

DECISION OF THE CERTIFICATION OFFICER ON COMPLAINTS MADE UNDER SECTION 3 (2)  
OF THE TRADE UNION ACT 1913

(4)

---

W RICHARDS  
AND  
NATIONAL UNION OF MINeworkERS  
AND  
NATIONAL UNION OF MINeworkERS  
(NOTTINGHAM AREA)

---

DATES OF HEARING 23, 24 and 25 March 1981  
DATE OF DECISION 30 April 1981

---

The complainant appeared in person.

The two unions were represented by Mr T R A Morison, QC.

---

1 Mr W Richards, who was, at the time when he made his complaints, a member of the National Union of Mineworkers and of the Nottingham Area of that union, complains to me under Section 3 (2) of the Trade Union Act 1913 ("the 1913 Act") that the Union, and in one case the Area, has acted in breach of the political fund rules. I shall refer to the National Union of Mineworkers as "the Union" and the Nottingham Area as "the Area" except where to do so would cause confusion.

The complaints

2 Mr Richards makes four complaints; three of them allege that the Union, or in one case the Area, spent money from its general fund on matters falling within the political objects contained in rule 47 (1) of the Union's rules whereas rule 47 (2) requires that money spent on those objects must be paid

from the Union's political fund.

3 Rules 47 (1) and (2) are in the following terms:

"47. - (1) The objects of the National Union of Mineworkers shall include the furtherance of the political objects to which section 3 of the Trade Union Act, 1913, applies, that is to say, the expenditure of money:-

(a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his or her candidature or election; or

(b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) on the maintenance of any person who is a member of Parliament or who holds a public office; or

(d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office; or

(e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of the Act, that is to say, the regulation of the relations between workers and masters, or between workers and workers, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

The expression "public office" in this rule means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

(2) Any payments in the furtherance of such political objects shall be made out of a separate fund (hereinafter called the political fund of the Union)."

4 The allegations contained in those three complaints may be briefly summarised as follows:-

The first complaint; that the Area spent money from its general fund on sending union officials, committee members and members to participate in a march and a lobby of Parliament organised by the

Labour Party; and that this was expenditure on the political object in rule 47 (1)(e);

The second complaint; that the Union spent money from its general fund to send a colliery band to attend, and to pay for newspaper advertisements to support, the same march and lobby; and that this also was expenditure on the political object in rule 47 (1)(e);

The fourth complaint; that the Union paid a sum of money to a trade union consortium for the development of premises at Walworth Road for use by the Labour Party as its headquarters; and that this was expenditure on the political objects in rule 47 (1)(a), (b), (c), (d) and (e).

In each case it was alleged that since the payments had been made in the furtherance of political objects, there had been a breach of rule 47 (2).

5 The allegation in the third complaint was that the Union refused to allow Mr Richards to inspect certain books of account relating to the political fund with the result that as he was a member who was exempt from paying the political contribution, it acted in breach of rule 47 (8) which provides that such a member shall not be placed at a disability or disadvantage as compared with other members (except in relation to the control or management of the political fund) by reason of his being so exempt.

#### Interpretation of the 1913 Act and the Union's Rules

6 Counsel for the unions prefaced his submissions with a number of observations as to the proper interpretation of rule 47(2). The rule is made in pursuance of section 3 of the Act and it is clear that the wording of the section, and consequently of the rule, presents several difficulties of interpretation. I shall discuss these points before I consider the complaints themselves.

7 First, as Counsel pointed out, the way that section 3 (1)(a) and section 3 (3) (rule 47(2) and rule 47(1) respectively) fit together, or rather fail to

do so, is unhappy; while section 3 (1)(a) states "that any payments in the furtherance of those (political) objects are to be made out of a separate fund", section 3 (3) explains that "the political objects to which this section applies are the expenditure of money" on the five objects which are then listed. On a literal interpretation it appears that in applying rule 47(2) one must consider whether there was "a payment in the furtherance of the expenditure of money" on one of the five listed objects.

8 Second, the prohibition in section 3 (1) of the Act which applies to any spending on the political objects by unions without political funds is expressed differently from the prohibition in section 3 (1)(a) which applies to spending on the political objects from the general funds of unions with political funds. Section 3 (1) provides that:-

"The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects."

