

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

**MR D MURPHY**

**v**

**THE GMB**

**Date of Decision:**

**29 November 2002**

**DECISION**

Upon application by the Applicant under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) for declarations that the GMB (“the Union”) acted in breach of the rules of the Union:-

1. I refuse the declaration sought by the Applicant that the Union acted in breach of rule 10A.1 of its rules in the conduct of the elections to the Lancashire Regional Council in 2001.
2. I refuse the declaration sought by the Applicant that the Union acted in breach of rule 18.6 of its rules in permitting to be elected to the Lancashire Regional Council in 2001 members who were alleged by the Applicant to be employees of the Union.
3. I refuse the declaration sought by the Applicant that the Union acted in breach of rule 71.2 of its rules in the conduct of the elections to the Lancashire Regional Council in 2001; the alleged breach being the failure of four named Branches to convene meetings to conduct their respective collective votes.

4. I declare that the Union breached rule 17G.8 of its rules in the conduct of the election to the Lancashire Regional Council in 2001 by not having counted in that election the financial membership of each Branch as shown on the last quarter's balance sheet.
5. I refuse the declaration sought by the Applicant that the Union acted in breach of rule 37.21 of its rules in the conduct of the election of Lancashire Region delegates to Congress in 2001; the alleged breach being that ten unnamed Branches acted in collusion as regards that election and were involved in each others formal business without the knowledge or approval of the Regional Secretary.
6. I refuse the declaration sought by the Applicant that the Union acted in breach of rule 71.2 of its rules in the conduct of the election of Lancashire Region delegates to Congress in 2001 by not counting in that election the financial membership of each Branch as shown in the last balance sheet.
7. I refuse the declaration sought by the Applicant that the Union acted in breach of rule 71.2 of its rules in the conduct of the election of Lancashire Region delegates to Congress in 2001 by there being a failure to give authorised instructions to convene meetings of the Branches by notice.
8. I refuse the declaration sought by the Applicant that the Union acted in breach of its rules at the meeting of its Regional Council on 12 May 2001 by allegedly breaching paragraph 23.2 of the Regional Benefits Booklet of the Lancashire Region in proposing that members of the Regional Committee should be made a payment from the Friendly Benefits Section fund.

## **REASONS**

1. The Applicant is a member of the GMB ("the Union") in its Lancashire Region. By an application dated 31 July 2001 the Applicant made a number of complaints against his Union, alleging breaches of the rules of the Union. These were matters potentially within the jurisdiction of the Certification Officer by virtue of sections 108A(2)(a), 108A(2)(c)

and 108A(2)(d) of the 1992 Act. By a letter dated 21 March 2002, the Applicant confirmed that the precise terms of the alleged breaches to be put to the Union were as follows:-

#### **GMB Regional Council Elections 2001 in the Lancashire Region**

1. The Central Executive Committee of the union, in exercising its authority to extend the period of office in respect of Regional Council members for a period of four years after 1 January 2001, failed to issue the appropriate written references to that four-year period in the documentation issued for nomination and the subsequent election and this was a breach of GMB rule 10A.1.
2. In breach of GMB rule 18.6, which states that '*No person who has, or who in the preceding five years has had, a written contract of employment with the union, or who is in receipt of a pension from the Union, shall be eligible for election as a delegate to Congress (Rule 8); as a delegate to a Regional Council (Rule 20 or Rule 21); as a delegate to National or Regional Delegate Conference (Rule 68) or Section Conference,*' the union elected members to the Regional Council 2001 who were identified on the ballot forms as being employed by the union.
3. In breach of GMB rule 71.2 which requires that, '*Should the decision be for a collective vote at Branch meetings, authorised instructions to convene meetings of the Branches must be given by notice,*' the following Branches did not convene a meeting with regard to a collective vote in connection with the Regional Council Ballot 2001:- South Cheshire S57, Manchester 02, Bolton and Walkden B14 and Bury 33.
4. Rule 71.2 requires that where a collective vote is decided upon at Branch meetings, the financial membership of the Branch as shown on the last balance sheet will count as regards any decision taken by the Branch. At the time of the Regional Council Elections 2001, the ballot forms were issued on 1 March 2001 and the last available balance sheet would have been December 2000 but the figures used did not relate to September or December 2000 or March 2001 and this is a breach of GMB rule 71.2.

#### **GMB Lancashire Regional Congress Delegates Elections 2001**

5. In relation to the ballot of branches for the delegates to Congress 2001, it is alleged that the result of the vote is evidence that ten branches were in collusion as regards that result and that this is evidence that these branches were involved in each others formal business without the knowledge and approval of the Regional Secretary, in contravention of GMB rule 37.21.
6. Rule 71.2 states that where a collective vote is decided upon at Branch meetings the financial membership of the branch as shown on the last balance sheet will count as regards any decision taken by the Branch. In contravention of this rule, it is alleged that the union used the December 2000 financial membership figures when the September 2000 were the last figures available at the time of issue of the ballot forms in January 2001 and that this is a breach of GMB rule 71.2.
7. The timescale for the issue and return of ballot forms to the Regional Officer in respect of the Branch ballot for Regional delegates to the Congress 2001, by 5<sup>th</sup> January 2001 (three days after issue of those ballot appears) was not in accordance with the requirements of GMB rule 71.2 in that authorised instructions to convene meetings of the Branches was not given by notice.

#### **Regional Council Meeting of 12 May 2001**

8. In breach of rule 23.2 of the Lancashire Region Regional Benefits Booklet, the Regional Secretary and members of the committee proposed that the Regional Committee should be made a payment from the Friendly Benefit Section Fund.

