1.3 *“that on 28 June 2002 Mr M Farrell, a member of the union’s Scottish Regional Council, used his position to further the candidature of a member of the union in the December 2002 election for the Scottish Regional Council 2003, in breach of rule 28(9) of the rules of the union and that the union failed to investigate the matter under the provisions of rule 25 of the rules of the union.”*

1.4 *“that on 12 September 2002 Mr J Green, a member of the union’s Rules Revision Committee, used his position to further the candidature of a member of the union in the December 2002 election for the Scottish Regional Council 2003, in breach of rule 28(9) of the rules of the union and that the union failed to investigate the matter under the provisions of rule 25 of the rules of the union.”*

1.5 *“that on 19 October 2002 Mr A Ritchie, the union’s Scottish Regional Secretary, used his position to further the candidature of a member of the union in the December 2002 election for the Scottish Regional Council 2003, in breach of rule 28(9) of the rules of the union and that the union failed to investigate the matter under the provisions of rule 25 of the rules of the union.”*

1.6 *“that on 12 September 2002, Mr J Green, a member of the union, circulated misleading statements concerning a candidate for Office in the*

December 2002 election for the Scottish Regional Council 2003 in breach of rule 28(10) of the rules of the union and that the union failed to investigate the matter under the provisions of rule 25 of the rules of the union.”

2. I investigated these matters in correspondence. As required by section 108B(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 15 July 2004. The Union was represented by Mr G Brumwell, General Secretary. Mr A Ritchie, Scottish Regional Secretary, and Mr J Green, were present at the hearing. The Union called no evidence but tendered witness statements by Mr Green and Mr Farrell. Mr Paul acted in person and tendered witness statements made by Messrs. Ashton, Lukaszewicz and McGugan. Mr Lukaszewicz was present at the hearing and gave evidence. A two-volume bundle of documents was prepared for the hearing by my Office, containing the witness statements, relevant exchanges of correspondence and minutes. The rules of the Union were also in evidence. The Applicant presented an outline argument and the Union presented a written submission.

Findings of Fact

3. Having considered the representations of the parties and the documentation before me, I find the facts to be as follows.
4. The Union is divided into 10 geographical regions, each one of which has a Regional Council. One such Council is the Scottish Regional Council. Members of the Regional Councils are elected for a period of five years. An election was to be held in the Scottish Region in December 2002, to elect a new Regional Council to take up office in January 2003. The Scottish Region is composed of three Divisions. The candidates nominated for Division 1 and Division 3 were unopposed, but an election was to be held in respect of Division 2, the Applicant's Division. The voting would take place at branch meetings on different dates, on so-called Star Nights, and the votes were to be counted on 23 December. The Applicant, Mr. Green and Mr. Farrell were members of the outgoing Regional Council. The Applicant, Mr. Green, Mr. Lukaszewicz and Mr. Kemp were the candidates contesting the two places to represent Division 2 on the Regional Council from January 2003.
5. At a meeting of the Regional Council on 28 November 2002, the Applicant raised certain allegations regarding the forthcoming election. These were deferred to be dealt with under "Any Other Business", at which stage the Applicant produced a two page document headed "Attention Regional Council". This document begins by stating that the Applicant wished to bring to the attention of the Regional Council a number of issues. It then lists six points relating to the Regional Council elections and concludes with the words "*I am formally requesting you to investigate these matters, before I take these concerns to the General Secretary of UCATT, Executive Council of UCATT, General Council of UCATT.*" At the hearing before me, the Applicant gave evidence that he read out this document to the Regional Council, expanding upon various points and identifying some of the unnamed individuals, but he also stated that the discussion of this matter took no more than five minutes. At a later date the Applicant summarised his allegations as concerning election

interference and gerrymandering on the part of others, coupled with allegations of racism and homophobia against him. The Applicant described the reaction of the Regional Council as being hostile. The minutes record that the decision of the Regional Council was that the Regional Secretary, Mr Ritchie, should look into the allegations raised by the Applicant and report to the next meeting.