Counsel submitted that although the words relating to indirect payment in section 3(1) do not appear in section 3(1)(a), indirect application of monies by way of expenditure was probably covered. However, the phrase on indirect payment qualified the word "applied" rather than the words "in the furtherance" with the result that it dealt with indirect application of funds through, for example, an agent and not with the possibility of indirect furtherance.

9 I doubt whether that is right; it seems to me that the phrase qualifies the whole expression "applied in the furtherance of the political objects to which this Act applies". I would in any event take the view that the word "furtherance" does in itself carry the implication that a payment need not be literally upon one of the political objects but may be indirect. Accordingly I do not think the point made by Counsel has the significance which he attributed to it.

10 The third submission, on which Counsel placed greatest weight, was that the expression "in the furtherance of the political objects" in the 1913 Act should be construed in the same way as the expression "in furtherance of a trade dispute" in section 3 of the Trade Disputes Act 1906. My attention was

drawn to the fact that section 8 of the 1913 Act provided not only that it and the Trade Union Acts 1871 and 1876 should be construed as one but also that the 1871, 1876, 1906 and 1913 Acts might be cited as the Trade Union Acts 1871-1913, although I note that the 1913 Act was not required to be construed as one with the 1906 Act. Accordingly it was submitted that the 1913 Act was part of a comprehensive series of statutes relating to trade union law which included the 1906 Act. On the authority of *Express Newspapers v McShane*\* the word "furtherance" was to be given a subjective and purposive interpretation and accordingly when considering the word "furtherance" in rules made pursuant to the 1913 Act I first had to determine whether the payments had been made with the purpose of furthering the political objects.

11 My own previous decisions on complaints involving the spending of money, and as far as I am aware the decisions of all my statutory predecessors, have turned on the question whether there has in fact been expenditure on a listed object and not on an investigation of the union's purpose in making the payments. My understanding of the term "in the furtherance" in the 1913 Act was that it added an indirect element to the consideration of whether the expenditure was on a listed object, so as to bring the prohibition in section 3(1)(a) into line with that in section 3(1).

12 The expression "furtherance" appears in rather different contexts in the 1913 and 1906 Acts and the expression "payments in the furtherance" in rule 47(2) is more capable of bearing an objective construction than "an act done by a person in contemplation or furtherance of a trade dispute". There is, I consider, a substantial difference between "action" in furtherance of a trade dispute when "action" is without limitation and therefore covers any kind of act and "payments in the furtherance" of specific and detailed matters where a payment falling even marginally outside those matters is not covered. My view therefore remains that Parliament did not intend that the issue on complaints of this sort should turn only on the intention of the union in accordance with a subjective interpretation of the words "in the furtherance". If it had, there would be little point in the detailed description of the political objects that appears in the list in section 3(3) and rule 47(1), because the intention could only be determined by an assessment of whether the union had a general political intention and not by reference to the detail of the listed

\* 1980 AC 672

political objects. However, in view of Counsel's strong submission to the contrary and of the uncertainty which surrounds the word "furtherance" following the McShane decision, I shall consider in relation to each of the three complaints not only whether there was expenditure on the political objects but also, in case my view of the law is wrong, Counsel's submissions as to the purpose of making the payments.

#### The first complaint

##### Jurisdiction

13 Section 3 (2) of the 1913 Act provides that:

"If any member alleges that he is aggrieved by a breach of any rule made in pursuance of this section he may complain to the Certification Officer".

Accordingly, my jurisdiction is confined to the hearing of complaints made against unions which have rules made in pursuance of the section; these rules are normally known as the "political fund rules". Mr Richards made this complaint against the Area and not the Union, but the Area has no political fund rules of its own. I therefore have to decide whether I have jurisdiction to hear the complaint. In so doing, I must ask myself whether the Union is a union with sections which operate directly under the rules of the Union as well as under their own section rules, or whether it is a federal body with affiliated unions which operate only under their own self-contained rules.

14 Rule 4 of the Union's rules reads in part:

"4. - (a) All members for the time being of the associated trade unions specified in the first column of the Schedule hereto shall be members of the Union, and any such member of the Union who, for any cause, is no longer a member of an associated trade union ... shall automatically cease to be a member of the Union ...".