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 8 November 2002. The Union was represented by Ms Susan Machin of counsel who appeared with Mr C Hantom, of Messrs Whittles Solicitors. Mr J O' Hara, GMB National Legal Officer was also present. No oral evidence was given on behalf of the Union. The Applicant acted in person and gave evidence. Mr D Boyle also gave evidence on the Applicant's behalf. A bundle of documents was prepared for the hearing by my office which consisted of the exchanges of correspondence with the parties, together with their enclosures (Bundle A). Supplementary bundles were supplied by both the Applicant (Bundle B) and by the Union (Bundle C). This decision has been reached on the basis of the representations made by the Applicant and the Union, together with such documents as were provided by them.

### **Findings of Fact**

3. These applications concern three distinct events. I will make separate findings of fact in relation to each event.

### **The Regional Council Elections 2001**

4. By rule 20(5) of the rules of the Union the Regional Council elections are to be conducted in accordance with the election procedure prescribed by rule 17G, the relevant extracts of which are set out below. These provide for nominations by each Branch on a form provided. Voting papers are issued to each Branch bearing the names of the candidates and a vote is to be taken by a show of hands at Branch meetings. Rule 17G.8 provides that "*The financial membership of the Branch, as shown on the last quarter's balance sheet, shall be counted for or against in accordance with any decision given by the majority of the members present at the meeting*". Within the GMB this is known as a collective vote.

5. The procedures for the election to be held in 2001 were notified to Regional Secretaries by a joint letter dated 17 October 2000 from Steve Short, Executive Services Administrator at National Office, and Joe O'Hara, National Legal Officer. With regard to the Regional Council elections they advised Regional Secretaries that "*The Rule Book is silent on the date on which financial membership of Branches is to be calculated for the purposes of branch voting strength. You may wish to take the December 2000 figure*".
6. On 24 October 2000 the Central Executive Council of the Union ("the CEC") exercised the power that it had by virtue of rule 10A.1 to extend the period of office from two years to four years of a number of elected positions, including that of Regional Council member. Mr Short notified all Regional Secretaries of this decision by a letter dated 15 December and the Lancashire Regional Secretary, Gary Jones, sent a copy of Mr Short's letter to all Branch Secretaries in the Lancashire Region.
7. On 22 January 2001 Mr Jones wrote to all Branches in the Lancashire Region enclosing nomination forms for the Regional Council elections. These were to be returned by 28 February. The ballot papers were issued to branches on 1 March and the ballot closed on 11 April. In accordance with rule 20(6) the newly elected members were to take up office as from 15 April.
8. A number of documents issued by the Region at this time referred to the term of office for those to be elected in this election as being two years. These documents include the Regional Secretary's letter of 22 January 2001, the nomination form and the voting form. The Applicant also observed that the minute of the Bury 33 Branch Committee of 29 January 2001 also referred to "*Regional Council representation 2001-2003*". He maintained that anyone standing for election as a member of Regional Council in 2001 would have done so on the basis that the term of office was to be for two years.
9. Amongst those elected as members of the Regional Council in 2001 were a number of full time Branch Secretaries. The Applicant identified these as being Alan Hughes, John

McDonnell, Sheila McKane, Les Morgan, Mel Beaumont, Tom Fallows, Jim Cairns, Graham Wells and Barry Montgomery. The Applicant asserted that full time Branch Secretaries are employees of the Union and are precluded by rule 18.6 from eligibility for election as a delegate to Regional Council. I find that the Union issues written contracts of employment and/or written statements of particulars of employment to all those who it considers to be its employees but that full time Branch Secretaries are given neither a written contract of employment nor written particulars. The Union asserted that full time Branch Secretaries are office holders.

### **Election of Regional Delegates to Congress**

10. The rules of the Union describe Congress as being vested with the supreme authority of the Union. Delegates are elected to Congress in accordance with rule 8, which sets out a timetable for these elections. Although rule 8 does not specify that such delegates are to be elected by collective vote it has been the long standing practice of the Union that delegates to Congress are elected in this manner. The letter to Regional Secretaries from Mr Short and Mr O'Hara of 17 October 2000 also deals with the elections to Congress. This letter states, amongst other things, that "*Branches' votes must reach Regional Office by 28 February*". I find that this is a notification to Regional Secretaries confirming that the elections to Congress in 2001 were to be by collective vote. It is the votes of the branches which were to be counted.
  
11. Nomination forms were sent to the branches by Mr Jones, the Regional Secretary, in or about November 2000 and nominations closed on 31 December 2000. Rule 8.3 provides that ballot papers are to be issued during the third week of the following January. In breach of this rule, the ballot papers were issued on 2 January 2001. No complaint has been made of this breach. A subsequent report into the conduct of this election by Mr O'Hara revealed that the first ballot paper returned from any branch was received at Regional Office on 5 January. The ballot closed on 28 February.

12. The results of this election were compiled on a running basis by the Regional Finance Officer, Ms Margaret Scullion. She did this on a spreadsheet on her computer. On Friday 2 March 2001 the Regional Auditors overseeing this election examined the 69 voting papers that had been returned and disqualified two of them. On Monday 5 March Ms Scullion created a new spreadsheet of the final results and, on the basis of the valid voting papers, 32 delegates were elected to Congress. The voting range of those elected was between 31,060 and 49,664. Ms Scullion notified the branches of these results in writing.
13. The Regional Committee met on 14 March 2001 and was given what purported to be the results of the election but were in fact the results as they had appeared on an earlier version of Ms Scullion's spreadsheet. By coincidence, the same 32 delegates were elected but the voting range was given as being between 21,546 and 38,342. Nevertheless, when the minutes of the meeting of 14 March were produced they recorded the result of the election showing the higher range of votes. The next meeting of the Regional Committee took place on 5 April and the Applicant pointed out that the minute of the meeting of the 14 March was not accurate. Although the meeting of 5 April accepted the earlier minutes as being accurate, a further meeting of the Regional Committee was arranged for Saturday 7 April. At this meeting Ms Scullion explained the discrepancy between the two sets of figures. She said that the earlier spreadsheet did not contain the figures from ten branches which she had received after she had prepared that spreadsheet but before the close of voting. The inclusion of the votes from these ten branches did not change the identity of those elected but increased the number of votes cast for them. It later emerged that the votes of these ten branches had not been date stamped upon receipt at Regional Office, unlike the voting papers from the other 59 branches.
14. Following complaints by the Applicant, the General Secretary asked Mr O'Hara, the National Legal Officer, to conduct an investigation to establish whether the Congress Ballot result contained in the minute of the meeting of the Lancashire Regional Committee of 14 March 2001 was correct. Mr O'Hara's report is dated 30 May 2001 and concludes that the Congress ballot result contained in the minute of the meeting of 14