6. On 29 November 2002, the Regional Secretary wrote to the Applicant stating that he was conducting an investigation into the allegations and required further information to allow him to conduct that investigation. The letter sought further information from the Applicant in respect of each of his six points and specifically requested that the Applicant identified the senior UCATT officials and full time officers allegedly involved.
7. The Applicant wrote to the Regional Secretary on the 1 December 2002, in a letter which apparently crossed with the above letter from Mr. Ritchie. The Applicant stated, "*At this point, I must state that 'I' [the Applicant's emphasis] do not make these accusations. I am, and was, relating to you information that has been given to me by members of UCATT*". He said that he hoped that these matters "*... will be investigated with the utmost urgency...*"
8. Having received no further information from the Applicant by 13 December 2002, the Regional Secretary sent him a reminder and a copy of his earlier request for further information about the allegations.
9. By a letter dated 16 December 2002, the Applicant informed the Regional Secretary that he was in the process of collecting signed statements and that he would forward them to both the Regional Secretary and General Secretary. He also enclosed a statement from Mr. McGugan dated 3 December 2002, which has not been relied upon in these proceedings.
10. At the meeting of the Regional Council on 23 December 2002 the result of the election was announced. The Applicant and Mr. Lukaszewicz were elected. Mr. Green and Mr. Kemp were unsuccessful. The Applicant was present at this meeting of the Regional Council but raised no point relating to his earlier allegations.
11. On the 24 December 2002 the Applicant wrote to the Regional Secretary stating, "*I have now received statements from the persons that informed me of these alligations [sic]. I shall of course let you have copies when you start your investigation.*" The Applicant had obtained two statements from Mr. Lukaszewicz dated 22 December and an undated statement from a full-time officer, Mr. Ashton. In fact, the Applicant did not send the Union the statements he had obtained. The Union first saw these statements when it received the bundle for this hearing, which contained the statements.
12. The Regional Council met twice in February 2003 and again in June and July 2003. At none of these meetings did the Applicant raise any issue relating to his earlier allegations. The next step taken by the Applicant in relation to this matter was to write to the Certification Officer on 2 August 2003, seeking a

Registration of Complaint Form. After being informed by the Certification Office of the requirement for him to have taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the Union, the Applicant wrote to the Regional Secretary on the 25 August. In this letter he repeated his comment that it was not he who was making these allegations. He stated that he had detailed allegations that had been made to him but, he continued, “...*I don't make these allegations*”.

13. There was a meeting of the Scottish Regional Council on the 29 August 2003 at which the Applicant was present. The meeting was informed of the Applicant's recent letter to the Regional Secretary. The Regional Secretary reported that he had written to the Applicant on two occasions asking him to substantiate the allegations that he had made at the meeting on the 28 November 2002. The minute continues, “*As a number of months had now elapsed with no answers from Bro. Paul, the matter was now closed. Bro Paul indicated that he did not accept this and said he had written to the Trade Union Registration Officer.*”
14. On 31 August 2003 the Applicant wrote to the General Secretary, Mr Brumwell, enclosing correspondence and documents. He referred to the allegations as having been “*made by members of our union...*” The General Secretary responded by letter dated 2 September commenting that the allegations appeared to be based on hearsay. The General Secretary went on to state, “*If there are concerns about the elections of the Regional Council then the complaint should be based on facts and supportive evidence and lodged within the time scale required under General Rule but it would appear that you have not done so.*”
15. The Applicant's Registration of Complaint Form was received by the Certification Office on the 23 September 2003. With this form the Applicant submitted copies of the statements he had obtained in December 2002 but which he had not submitted to the Union. I set out below a summary of the three relevant statements.
 - 15.1 Mr Lukaszewicz's first statement is dated 22 December 2002. He relates a conversation which occurred in the Sun and Moon public house in Bournemouth on the evening of 28 June 2002, on the last day of the Union's Biennial Conference. He states that he was approached by Mr Farrell, who attempted to persuade him not to stand in the Regional Council elections against Mr Green. Mr Farrell is reported as offering to arrange for Mr Lukaszewicz to attend either the Labour Party Conference or TUC Conference in 2003 if he were not to stand. Mr Lukaszewicz further states that Mr Farrell told him that, if he did stand, he, Mr Farrell would make it difficult for him to get on the Regional Council. Mr Lukaszewicz felt that he had been bullied and coerced by Mr Farrell.
 - 15.2 Mr Ashton's statement is undated. He is a full time officer of the Union. In his statement he describes a telephone conversation he had on the 12 September 2002 with Mr Green. Mr Green is alleged to have

asked Mr Ashton if he was going to support him in the election to the Regional Council. The statement records that, when Mr Ashton said he was going to support the Applicant, Mr Green said, "... *George Paul is a racist and homophobic...*" adding that Mr Paul had refused to let the Union make a donation to the Section 28 appeal.