The unions listed in the Schedule to the rules are the NUM Areas including the Nottingham Area. It is clear that the Union is one which consists of individual workers and as such is not simply a federal body. At the same time, the rule says that the Areas are "associated" trade unions and clearly assumes that they are separate trade unions in their own right. I note that

the Nottingham Area is itself included in the list of trade unions maintained by me under section 8 of the Trade Union and Labour Relations Act 1974 and that it holds a certificate of independence issued under section 8 of the Employment Protection Act 1975.

15 However, there are many indications in its rules that although it has a significant degree of autonomy, the Area is a part of the Union and subject to the latter's rules in many, if not all, respects. For example:-

(a) Rule 1 of the Area rules refers to the Area as a "constituent part of the National Union of Mineworkers".

(b) The first object in Rule 2 is to support and put into effect the objects of the National Union, insofar as the members of the Area are concerned, and the third object provides, inter alia, for pecuniary assistance to be given to members during strikes authorised by the National Union in accordance with its rules.

(c) Rule 3 (b) is written on the basis that it is the National Union which is "principally responsible" for collective bargaining in respect of the Area's members and rule 3 (c) enables the National Executive Committee, that is the main executive committee of the National Union, to direct the Area to terminate the membership of the members of the Area in certain circumstances.

(d) Rule 30, under the heading "Relationship of Union Rules to Rules of National Union", provides that in the event of conflict between the rules of the National Union and the Area, the rules of the National Union shall prevail.

16 Rule 48 (1) of the National Union lays down that having collected the political contribution, the Areas are to pay it to the National Union which is then to return one-third of it to each area for the purpose of carrying out only the 1913 Act objects. Area rule 23 establishes a Political Committee to deal with monies so remitted by the National Union and provides that

"Subject to the authority of the National Executive Committee, the Political Committee shall operate in accordance with Rules set out in Appendix 1".

Looking at these rules and the others relating to the political fund in the two rule books, it is clear that the Area merely collects the political contribution on behalf of the National Union and, under the rules of the latter, is permitted to spend one-third of it on political matters of its own choosing, within the limits laid down by the 1913 Act.

17 Accordingly I conclude that the Area is a part of the Union and that in making political payments through the Political Committee the Area is acting under, and is bound by, the rules of the Union. The implication of a ruling to the contrary would be that any payment by the Area in furtherance of the political objects would be in breach of section 3(1) of the 1913 Act. It follows from my conclusion that any expenditure from the Area's general funds on the political objects is a breach of rule 47(2). I therefore hold that Mr Richards' complaint is of a breach of that rule of the Union and that I have jurisdiction to hear the complaint.

#### The facts

18 In October 1979 the Union, as an organisation affiliated to the Labour Party, received a circular letter from the Party saying that as part of the Party's campaign against the Government's public spending cuts, it had arranged a lobby of the House of Commons to take place on 28 November 1979 and that the lobby was supported by the Trades Union Congress. Among other supporting activities, there was to be a march. The circular finished by making an urgent plea for support.

19 On 1 November the Trades Union Congress sent a circular letter to its own affiliated unions (including some not themselves affiliated to the Labour Party) following up the letter from the Labour Party. It reported that a national lobby of Parliament was being organised by the Labour Party and continued:

"The purpose of the Lobby is to protest against the Government's policy of cutting back public expenditure for local authorities, and, in particular,

to highlight the cuts in the Rate Support Grant for 1980-81, which are due to be announced by the Environment Secretary in Parliament on 20 November".

It went on to say that the Local Government Committee of the Trades Union Congress suggested that individual unions should consider selecting delegations to join the lobby on a representative basis. Throughout the letter, in contrast to the letter from the Labour Party, a strong emphasis is placed on the proposed local government cuts as opposed to wider cuts in public expenditure. The impression is given that the letter was written with the view that the lobby and march were solely concerned with local government cuts.

20 On 8 November the National Executive Committee of the Union discussed the events to be held on 28 November. Under the heading "Labour Party Campaign Against the Cuts" the following record appears:

"The Committee had before them correspondence from the Trades Union Congress and the Labour Party regarding a national lobby of Parliament on 28 November 1979 to protest against the Government's policy of cutting back public expenditure which were due to be announced in Parliament on 20 November 1979.

It was agreed:

"That the Union should support the lobby and be represented by the National Executive Committee; and that Areas be advised to support."

It was further agreed:

"That the National Union should meet the cost of one band from the Yorkshire Area."