March was correct. He also commented that, although the final voting figures had been notified to the branches in writing, Ms Scullion had mistakenly printed off and presented to the Regional Committee an earlier summary which did not contain the final figures. Mr O'Hara made a number of other observations regarding the conduct of the ballot.

### **Regional Council Meeting 12 May 2001**

15. At a meeting of the Regional Council on 12 May 2001, a lay Regional Auditor asked in a written report on whose authority expenses were being paid to members of the Regional Committee. He also asked for there to be produced the minute recording the decision to allow these payments to be made. Although it had been established practice for a considerable time that fixed expenses, sometimes called an honorarium or an attendance allowance, of about £15 were paid to members of the Regional Committee, no written authority for such a payment could be found. The Applicant accepts that, as a member of the Regional Committee, he too had received such payments. In order to regularise the position, Alan Hughes, a member of the Regional Council, proposed a resolution that such payments to members of the Regional Committee would in future be made from the funds of the Friendly Benefits Section, from which the payments had previously been made. Mr Hughes's resolution was adopted.

### **The Relevant Statutory Provisions**

16. 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 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 sections (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) ...
  - (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) ...



- (6) An application must be made -
  - (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
  - (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).
- (7) Those days are -
  - (a) the day on which the procedure is concluded, and
  - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

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

- 17. Section 108B(2) of the 1992 Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declarations asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.
- 18. Section 108B(3) of the 1992 Act requires that where I make a declaration I shall also, unless I consider that to do so would be inappropriate, make an enforcement order requiring, inter alia, the union to take such steps to remedy the breach as may be specified in the order.

**The Union Rules**

- 19. The Union rules and other material relevant to the Applicant’s complaints are as follows:

**Congress of the Union**

- Rule 8.2 One delegate who shall be a fully financial member shall be elected in each Region for every complete 2,000 financial members, as stated in the previous September quarter’s balance sheet.
- Rule 8.3 Each Branch of a Region may nominate one delegate to represent the Region at the Congress. Such nominations shall be sent to the Regional Office not later than 31<sup>st</sup> December. The Regional Secretary shall then have lists printed and issued during the third week of the following January, setting forth the name and Branch of each candidate. Those candidates, according to the number required, who receive the largest number of votes, shall be considered elected.

Rule 8.4 The papers or the result of the vote shall be sent to the Regional Office no later than the 28<sup>th</sup> February of the year in which Congress meets.

#### **Power to Increase Term of Office**

Rule 10A.1 Notwithstanding any contrary provision in these rules, the Central Executive Council shall have power to increase to four years the term of any office named in clause 3. Any exercise by the Central Executive Council of this power shall affect only the term of office commencing with elections held on or after a date specified by the Central Executive Council and falling after the exercise of the power.

Rule 10A.3 The offices are: Branch President; Branch Secretary; Branch Equality Officer; Branch Youth Officer; Branch Committee member; Branch Financial Secretary; Branch Member Auditor; Regional President; Regional Council member; Regional Committee member; Appeals Tribunal panel member; Regional Member Auditor.

#### **Organiser Election Procedure**

Rule 17G.4 Each Branch in the Region shall have power to nominate and vote for any member who is a candidate for a regional office (including that of Organiser),....

Rule 17G.5 Nomination shall be made on the form provided which shall be returned to the Regional Office within five weeks from the date of receipt.

Rule 17G.7 Voting papers bearing the names of accepting candidates shall then be issued to each Branch and a vote shall be taken by show of hands at Branch meetings.

Rule 17G.8 The financial membership of the Branch, as shown on the last quarter's balance sheet, shall be counted for or against in accordance with any decision given by the majority of the members present at the meeting.

#### **Qualifications for Office and Definition of Officers**

Rule 18.6 No person who has, or who in the preceding five years has had, a written contract of employment with the Union, or who is in receipt of a pension from the Union shall be eligible for election as a delegate to Congress (Rule 8); as a delegate to a Regional Council (Rule 20 or 21); or as a delegate to a National or Regional Delegate Conference (Rule 68) or Section Conference.

#### **Regions and their Management**

Rule 20.4 Members of the Regional Council shall be elected every two years from nominations sent in by the Branches comprising the Region. ....

Rule 20.5 Nominations shall be sent by the Branches to the Regional Secretary not later than 28<sup>th</sup> February in the year when the elections are due, and an election shall take place in accordance with the election procedure prescribed by Rule 17G.

Rule 20.6 When elected, the Regional Council shall take office as from 15<sup>th</sup> April in the year of the election and shall hold office for a period of two years. ....

Rule 20.8 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. ....

Rule 20.10 Any Regional Council may make bye-laws - including a levy upon such description or class of members as may be determined - for the conduct and management of its own affairs and those of the Region. Such bye-laws however, must be in accordance with the Rules of the Union and approved by the Central Executive Council.

### **Branches**

Rule 37.21 Meetings of Branch members shall be confined to the members of the Branch concerned and no member of a Branch shall be entitled or permitted to attend or take part in the business of meetings of another Branch except with the knowledge and approval of the Regional Secretary. Any member violating this provision will be liable to be dealt with by the Regional Committee in accordance with the powers conferred by these Rules upon Regional Committees.