- 15.3 Mr Lukaszewicz's second statement is dated 22 December 2002. In it he relates a conversation that occurred on the 19 October 2002 at a Union dinner in Glasgow. He reports that he was told by Mr Kemp of the circumstances in which Mr Kemp had become a candidate. It was alleged that Mr Kemp had said that the Regional Secretary had told another Union official, Mr McKenna, to tell Mr Kemp to stand as a candidate for the Regional Council and that, when Mr Kemp had mistakenly accepted other nominations, the Regional Secretary had telephoned him to say that he had been supposed to accept nomination to the Regional Council position. Mr Kemp is further alleged to have said that he intended to resign as a candidate in that election because he hated "... *all this internal politics stuff...*"

The Relevant Statutory Provisions

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

S.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) – (e)*

The Union Rules

17. The rules of UCATT most relevant to the Applicant's complaints are:-

Rule 25 Disciplinary Powers

1. The EC shall have power to impose a fine not exceeding £25, suspend from all or any benefits or from holding office, or exclude from the Union, any member, who, in the opinion of the EC:

- (i) by his or her conduct acts against the interests of the Union; such conduct to include racist or sexist behaviour;*
- (ii) refuses to carry out any decision of any governing body of the Union made in virtue of the Rules or disregards such decision, or acts against it;*
- (iii) wilfully or otherwise breaks or evades any provision of the Rules of the Union;*
- (iv) wilfully or otherwise breaks the working rules and conditions of employment applicable to the industry in which s/he is working*
- (v) misappropriates or fraudulently receives any money, funds or other property of the Union, or make any false declaration in regard thereto.*

2. *The EC shall have power to take all or any of the measures specified in the preceding clause against all or any of the members of any Branch, council, or committee, who in the opinion of the EC is or are guilty of any offence specified in the preceding clause.*

3. *The powers specified in Clause 1, shall also be exercisable, within their jurisdiction, by any Regional Council, or Branch at any specially summoned Branch meeting, acting against any member who, in its opinion, is guilty of any of the offences specified in Clause 1.*

Provided always that no decision of a Regional Council or Branch involving the exclusion of any member under this or any other Rule of the Union except Rule 7, Clause 12, shall become operative until it has been confirmed by the EC, except in the case of full-time officials who shall be subject to discipline by the EC under Rule 18, Clause 16.

4. *No decision shall be taken by virtue of the provisions of Clauses 1, 2, or 3 of this Rule unless and until the requirements as to procedure in Rule 26 have been complied with.*

Rule 26 Procedure for Dealing with Charges

1. *The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the Union.*

2. *The EC shall be competent to deal with all charges made under the Rules of the Union.*

3. *Any Regional Council or Branch shall be competent to deal with such charges made under the Rules of the Union as come within its local jurisdiction.*

4. *Any such charges must be made and received by the appropriate council within 28 days of the discovery of the relevant facts.*

5. *The Secretary of the Union authority before whom the charge is made shall give to the member charged written notice of the charge, specifying the facts on which the charge is based and the Rule or Rules of the Union under which the charge is made. S/he shall notify in writing the complainant and the member charged of the date and place of the hearing and of their right to address the Union authority and to produce evidence, including a witness or witnesses, in order to support or rebut the charge or charges. Such notice shall constitute a summons to the complainant and to the member charged to attend at the time and place stated in the notice.*

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Rule 28 Miscellaneous Obligations

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9. *No member shall use his/her official position to further the candidature of any person, contrary to the spirit contained in our rules. S/he shall not act against the expressed wish of the local governing body of the Union, nor against any candidate nominated from this Union by an affiliated body for any public office or to anybody with whom we are federated. Any member violating this rule shall be dealt with under the provisions contained in Rule 25.*

10. *Any member circulating false and misleading statements concerning a candidate for office in the Union shall be dealt with under Rule 25.*

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Submissions and Conclusions

Complaint 1

18. Complaint 1 is in the following terms;

“On 28 November 2002, the union breached rule 26(1) of the rules of the union in that Mr Alan Ritchie, the Scottish Regional Secretary of the union failed to investigate the allegations laid before him by Mr George Paul in respect of the actions of Mr Farrell, Mr Green and Mr Ritchie, and thereby failed to invoke the procedures provided by rule 26(5) and 25(1)(i) of the rules of the union.”

19. The Applicant submitted that he had laid charges against Messrs Ritchie, Green and Farrell at the meeting of the Regional Council on 28 November 2002 and that the Union was in breach of rule by not putting those charges to the accused and processing them to a disciplinary hearing.
20. The Union submitted that rule 26(1) gives discretion to members and to certain other bodies to bring charges against any member, but that the Applicant had not exercised that discretion. The Union noted the Applicant’s express assertion that he was not making any accusations himself but merely relating the allegations made by others.