It was also agreed:

"That the National Union of Mineworkers take advertising space in 'The Tribune', 'Morning Star' and 'Labour Weekly'."

21 On 12 November the Area Executive Committee, which had been sent copies of the letters from the Labour Party and the Trades Union Congress, discussed the matter and the minutes, having set out the decisions of the National Executive Committee mentioned above, go on to record the decisions of the Area Committee in the following terms:

"The Area Executive Committee considered the correspondence from National

Level and in line with the authority granted them at the October 1979 Council Meeting agreed -

(a) That each Branch be requested to appoint 12 members, preferably Branch Officials, Committee Members or other members of the Branch active within the Trade Union and Labour Movements;

(b) A special train to and from London be arranged, starting, if possible, from Mansfield/Alfreton Parkway and calling at Nottingham; and

(c) One shift loss of time be paid together with £5 subsistence and travelling expenses between home and the nearest of the two railway stations."

22 On 21 November the National Executive Committee discussed the progress of their arrangements and recorded, inter alia, that the Union had secured the services of the Carlton Main/Frickley Band to take part in the march.

23 The events took place on 28 November as arranged by the Labour Party. According to Mr Whelan, who is General Secretary of the Nottingham Area, a trustee of the Union and a member of the National Executive Committee and of its Finance and General Purposes Sub-Committee, people assembled at Hyde Park in the morning with their banners and bands and there was a meeting there with speakers who included Mr Len Murray, Mr James Callaghan, Mrs Shirley Williams and Mr Tony Benn. Then they formed up and marched off to Westminster. At 2 pm there was a meeting at Central Hall, Westminster and from 2.30 pm participants went into the Palace of Westminster to lobby MP's. Mr Whelan said that the Area had no part in organising the events other than organising the attendance of its own members.

24 The expenditure incurred by the Area amounted to more than £11,000. The money was spent on the hire of the special train and payments to those attending the lobby as authorised by the Executive Committee; there was also a payment direct to the National Coal Board to cover contributions to the Mineworkers Pension Scheme for those attending.

25 Mr Richards had thoroughly researched the amount of money spent but in spite of his best efforts and correspondence with Mr Daly, the Secretary and Treasurer of the Union, it proved impossible to reconcile his figures precisely with those shown for expenditure on the events in the General Fund.

Receipts and Payments Accounts for November and December 1979. Nevertheless the discrepancy was small and Mr Richards said that he was not concerned about it.

26 The total expenditure shown in the general accounts is £11,573.13. This included £71.50 spent on a demonstration in Mansfield. Mr Richards maintained that this expenditure should also have been paid from the political fund but no evidence was given as to the nature of the demonstration or the Area's reasons for participating in it, and I therefore take the view that the demonstration and the expenditure on it must be excluded from my consideration of this complaint. That means that the Area spent the sum of £11,501.63 on participation in the events which took place in London on 28 November 1979.

What was the purpose of making the payments?

27 In line with the general submission of Counsel that I had to determine whether the payments had been made with the purpose of furthering the political objects - a submission which I have already said I do not accept - he contended that in this instance they had not. Both Mr Daly and Mr Whelan gave evidence that the Union supported the events held on 28 November in order to dissuade the Government from cutting expenditure in the public sector. Behind this lay two beliefs, first that the cuts, even if not directly affecting the mining industry, would have undesirable economic effects which would eventually reduce the demand for coal and thus affect the industry and its employees; and second that the Government might reduce the grant in aid to the National Coal Board with direct effect upon the industry and its employees. I accept that evidence and therefore agree that in deciding to participate in the events of 28 November the Union (including the Area) had a purpose other than to further a political object.

28 Is that then the end of the matter? I do not think it is. In *Express Newspapers v McShane* the original defendant would have been acting unlawfully if he had not been acting in furtherance of a trade dispute. On my understanding of the decision of the House of Lords the fact that he had or might have had purposes other than the furtherance of a trade dispute in mind as well when he decided to take the action in respect of which interlocutory

relief was sought would not have altered their Lordships' decision. Under the 1913 Act a union acts in breach of its rules if it makes a payment in the furtherance of the political objects other than from its political fund. Accordingly it seems to me an inescapable result of following the decision in *Express Newspapers v McShane* that it is immaterial that a union has purposes other than the furtherance of the political objects in mind when making a payment as well as that purpose. Thus even if the Union is right in its submission that the *McShane* subjective test should be applied to rule 47(2) so that I have to decide whether the payments were made with the purpose of furthering the political objects, the question that I have to ask myself is whether one of the purposes of making the payment was the furtherance of a political object.