### **Voting - Alternative Methods**

Rule 71.1 Wherever in these rules officials or other representatives are required to be chosen by the votes of members, and when important questions (not specifically provided for) have to be settled by such vote, the Central Executive Council, or where the decision rests with a Region, the Regional Committee, may decide:

- a. whether the voting shall be by individual ballot of members or by a show of hands; and/or
- b. whether the voting shall take place in the workplace, at Branch meetings, or by post, or by any combination of these; and/or
- c. whether the votes shall be counted in total, or by the majority vote in a Branch carrying the total financial membership of the Branch.

Rule 71.2 Should the decision be for a collective vote at Branch meetings, authorised instructions to convene meetings of the Branches must be given by notice. The financial membership of the Branch as shown on the last balance sheet will be counted for or against in accordance with any decisions duly given by the majority of members present at the meetings. Should there be a ballot of members, the requisite voting papers shall be supplied to the Branches.

### **LANCASHIRE REGIONAL BENEFITS BOOKLET**

Rule 23.2 The Regional Secretary, and other staff of the Section, shall receive such payments for their services as may be agreed on by the Regional Committee.

Rule 24 Any matter arising in connection with this Section not provided for in these rules, shall be dealt with by the Regional Committee or Regional Council, who shall have power to decide anything deemed just and beneficial to the members.

### **Issues of Time and Acceptance of the Application**

20. My office raised with the Applicant in correspondence various issues relating to whether his complaints had been made in time and whether the Applicant had taken all reasonable steps to resolve his claims by the use of any internal complaints procedure of the Union.

The Union's solicitors accepted that certain of the Applicant's complaints were in time but wished to argue that others were not. In her skeleton argument counsel for the Union stated that all the complaints were in time. At the hearing, however, counsel wished to qualify this statement to the extent of arguing that certain of the complaints were out of time and that I should exercise my discretion under section 108B(1) of the 1992 Act not to accept the applications on the basis that the Applicant had not taken all reasonable steps to resolve his claims by the use of any internal complaints procedure of the Union.

21. The Applicant's first concerns arose when he received the erroneous minutes of the meeting of the Regional Committee of 14 March 2001. He raised this concern at the subsequent meeting of the Regional Committee on 5 April and, at the end of that meeting, he and two colleagues handed in a letter of the same date putting his complaint more formally. He followed this up on 26 April by writing to the General Secretary asking if he and the National Legal Officer would investigate his complaints regarding the elections to Regional Council. The General Secretary responded by a letter dated 10 May in which he informed the Applicant that the National Legal Officer would conduct an investigation but that the proper procedure for any complaint was under rule 6. The Applicant wrote again to the General Secretary on 17 May raising further concerns, including the conduct of the Regional Council meeting of 12 May and the election of certain full time Branch Secretaries. By a further letter of 21 May the Applicant advised the General Secretary that, as his complaint concerned the elections to the Regional Council, it was inappropriate for him to use the rule 6 procedure, under which his complaint would have been considered first by the branch and then, on appeal, by the Regional Committee. Following the publication of Mr O'Hara's report dated 30 May the Applicant wrote again to the General Secretary informing him that he did not accept Mr O'Hara's report and seeking a response to all his enquiries by 30 June. The General Secretary's reply of 27 June again suggested that the Applicant should use the rule 6 procedure. The Applicant complained by telephone to my office in late June or early July 2001 and completed a registration of complaint form on 31 July. My office informed the Applicant by letter dated 20 August that I would not accept his complaint unless he had made all reasonable attempts to resolve the matter using the rule 6 complaints procedure.

The Applicant then made a rule 6 complaint, first to his branch and then to the Regional Committee. By a letter dated 14 December the Regional Secretary wrote to the Applicant referring to Mr O'Hara's report and stating that, "*The Regional Committee feels that it is inappropriate to reopen the issues as all points have been addressed and answered*". The Applicant renewed his application to my Office by a letter received on 10 January 2002.

22. Counsel for the Union accepted that the Applicant's registration of complaint form dated 31 July 2001 was a valid application, within section 108A(6)(a) of the 1992 Act, in respect of those breaches alleged to have taken place within the previous six months. With regard to earlier breaches counsel submitted that these were out of time and were not saved by section 108A(6)(b), which provides that such applications may be saved if, within the period of six months of the alleged breach, any internal complaints procedure of the Union is invoked to resolve the claim. Ms Machin argued that the Applicant did not invoke any internal complaints procedure within the period of six months of these earlier breaches. In order to make good this submission Ms Machin had to persuade me that the complaints raised by the Applicant with his Union prior to his complaint under rule 6 were of no effect for the purposes of section 108A(6)(b).
  
23. In my judgement the Applicant did invoke a complaints procedure to resolve his complaints by writing to the General Secretary at regular intervals from 26 April 2001. In so finding, I have regard to the words "*any internal complaints procedure of the union*" (my emphasis) in section 108A(6)(b). These words do not impose the requirement that there be a written procedure or that the written procedure should be the exclusive procedure. Other Unions have well established complaints procedures for members which are not in writing. Furthermore, some complaints may not be appropriate for the written procedure of the Union, where for example the complaint is against the body which would determine the complaint. Given the many different types of complaints procedure that may exist and the many different types of complaint which members may wish to bring, it is appropriate to adopt a purposive approach to the interpretation of section 108A(6)(b). It is in the interests of all concerned that, where

possible, disputes are resolved internally without resort to third party adjudication and attempts by members to resolve their disputes internally should be encouraged. In this context I find that what constitutes “*any procedure*” is to be given a wide interpretation. These words not only comprehend a written procedure. They include any procedure generally known to the members as a way of raising and resolving complaints. This will exclude complaints raised in a purely ad hoc or arbitrary manner, outside what could reasonably be regarded as a procedure. However, in the present case, having regard to the fact that the complaints related to the same Committee as would ultimately hear the complaint, I find that the decision of the Applicant to write direct to the General Secretary was not arbitrary. Nor was it treated dismissively by the General Secretary who set up Mr O’Hara’s investigation. In many circumstances this prompt action by the General Secretary would have been sufficient to dispose of the matter and I do not consider that, in the appropriate case, this approach to complaints resolution should be discouraged. I accordingly find that the applications made by the Applicant were in time.