Conclusion – Complaint 1

21. Rule 26(1) provides as follows:

“The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the Union.”

22. By its terms, rule 26(1) is permissive. It provides that certain bodies within the Union and members may bring charges. It imposes no requirement or duty on the Union, its officials or members to do so. It is clear to me from the terms of the document that the Applicant submitted to the meeting of the Regional Council on 28 November 2002 and from the subsequent correspondence, that the Applicant’s intention was to alert the region to the allegations that had been made by others so as to secure an investigation of those allegations and, if appropriate, the laying of charges by the Regional Council. In the rules of the Union, the laying of a charge is an event which triggers a formal procedure which can lead to significant disciplinary penalties. Any such charge is put to the accused specifying the facts upon which it is based and the rules allegedly breached. The two page document put to the Regional Council on 28 November by the Applicant, even supplemented orally by the giving of names, did not amount to a charge which, without more, could have been put to the accused. In my judgment the Applicant did not, in his capacity as a member, exercise the discretion in rule 26(1) to lay a charge against anyone at the meeting of the Regional Council on 28 November 2002. I accordingly dismiss this complaint.

Complaint 2

23. Complaint 2 is in the following terms:

“On 28 November 2002, the union breached rule 26(5) of the rules of the union in that Mr Alan Ritchie, the Scottish Regional Secretary of the union failed to investigate the allegations laid before him by Mr George Paul in respect of the actions of Mr Farrell, Mr Green and Mr Ritchie, and thereby failed to invoke the procedures provided by rule 26(5) of the rules of the union.”

24. The Applicant repeated his complaint that the Regional Secretary had failed to investigate his allegations and also submitted that there was a breach of rule 26(5) in that no written notice of the charges had been given to any of the accused, despite the fact that he had named Mr Ritchie, Mr Farrell and Mr Green at the Regional Council on 28 November 2002.
25. The Union repeated the submission it had made in relation to the first complaint. It asserted that neither the Applicant nor any of the individuals who had made statements had proffered charges. The Union also pointed out that, in any event, rule 26(4) provides that any such charges must be received by the appropriate council within 28 days of discovery of the relevant facts. The Union submitted that the Regional Secretary had acted within the rules by requesting supporting evidence and dismissing the allegations when this had not been provided.

Conclusions – Complaint 2

26. Rule 26(5) provides as follows:

“The Secretary of the Union authority before whom the charge is made shall give to the member charged written notice of the charge, specifying the facts on which the charge is based and the Rule or Rules of the Union under which the charge is made. S/he shall notify in writing the complainant and the member charged of the date and place of the hearing and of their right to address the Union authority and to produce evidence, including a witness or witnesses, in order to support or rebut the charge or charges. Such notice shall constitute a summons to the complainant and to the member charged to attend at the time and place stated in the notice”

27. In as much as the Applicant alleges a failure by the Regional Secretary to investigate the allegations made by the Applicant on 28 November 2002, the complaint is misconceived. Rule 26(5) imposes no duty on the Regional Secretary or on any other official of the Union to investigate any and all allegations made by members. The duty imposed by rule 26(5) is for the appropriate person to give the accused written notice of the charge, specifying the facts on which the charge is based and the rule of the Union allegedly broken together with the date and place of the hearing. However, this rule is only activated if a charge has been made. I have found in relation to the first complaint that no charge was laid by the Applicant or, indeed, by anyone else in relation to these matters. Rule 26(5) was not therefore engaged or capable of being breached. I accordingly dismiss this complaint.

Complaint 3

28. Complaint 3 is in the following terms:

“On 28 June 2002 Mr M Farrell, a member of the union’s Scottish Regional Council, used his position to further the candidature of a member of the union in the December 2002 election for the Scottish Regional Council 2003, in breach of rule 28(9) of the rules of the union and that the union failed to investigate the matter under the provisions of rule 25 of the rules of the union.”

29. In support of this complaint, the Applicant relied upon the first statement of Mr. Lukaszewicz. He asserted that Mr Farrell was a member of the Regional Council at the time he approached Mr Lukaszewicz on 28 June 2002 in the Sun and Moon public house in Bournemouth and that Mr Farrell had used his official position to further the candidature of a person contrary to the spirit of the rules by the use of bribery and coercion to persuade Mr Lukaszewicz not to stand as a candidate.
30. The Union submitted a witness statement from Mr Farrell denying that the alleged conversation took place and stating that, in any event, Mr Farrell could not influence who attended the TUC or Labour Party Conferences as this was decided by a ballot of members of the region. In the Union’s submission, the Applicant’s allegations were unsubstantiated.