29 The evidence of Mr Daly and Mr Whelan which I have just referred to is undoubtedly relevant to this question. I have already accepted that one of the reasons why the Union supported the events of 28 November was in order to persuade the Government to abandon policies which the Union considered would in the end be damaging to the interests of its members. On the view I take of the law, that does not, however, determine that the payments were not made in the furtherance of the holding of a political meeting.

30 There is strong circumstantial evidence, and some evidence in the minutes referred to earlier, that the Union did also have a political purpose in mind. When deciding to participate, the Union and the Area knew that the events were being organised by the Labour Party as part of a continuing political campaign against Government cuts in public expenditure and the Union is a body which is affiliated to the Labour Party. On the face of the matter it is implausible to suggest that a union committed to supporting the Labour Party did not, when taking a decision to participate in an activity organised by that Party in protest against Government policies, have in mind the purpose of furthering the political objects in rule 47(1) if what it actually did, apart from the question of furtherance, fell within that rule.

31 Moreover Mr Daly was asked in cross-examination by Mr Richards "It is a Labour Party campaign against the Government's policy. Do you think it is a political matter?" He replied "It is political and industrial. That is why

the trade union movement was involved". Later he amended that statement and said "It could be construed as being partly political, but our view was that the objective was mainly an industrial and economic one". Lastly he said "Payments were made from NUM funds, from the general fund, because of this industrial objective". In my view these remarks confirm that whatever other reasons there may have been for making the payments, there was also a political reason for doing so, and accordingly an intention to further a political object.

32 At the hearing Counsel handed me an extract from a Scottish newspaper, either the Scotsman or the Glasgow Herald of 27 March 1965. The extract was a report, not a law report, of a judgement by Lord Kilbrandon in 1965. Unfortunately the name of the case is not evident, although the pursuer may have been a Mr J McCarroll. The report was, I think, adduced to show that a lobby of Parliament by Scottish miners to protest against threatened Scottish pit closures had been held to have a primarily industrial purpose. I have no doubt that that was right, but I do not think that it is relevant to this complaint, both because on the view I take only one of the purposes of making a payment has to be the furtherance of a political object and because the facts are different. It appears that the 1965 demonstration was a demonstration organised by the Scottish miners which related specifically to Scottish pit closures whereas the events with which I am concerned were organised by the Labour Party and related to public expenditure cuts.

Was there expenditure on a political object?

33 The other issue for my decision is whether the payments were expenditure on the political object in rule 47(1)(e). This raises a number of questions which I shall deal with in turn.

34 The first question is whether meetings were held and if so whether they were political meetings. I have no doubt that a series of political meetings was organised and arranged by the Labour Party on 28th November 1979. This included the meetings at Hyde Park in the morning, at Central Hall, Westminster after lunch and at the Houses of Parliament later in the afternoon. Indeed, though he made no concessions, Counsel admitted that he

would find it difficult to argue that there were no meetings being held, or that the meetings were not political.

35 Secondly, was the expenditure on the holding of the meetings? It was submitted on behalf of the Union that rule 47(1)(e) applied only to meetings held by the union making the payment. I am unable to agree with this submission, because if that had been the intention it would have been a simple matter to draft a provision which clearly contained such a limitation. Indeed it seems to me that the present wording was used so that a payment to a political party to finance the holding of a political meeting or hire a hall for the holding of such a meeting would be covered.

36 It is arguable on the wording of rule 47(1)(e) that payments made to persons for the purpose of attending a meeting are not payments on the holding of a meeting. But the consequence of that narrow interpretation would be that unions, including unions without political funds, would be entitled to make payments from their general funds to send members to party political meetings, perhaps as delegates, even if those meetings had no connection with the statutory objects of any union - for instance, election meetings in support of a candidate from a particular political party which would otherwise be covered by the similar words in rule 47(1)(b). I cannot believe that this was the intention of Parliament when passing the 1913 Act.