24. On 20 August 2001, I exercised my discretion under section 108B(1) to refuse to accept the Applicant’s complaint. This subsection is worded differently to section 108A(6)(b). Under section 108B(1) I may refuse to accept an application unless I am satisfied “*that the Applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the Union*” (my emphasis). Having regard to the good faith shown by the Union in setting up an investigation, I considered that the use of the rule 6 complaints procedure was a reasonable further step for the Applicant to take. The Applicant then invoked the rule 6 procedure, but without success. I do not find that at this stage there are any grounds upon which I could properly exercise my discretion under section 108B(1) to refuse to accept this application.

## **The Regional Council Elections**

### **COMPLAINT 1**

**The Central Executive Committee of the union, in exercising its authority to extend the period of office in respect of Regional Council members for a period of four years after 1 January 2001, failed to issue the appropriate written references to that four-year period in the documentation issued for nomination and the subsequent election and this was a breach of GMB rule 10A.1.**

### **The Applicant's Submissions**

25. Rule 10A.1 states, *“Notwithstanding any contrary provision in these rules, the Central Executive Council shall have power to increase to four years the term of any office named in clause 3. Any exercise by the Central Executive Council of this power shall affect only the term of office commencing with elections held on or after a date specified by the Central Executive Council and falling after the exercise of the power.”*
26. The Applicant complains of a breach of rule 10A.1 in that the documents circulated by the Lancashire Region in respect of the Regional Council elections in 2001 not only omitted to state that the elections were to be for a term of office of four years but referred expressly to a term of office of two years. In these circumstances, the Applicant considered that those members elected to the Regional Council in 2001 will cease to hold office in 2003 and fresh elections will have to be held.

### **The Union's Response**

27. Counsel invited me to consider the precise terms of rule 10A.1 and to find that the arguments advanced by the Applicant do not put forward a prima facie case that this rule has been breached.

### **Conclusion**

28. Rule 10A.1 gives the CEC a discretion to increase to four years the term of office of, amongst others, members of Regional Councils. This discretion was exercised on 24 October 2000 and there is no complaint about the manner in which the discretion was exercised. The Union took reasonable steps to publicise the decision of the CEC. It is

unfortunate that the documentation circulated by the Lancashire Region in connection with the election referred in error to a two year term of office and so gave rise to the Applicant's concerns. Nevertheless, the Applicant has not advanced any case that there has been a breach of rule 10A.1. His concerns bear no relation to this rule. The term of office of elected office holders is determined by the rules, not administrative forms. At the time of the election to the Regional Council in 2001 the rules provided that the term of office of members of the Regional Council was to be four years.

29. For the above reasons I refuse the declaration sought by the Applicant that the Union acted in breach of rule 10A.1 of its rules in the conduct of the elections to the Lancashire Regional Council in 2001.

## **COMPLAINT 2**

**In breach of GMB rule 18.6, which states that ‘No person who has, or who in the preceding five years has had, a written contract of employment with the union, or who is in receipt of a pension from the Union, shall be eligible for election as a delegate to Congress (Rule 8); as a delegate to a Regional Council (Rule 20 or Rule 21); as a delegate to National or Regional Delegate Conference (Rule 68) or Section Conference,’ the union elected members to the Regional Council 2001 who were identified on the ballot forms as being employed by the union.**

### **The Applicant's Submission**

30. The Applicant argued that the nine full time Branch Secretaries who were elected to the Regional Council in 2001 and who were named in his application are employees of the Union and should therefore have been declared ineligible for election. He relied upon the decision of an Employment Tribunal in the case of Ball v GMB (2405298/98) in which the Union conceded that a full time Branch Secretary was an employee. The Applicant also submitted documentation to establish that full time Branch Secretaries work under the control of the Regional Secretary and are integrated into the organisation of the Union, and a paper written by an official of the Union, prepared as a part of his MBA studies, which concluded that full time Branch Secretaries are employees of the Union not office holders. The Applicant considered that there is an overwhelming case that full time Branch Secretaries are employees and that the Union acted in breach of rule 18.6 in not excluding them from the election to the Regional Council.



## **The Union's Response**

31. The Union strongly denied that full time Branch Secretaries are employees and stated that the concession made by the Union in the case of *Ball v GMB* was made on the facts of that case for the purposes of that case only. The Union maintains that full time Branch Secretaries are office holders. Counsel commented that the position of such persons is a vexed issue in a number of unions, not only the GMB. She went on to submit, however, that the status of full time Branch Secretaries was not a matter which it was necessary for me to determine in this case. Counsel argued that my jurisdiction is limited to breach of rule and that rule 18.6 only declares ineligible a person "*who has, or who in the preceding five years has had, a written contract of employment with the Union...*". Ms Machin submitted that, as full time Branch Secretaries are given neither written contracts of employment nor written particulars of employment, it does not matter if they are employees or not. She argued that in either event, on the literal meaning of rule 18.6, full time Branch Secretaries are eligible to stand for the Regional Council.