Conclusion – Complaint 3

31. Rule 28(9) provides as follows:

“No member shall use his/her official position to further the candidature of any person, contrary to the spirit contained in our rules. S/he shall not act against the expressed wish of the local governing body of the Union, nor against any candidate nominated from this Union by an affiliated body for any public office or to anybody with whom we are federated. Any member violating this rule shall be dealt with under the provisions contained in Rule 25”.

32. I am asked to determine what was said in a conversation between two men in a public house on the last day of the Union’s conference in June 2002. Mr Lukaszewicz did not complain about this conversation when it occurred and only recorded his recollection in writing on the 22 December 2002. Given the fundamental dispute between the recollections of Mr Lukaszewicz and Mr Farrell and the absence of any relevant extrinsic evidence, I am unable to find on the balance of probabilities that the conversation, as alleged by the Applicant, took place. It is a matter of one person’s word against another. This does not infer that either Mr Lukaszewicz or Mr Farrell is not telling the truth. It reflects the fact that there can be different recollections of the same conversation, especially one that takes place in such a social setting. In order to make good this complaint, the Applicant would have to prove the facts upon which he relies on a balance of probabilities. In my judgment, the Applicant has not established on a balance of probabilities the necessary facts to make good this complaint.

Complaint 4

33. Complaint 4 is in the following terms:

“On 12 September 2002 Mr J Green, a member of the union’s Rules Revision Committee, used his position to further the candidature of a member of the union in the December 2002 election for the Scottish Regional Council 2003, in breach of rule 28(9) of the rules of the union and that the union failed to investigate the matter under the provisions of rule 25 of the rules of the union.”

34. In support of this complaint, the Applicant relied upon the undated statement of Mr Ashton. This states that on 12 September 2002 Mr Green tried to persuade Mr Ashton not to vote for the Applicant in the Regional Council election on the basis that the Applicant was racist and homophobic. The Applicant argued that Mr Green was using his position on the Regional Council to further the candidature of a person, namely Mr Green’s own candidature.
35. The Union submitted a statement from Mr Green dated 18 March 2004 in which he confirmed the accuracy of Mr Ashton’s recollection of the conversation and stated that he remained strongly of the view that the Applicant is racist and homophobic. The Union noted that Mr Ashton had not seen fit to complain about this conversation when it had taken place and it would have been out of time to have done so under the Union’s rules by November 2002. The Union characterised this comment as being “an innocuous topic of conversation ... a rational discussion between two close colleagues”.

Conclusion – Complaint 4

36. The facts of this complaint are agreed. However, for the Applicant to establish a breach of 28(9) he must establish that Mr Green “used his official position” to further the candidature of another person. Whilst it is clearly arguable that Mr Green was attempting to further his own candidature by this telephone conversation, the Applicant has more difficulty in establishing that he was doing so by using his official position as a member of the Regional Council. In my judgment, Mr Green was not speaking to Mr Ashton in his, Mr Green’s capacity as a member of the Regional Council but as an actual or potential candidate for the election to be held in December 2002. In as much the evidence for Mr Green’s comments derived from regional minutes, these are not documents which are available exclusively to members of the Regional Council. I do not accept that in referring to these documents Mr Green was using his official position. I accordingly dismiss this complaint.

Complaint 5

37. Complaint 5 is in the following terms:

“On 19 October 2002 Mr A Ritchie, the union’s Scottish Regional Secretary, used his position to further the candidature of a member of the union in the December 2002 election for the Scottish Regional Council 2003, in breach of rule 28(9) of the rules of the union and that the union failed to investigate the matter under the provisions of rule 25 of the rules of the union.”

38. In support of this complaint, the Applicant relied upon the second statement of Mr. Lukaszewicz dated 22 December 2002, in which he reported a conversation he had had with Mr Kemp at a Union dinner in Glasgow on 19 October 2002. The Applicant submitted that this statement established that the Regional Secretary, Mr Ritchie, had used his position to persuade Mr Kemp to stand as a candidate and had thereby furthered his candidature in breach of rule 28(9).