37 It seems to me that if a union pays the expenses of delegates to attend a meeting which it organises, the payments are "on the holding of a meeting". Note, for instance, that "Citrine's Trade Union Law", which is still the only authoritative text book dealing with the detail of the 1913 Act, states on page 437 of the Third Edition that "the expenses of holding a meeting will, of course, include the payment of delegates' expenses". I see no reason why the situation should necessarily be different if the meeting is organised by someone other than the union; for example it seems to me that payments for the expenses of delegates sent to the Labour Party Conference are just as much payments on the holding of a meeting as expenses paid to delegates for attendance at a meeting organised by the union itself. Proceeding from there I can see no valid distinction between payments to delegates to facilitate their attendance and payments to facilitate the attendance of other sorts

participants, such as the NUM members involved in the events of 28 November. Indeed, although the word may have been used loosely, I note that the TUC letter of 1 November referred to the participants as union "delegations", and advised that the delegations should be selected on a representative basis. I therefore hold that the payments which are the subject of this complaint were payments on the holding of political meetings.

38 The third question concerns the proviso to rule 47(1)(e), which has the effect of excluding from the rule payments on the holding of a political meeting if the main purpose of the meeting is the furtherance of the statutory objects, which include the regulation of relations between workers and masters. There is I think a conceptual difficulty in applying this exclusion to meetings organised by someone other than the union making the payment since the exclusion is clearly most appropriate when the meeting is one organised by the union. In my view the words "main purpose of the meeting" mean that a subjective test must be applied, with the result that it is the main purpose of the organisers of the meeting which must be determined. Obviously, however, it will usually be necessary to have regard to what the meeting was about in order to decide what purpose or purposes the organisers had in mind.

39 Consequently where a union makes payments on the holding of a meeting organised by another person or body it is the purpose of that other person or body in organising the meeting which must be considered in deciding whether the statutory objects exclusion applied, and not the purpose of the union in making the payments. This is perhaps unfortunate from the union's point of view because, although it is not impossible that persons or bodies other than the union should have the statutory objects as the main purpose of their meetings, they are in the nature of things less likely to do so.

40 The meetings which took place on 28th November were arranged by the Labour Party as part of a campaign against the policies of the Government. They were not organised by the Trades Union Congress or by the Union although the lobby was supported by those bodies. In my view this means that the strong evidence given by Mr Daly and Mr Whelan as to the Union's reasons for participating in the events of 28 November is not relevant to deciding the main purpose of the meetings. Similarly the evidence in the letter of 1 November from the Trades

Union Congress, which placed the main emphasis on the proposed local government cuts rather than on the wider issues which were of concern to the Union, is also immaterial because it indicates the reasons which the TUC had for supporting the lobby. Consequently I consider that the main purpose of the meetings was political and was not the furtherance of the statutory objects.

#### Conclusion

41 I therefore hold that the payments made by the Area were payments on the holding of political meetings the main purpose of which was not the furtherance of the statutory objects; and I am satisfied both that there was expenditure on the political object in rule 47 (1)(e) and that in making the payments there was an intention to further that political object. It follows that there was a breach of rule 47(2), whichever test I use to interpret that rule, and I accordingly find the first complaint justified.

#### The second complaint

42 Mr Richards' second complaint is that the Union spent money from its general fund on the march and lobby of 28th November 1979. The facts have been adequately set out in describing the first complaint. The expenditure with which Mr Richards is concerned is a sum of £550 paid to the Carlton Main/Frickley Band and an unspecified sum alleged to have been spent on advertisements in three newspapers.

43 Mr Richards went to London to see the books of the Union and to ask how much was spent on the band. He was told that the figure was £550 and the Union does not dispute this. However, he says that he did not ask to see any receipts about the newspaper advertisements and he did not produce any evidence about the amount spent, although he guessed that the advertisements would have cost £90 each. In the circumstances I do not think that it would be right for me to make any finding on the allegations about advertisements.

44 With regard to the band, I take the view that with the exception of any conclusions to be drawn from the evidence relating solely to decisions taken

by the Area, the same considerations and arguments apply to the second complaint as to the first. My findings are therefore that the £550 paid to the band was paid to secure the participation and attendance of the band at the events of 28th November 1979, specifically the Hyde Park meeting and the march that followed, and that the sum was expenditure on the holding of political meetings so as to constitute a payment in the furtherance of a political object in breach of rule 47(2); further for the purposes of the subjective test, I find that there was an intention on the part of the union to further the political object in rule 47(1)(e). Accordingly I find the second complaint justified.