## **Conclusion**

32. The logic of the Union's argument is that a distinction can be drawn between employees of the Union who have been given written contracts of employment and employees of the Union who have not been given written contracts of employment. This distinction is unattractive, having regard in particular to the obligations in section 1 of the Employment Rights Act 1996 for all employees to be provided with written particulars of employment. However, it is a distinction that is clearly made in rule 18.6 and I have no evidence to cause me to conclude that those who adopted this rule did not intend it to bear its ordinary literal meaning. Where a rule is unclear, ambiguous or is contradicted by other rules it may be appropriate for me to consider more than the literal meaning of the words which constitute the rule. In the present case, however, the words in question are clear and unambiguous. The eligibility of members to sit on senior committees of a Union is often a sensitive matter and it is for the Union to decide where the line should be drawn. If that line is drawn with sufficient clarity it is not for me to interfere when the ordinary literal meaning of the rule is applied.

33. For the above reasons I refuse the declaration sought by the Applicant that the Union acted in breach of rule 18.6 of its rules in permitting to be elected to the Lancashire Regional Council in 2001 members who were alleged by the Applicant to be employees of the Union.

### COMPLAINT 3

**In breach of GMB rule 71.2 which requires that, ‘*Should the decision be for a collective vote at Branch meetings, authorised instructions to convene meetings of the Branches must be given by notice,*’ the following Branches did not convene a meeting with regard to a collective vote in connection with the Regional Council Ballot 2001:- South Cheshire S57, Manchester 02, Bolton and Walkden B14 and Bury 33.**

#### **The Applicant’s Submission**

34. Rule 71.2 states, “*Should the decision be for a collective vote at Branch meetings, authorised instructions to convene meetings of the Branches must be given by notice. The financial membership of the Branch as shown on the last balance sheet will be counted for or against in accordance with any decisions duly given by the majority of members present at the meetings. Should there be a ballot of members, the requisite voting papers shall be supplied to the Branches.*”
35. The Applicant produced minutes of various meetings of the branches he named and alleged that the minutes did not establish that there had been a vote conducted at those branches before a member had been nominated or had received that branches vote. The Applicant expressed concern that the minutes only recorded the name of the person for whom the branch had voted and did not record the voting figures.

#### **The Union’s Response**

36. Counsel argued that this complaint could not be sustained on either the wording of rule 71.2 or the facts. She submitted that rule 71.2 is directed at the instructions that must be given by the Region by notice and imposes no requirement on branches with regard to the calling of meetings. Furthermore, counsel argued that the minutes submitted by the Applicant do not establish that a proper vote had not taken place. She commented that

the minutes are equally consistent with there having been a vote but with only the result of the vote being recorded.

### **Conclusion**

37. In my judgement rule 71.2 plays no part in the election of members of Regional Council. Rule 71 is headed "*Voting - Alternative Methods*". Rule 71.1 provides that a choice must be made between three different types of voting where the rules provide that a decision is to be taken "*by the votes of members*". Rule 71.2 goes on to provide what should happen if the CEC or Regional Committee opt for a collective vote at branch meetings. In the case of Regional Council elections, however, the method of voting is provided for expressly in rules 17G.7 and 8. It is to be a collective vote at branch meetings. There is no decision to be taken pursuant to rule 71.1. Such a decision is only required when the method of voting is not dealt with expressly. Accordingly I find that the Applicant's claim that there was a breach of rule 71.2 is misconceived. If I were to be wrong about this, I accept counsel's submissions that the words "*...authorised instructions to convene meetings of the Branches must be given by notice*" in rule 71.2 impose a requirement on the decision making body, in this case the Regional Committee, to give authorised instructions by notice. These words do not impose any requirements on branches. I also accept counsel's submissions that the minutes produced by the Applicant do not establish, on a balance of probabilities, that properly convened Branch meetings had not been called, even if the Applicant's interpretation of the rules had been correct.
  
38. For the above reasons I refuse the declaration sought by the Applicant that the Union acted in breach of rule 71.2 of its rules in the conduct of the elections to the Lancashire Regional Council in 2001, the alleged breach being a failure of four named Branches to convene meetings to conduct their respective collective votes.

## COMPLAINT 4

**Rule 71.2 requires that where a collective vote is decided upon at Branch meetings, the financial membership of the Branch as shown on the last balance sheet will count as regards any decision taken by the Branch. At the time of the Regional Council Elections 2001, the ballot forms were issued on 1 March 2001 and the last available balance sheet would have been December 2000 but the figures used did not relate to September or December 2000 or March 2001 and this is a breach of GMB rule 71.2.**

### **The Applicant's Submission**

39. The Applicant's case was that the figures used as being the voting strength of the branches in this election bore no relation to the quarterly balance sheets of September or December 2000 or March 2001.

### **The Union's Response**

40. The Union conceded the Applicant's complaint. Counsel explained that the Region's Finance Officer had taken the relevant figures from her computer shortly before circulating the ballot forms. These figures were therefore not the figures which appeared on any quarterly balance sheet. They were, however, the most up to date figures available to the Finance Officer at the time of despatch of the ballot forms. Counsel commented that the Finance Officer had acted in good faith in the genuine but mistaken belief that the most up to date figures of financial membership should be used. Counsel further commented that the difference in financial membership between the figures used and those in the last quarter's balance sheet was only seven members.

### **Conclusion**

41. It was accepted at the hearing that the relevant rule for elections to Regional Council is rule 17G.8, which for these purposes is in almost identical terms to rule 71.2, except that rule 17G.8 refers to the last "*quarter's*" balance sheet. It was also accepted that this complaint be treated as an alleged breach of rule 17G.8.