39. The Union submitted that Mr Lukaszewicz’s statement was too vague and insubstantial to support this complaint. It noted that it was an account of a conversation with Mr Kemp who was describing to Mr Lukaszewicz a conversation with Mr McKenna who had allegedly been told to speak to Mr Kemp by the Regional Secretary. The Union asserted that Mr Kemp’s alleged conversation with the Regional Secretary was itself hearsay and unsubstantiated. The Union argued that doubt is cast upon Mr Lukaszewicz account by the fact that at no stage did he complain personally about the alleged comment nor did he cause a charge to be made within the 28 days allowed by rules.

Conclusion – Complaint 5

40. This complaint, like complaint 3, is based on a conversation that took place between two men at a social event. There was no evidence before me from Mr Kemp and the evidence of Mr Lukaszewicz is in part second-hand hearsay. Mr Lukaszewicz’s evidence tells of a conversation he had with a second party, who allegedly said that he had been told by a third party that he, the second party, should stand for office and that the second party had said that the third party had allegedly been asked to tell him this by a fourth party. At a later stage the fourth party is alleged to have directly encouraged the second party to stand for office. On this evidence it is alleged that the fourth party is in breach of rule. Given the absence of reliable first-hand evidence or extrinsic supporting evidence, I find, on the balance of probabilities, that the evidential base for this complaint of breach of rule is not made out. However, even if it had been, I would have required further persuasion that the mere encouragement of a member to stand for election by a Regional Secretary in a private conversation amounted to a breach of rule 28(9). I accordingly dismiss this complaint.

Complaint 6

41. Complaint 6 is in the following terms:

“On 12 September 2002, Mr J Green, a member of the union, circulated misleading statements concerning a candidate for Office in the December 2002 election for the Scottish Regional Council 2003 in breach of rule 28(10) of the rules of the union and that the union failed to investigate the matter under the provisions of rule 25 of the rules of the union.”

42. In support of this complaint, the Applicant again relied upon the undated statement of Mr Ashton. The Applicant submitted that in his telephone conversation with Mr Ashton of 12 September 2002, Mr Green had described him, the Applicant, as being racist and homophobic. He argued that this constituted a breach of rule 28(10) as it was the circulation of false and misleading statements concerning a candidate for office.
43. The Union submitted that Mr Green had expressed his genuine personal belief during the course of a private telephone conversation. The Union referred to a number of minutes of the Regional Council which it argued could be used as evidence to support Mr Green’s belief. The Union further argued that a private conversation between close colleagues could not constitute “circulating” misleading information.

Conclusion – Complaint 6

44. Rule 28(10) provides as follows:

“Any member circulating false and misleading statements concerning a candidate for office in the Union shall be dealt with under Rule 25”.

45. I do not propose commenting one way or another on the accuracy of Mr Green’s description of the Applicant. There is insufficient evidence before me to reach any finding on this issue and it is not necessary for me to do so. Rule 28(10) prohibits the circulating of false or misleading statements. In my judgment, whether or not Mr Green’s statements were false or misleading, the private telephone conversation during which these views were expressed, did not amount to the “circulating” of those statements. For matters to be circulated, in the context of rule 28(10), it is necessary that they are made generally available to more than one person. I find that Mr Green’s alleged statement was not ‘circulated’ within the meaning of rule 28(10). Accordingly, I dismiss this application.

Complaints 3 to 6

46. Complaints 3 to 6 each conclude with an allegation that the Union failed to investigate the matters in question under the provisions of rule 25 of the Rules of the Union. I have already found that the relevant rules impose no obligation on the Union to investigate any and all allegations which may be raised with it. In particular, there is no such obligation in rule 25. Accordingly, and for the avoidance of doubt, I dismiss the complaints that the Union failed to

investigate the issues raised in complaints 3 to 6. As a matter of fact, however, I have already found that the Regional Secretary did commence an investigation into the allegations raised by the Applicant at the meeting of the Regional Council on the 28 November 2002. He wrote to the Applicant on 29 November requesting further and better particulars of his allegations and repeated his request by letter dated 13 December 2002. It remains a curiosity of this case that the Applicant obtained statements which provided those particulars by late December 2002 but did not supply them to the Union at any stage.

Observation

47. The rules of UCATT provide for complaints of breach of rules to be dealt with internally in accordance with a clear procedure. This procedure requires that any such charge is received by the appropriate council within 28 days of the discovery of the relevant facts. The distinction between a charge and an allegation is important. It is clearly desirable that, so far as possible, any union regulates its own affairs and attempts are made to resolve problems internally before resorting to outside bodies.

DAVID COCKBURN
The Certification Officer