42. Rule 17G.8 states, "*The financial membership of the Branch, as shown on the last quarter's balance sheet, shall be counted for or against in accordance with any decision given by the majority of the members present at the meeting.*"

43. Although it is not necessary for this decision, an issue arises as to the date to be used by the Union as the date from which to determine “*the last quarter’s balance sheet*”. Counsel stated on instructions that the date the Union regards as being the one to use for this purpose is the date of the close of voting. This gives a more accurate figure of financial membership at the date of the declaration of the ballot result than does the date of dispatch of ballot forms. Had this date been used in the election of members to Regional Council, the last quarter’s balance sheet would have been that for the quarter ending 31 March 2001. By agreement, the figures used in assessing financial membership for this election were not those on the balance sheet for the quarter ending 31 March 2001, or indeed on any quarterly balance sheet.
44. Accordingly, I declare that the Union breached rule 17G.8 of its rules in the conduct of the election to the Lancashire Regional Council in 2001 by not having counted in that election the financial membership of each Branch as shown on the last quarter’s balance sheet. I do not consider that it is appropriate to make an enforcement order, having regard in particular to the seriousness of the breach and its impact on the result of the election.

### **Election of Regional Delegates to Congress**

#### **COMPLAINT 5**

**In relation to the ballot of branches for the delegates to Congress 2001, it is alleged that the result of the vote is evidence that ten branches were in collusion as regards that result and that this is evidence that these branches were involved in each others formal business without the knowledge and approval of the Regional Secretary, in contravention of GMB rule 37.21.**

#### **The Applicant’s Submission**

45. Rule 37.21 states, “*Meetings of Branch members shall be confined to the members of the Branch concerned and no member of a Branch shall be entitled or permitted to attend or take part in the business of meetings of another Branch except with the knowledge and approval of the Regional Secretary. Any member violating this provision will be liable to be dealt with by the Regional Committee in accordance with the powers conferred by these rules upon Regional Committees.*”

46. The Applicant argued that it was suspicious that the votes of ten branches had been omitted from the results mistakenly given to the Regional Committee on 14 March 2001 and that the voting papers of those ten branches were the only ones that had not been date stamped on receipt at Regional Office. He also considered it to be a strange coincidence that when the votes of those ten branches were aggregated with the others, the same members had been elected to Regional Council but with higher voting figures. The Applicant conceded, however, that he had no evidence that the ten branches in question had colluded or been involved in each other's formal business.

### **The Union's Response**

47. Council submitted that in order to establish a breach of rule 37.21 the Applicant had to be able to prove on a balance of probabilities that members of a branch had taken part in the business of meetings of another branch without the knowledge and approval of the Regional Secretary. Council argued that the Applicant had produced no evidence to support this complaint.

### **Conclusion**

48. On the Applicant's own concession, he had no evidence to support his assertion that the branches whose returns were undated had taken part in the business of each other, other than a number of circumstances which he considered to be suspicious. In making a complaint of breach of rule, the Applicant must establish, on a balance of probabilities, the factual basis upon which the alleged breach occurred. In most circumstances, suspicion by itself is not enough. Whilst there were grounds for the Applicant's suspicion, there was no evidence before me that the relevant branches had breached rule 37.21. Accordingly, the Applicant did not make good his complaint.
49. For the above reasons I refuse the declaration sought by the Applicant that the Union acted in breach of rule 37.21 of its rules in the conduct of the election of Lancashire Regional delegates to Congress in 2001, the alleged breach being that ten unnamed branches acted in collusion as regards that election and were involved in each others formal business without the knowledge or approval of the Regional Secretary.

## COMPLAINT 6

**Rule 71.2 states that where a collective vote is decided upon at Branch meetings the financial membership of the branch as shown on the last balance sheet will count as regards any decision taken by the Branch. In contravention of this rule, it is alleged that the union used the December 2000 financial membership figures when the September 2000 were the last figures available at the time of issue of the ballot forms in January 2001 and that this is a breach of GMB rule 71.2.**

### **The Applicant's Submission**

50. The Applicant argued that the last balance sheet before the issue of ballot forms in the election to Congress in 2001 was the September 2000 balance sheet, whereas the Union had used the December 2000 balance sheet.

### **The Union's Response**

51. Counsel argued that the figures used in this election were those available on 31 December 2000 and the voting strength of each Branch at that date had been marked on the ballot form sent to members on 2 January 2001. Ms Machin submitted that these were the up to date figures and in compliance with rule 71.2.

### **Conclusion**

52. The task of deciding which balance sheet is "*the last balance sheet*" may depend on the date upon which the task is to be performed, as noted above. On the facts of this complaint the ballot papers were issued on 2 January 2001 and the voting closed on 28 February 2001. Accordingly, whichever date is chosen, the last balance sheet was that for the period concluding 31 December 2000. The actual balance sheet for that period may or may not have been published by 2 January 2001 but, in my judgement, this practical consideration is not crucial. The figures for the quarter ending 31 December 2000 were fixed on or about that date and provided the most up to date information on voting strength. The December 2000 balance sheet was or would in due course be published and the branches would be able to check the voting strength notified to them by the Regional Office against a published document. This ballot was therefore conducted on the figures for financial membership of the branches contained in the last balance sheet as required by rule 71.2.

53. For the above reasons I refuse to make the declaration sought by the Applicant that the Union acted in breach of rule 71.2 of its rules in the conduct of the election of Lancashire Regional delegates to Congress in 2001, by not counting in that election the financial membership of each branch as shown in the last balance sheet.

## **COMPLAINT 7**

**The timescale for the issue and return of ballot forms to the Regional Officer in respect of the Branch ballot for Regional delegates to the Congress 2001, by 5<sup>th</sup> January 2001 (three days after issue of those ballot appears) was not in accordance with the requirements of GMB rule 71.2 in that authorised instructions to convene meetings of the Branches was not given by notice.**

### **The Applicant's Submissions**

54. The Applicant noted from Mr O'Hara's report that the first ballot form in the election of Congress delegates which was returned by a branch was received on 5 January 2001, only three days after the ballot papers were issued on 2 January. The Applicant deduced from this that at least that particular branch had not called its branch meeting on seven days notice, as required. The Applicant argued that rule 71.2 imposes a requirement on branches to convene branch meetings by such notice.

### **The Union's Response**

55. Counsel argued that the Applicant's interpretation of rule 71.2 was misconceived. In Ms Machin's submission, rule 71.2 contains no requirement to convene a branch meeting whether or not upon seven days notice. Further, counsel argued that on the facts of this case the branch in question would have been aware of the date the ballot papers were to be issued and could have arranged its branch meeting to take place between 2<sup>nd</sup> and 5<sup>th</sup> January upon proper notice. Counsel submitted that the Applicant had not proved that there was a breach of rule 71.2, even on his interpretation of that rule.

### **Conclusion**

56. The written complaint accepted by my Office, as stated above, contains a textual error. The date for the return of ballot forms was not 5 January 2001 but 28 February 2001. Nevertheless, the thrust of the Applicant's complaint was plain and the Union took no



point on this error. As I have found in relation to complaint 3, rule 71.2 imposes no obligation on branches to convene meetings by notice. In my judgement, rule 71.2 sets out the duties of the CEC or Regional Committee in the event of either of these bodies deciding that there should be a collective vote at branch meetings in the exercise of their discretion under rule 71.1. It is these bodies which must give authorised instructions by notice to convene meetings of the branches. Should I be wrong on this point, I accept counsel's submissions that on the facts before me no breach of rule 71.2 has been established. The Applicant was unable to show me any provision in the rule book which requires branches to give seven days notice of a meeting and, in any event, with the election timetable being published in advance, the branch in question could well have given appropriate notice for a meeting which took place between 2<sup>nd</sup> and 5<sup>th</sup> January 2001.

### **Regional Council Meeting 12 May 2001**

#### **COMPLAINT 8**

**In breach of rule 23.2 of the Lancashire Region Regional Benefits Booklet, the Regional Secretary and members of the committee proposed that the Regional Committee should be made a payment from the Friendly Benefit Section Fund.**

#### **The Applicant's Submission**

57. The Applicant claims a breach of rule 23.2 of the terms of a booklet published by the Lancashire Region entitled "*Regional Benefits Booklet*". Rule 23.2 of this booklet states, "*The Regional Secretary, and other staff of the Section, shall receive such payments for their services as may be agreed on by the Regional Committee*". The Applicant argued that this booklet constitutes bye-laws of the Regional Council, which the Regional Council was entitled to make under rule 20(10) of the rules of the Union. The Applicant submitted that this rule had been broken when Mr Hughes proposed to the Regional Council a resolution for the payment of expenses to members of the Regional Committee from the Friendly Benefits Section fund, without that resolution having been circulated in advance and proper notice of it having been given. The Applicant argued that this resolution should not have been tabled from the floor.

## **The Union's Response**

58. Counsel explained that the Friendly Benefits Section operates only in the Lancashire Region. In addition to the general benefits available to members under the rule book, members of the Lancashire Region could volunteer to contribute an extra 10p, 20p or 30p a week in order to obtain different levels of sick benefit. In counsel's submission the so called "*rules*" of the Regional Benefits Booklet were not rules of the Union over which I have any jurisdiction. Counsel submitted that for a Regional Council to establish by-laws under rule 20(10) the approval of the CEC must first be obtained and the CEC had not approved the rules in the "*Regional Benefits Booklet*" as by-laws. Counsel noted that although the Friendly Benefits Section fund fell outside the rules of the Union, its trustees were the trustees of the Lancashire Region and the management of the fund was vested in the Regional Council. Accordingly, counsel submitted in the alternative that the Regional Council had acted within the rules of the Regional Benefits Booklet and could rely upon rule 24 of that Booklet which provides that, "*Any matter arising in connection with this Section not provided for in these rules, shall be dealt with by the Regional Committee or Regional Council, who shall have power to decide anything deemed just and beneficial to the members*".

## **Conclusion**

59. The issue I have to determine is whether the proposal made to the Regional Council to authorise payments of fixed expenses to members of the Regional Committee from the Friendly Benefits Section fund amounted to a breach of rule 23.2 of the Regional Benefits Booklet. In determining this narrow issue I will assume that the rules of the Regional Benefits Booklet comprise rules of the Union, without so deciding. Whilst acknowledging the force of counsel's arguments, it is extremely unattractive that members money should be handled by the Regional Council and Committee without the Union being responsible for their actions through the rules of the Union. Should this matter require determination in another case it would be important that the parties produce evidence of the history and current conduct of the Friendly Benefits Section and its constitutional relationship to the Union.

60. As this complaint is put by the Applicant, I find that rule 23.2 of the Regional Benefits Booklet has no relevance. The Regional Committee did not purport to agree payment to the Regional Secretary and other staff of the section for their services. The Regional Council decided to continue the long standing practice of paying fixed expenses to members of the Regional Committee, it being the Regional Committee which administered the funds of the Friendly Benefits Section. I find that the Regional Council was entitled to reach a decision on the payment of expenses by virtue of rule 20(8) of the rules of the Union which provides that the Regional Council has general powers to “*administer the business and affairs of the Region*” or by virtue of rule 24 of the Regional Benefits Booklet. However, the Applicant’s complaint, as he explained at the hearing, was not so much that the Regional Council did not have the power to reach their decision but rather that the decision was reached improperly in that no proper notice of it had been given. In making this submission, the Applicant did not refer to a provision of either the rules of the Union or the Regional Benefits Booklet that requires notice of a specific length to be given. Even if there were to be such a provision, the Applicant’s complaint did not allege a breach of that specific rule.
61. For the above reasons, I refuse the declaration sought by the Applicant that the Union acted in breach of its rules at the meeting of its Regional Council on 12 May 2001 by allegedly breaching rule 23.2 of the Regional Benefits Booklet of Lancashire Region in proposing that members of the Regional Committee should be made a payment from the Friendly Benefit Section fund.

D Cockburn  
Certification Officer