#### The third complaint

45 On 3 February 1980 Mr Richards wrote to the Union asking whether he could inspect certain books of account. The Union agreed to this but when Mr Richards attended on the date arranged it refused to let him inspect any books relating to the political fund. There followed a protracted correspondence about further inspection of the books and Mr Richards' wish to inspect the political fund books. I need not go into the details of this except to say that on 14 April Mr Richards wrote maintaining that the rules entitled him to inspect the political fund account books and in particular pointed to the provisions of rule 47(8) and rule 45.

46 The Union's most definitive reply to Mr Richards is in a letter from Mr Daly dated 21 April which reads in part as follows:

"I have now received the legal advice to which my letter of 15 April referred.

My opinions have been confirmed and I must inform you that the records of the Political Fund are not subject to examination by someone not a member of that Fund ...."

47 Rule 47(8) is in the following terms:

"(8) A member who is exempt from the obligation to contribute to the political fund of the Union shall not be excluded from any benefits of the Union, or placed in any respect either directly or indirectly under any disability or disadvantage as compared with other members of the Union (except in relation to the control or management of the political fund of

the Union) by reason of his or her being so exempt."

48 Rule 45 provides in part that "Any member or any person having an interest in the funds of the Union shall at all reasonable times be entitled to inspect the books of the Union ...". I have no jurisdiction to hear any complaint of a breach of rule 45 because the rule is not a rule made in pursuance of section 3 of the 1913 Act. Moreover, although rule 45 is open to different interpretations and, indeed, Mr Richards and the Union hold different views as to whether it gives Mr Richards the right to inspect the political fund books, I do not think that the rule is relevant to my consideration of the complaint of a breach of rule 47(8), which is a rule made in pursuance of section 3 of the 1913 Act. Neither rule 45 nor any other rule can entitle the Union to act in breach of rule 47(8). Similarly my decision on rule 47(8) does not determine whether there has been a breach of rule 45.

49 The question under rule 47(8) is whether Mr Richards was placed under a disability or disadvantage by reason of his being an exempt member. In argument before me Mr Richards concentrated on the point that he had been placed at a disadvantage because he had been unable to obtain information which would have been useful to him, and in particular, might have been helpful to him in bringing his complaints before me and challenging other actions taken by the Union. In answer to this Counsel pointed out that Mr Richards' complaints related to expenditure from the general fund, so that it was inspection of the books of that fund and not those of the political fund, which was relevant. He went on to argue that there was no disability or disadvantage because, as a non-contributor to the political fund, Mr Richards had no interest in looking at its books; or alternatively that even if there was a disability or disadvantage it related to control or management of the political fund and was therefore covered by the exception permitted by rule 47(8).

50 I am not persuaded by this latter argument; in practical terms it does not seem to me that a simple request to inspect the books of the political fund has any real bearing on its control or management. However, I consider that the Union is on stronger ground in claiming that someone who does not contribute to the political fund and has no say in how it is spent has no interest in the books of that fund; and consequently that he suffers no

disability or disadvantage by being denied the opportunity to inspect them. Even if there was a disability or disadvantage in this case, I take the view that it was technical only and not a disability or disadvantage which amounted to a breach of rule 47(8). The provision in the 1913 Act on which that rule is based was intended to protect exempt members from being victimised on account of their exempt status but not, as I see it, to enable them to require information about an area of union activity from which they have deliberately chosen to exclude themselves.

51 I therefore find that Mr Richards was not placed under any real disability or disadvantage within the meaning of those words in rule 47(8) and that his complaint is not justified. I should add that even if I had reached a different conclusion I would not have thought it appropriate to make an order to remedy what could, at the most, be regarded as only a technical breach of the rule.

#### The fourth complaint

##### The facts

52 The Labour Party, through its operating company, Labour Party Nominees Limited, owned property at 144/152 Walworth Road, London SE17. In 1977 it was in the course of developing the property with the intention that the Party would eventually have its headquarters there.

53 At some time during 1977 or early 1978 the Labour Party needed finance in order to complete the development. Trade unions affiliated to the Party became aware of this need and a committee of national officers of certain trade unions affiliated to the Party was formed to look into the matter; one of the members of that committee was Mr Gormley, President of the Union. By May 1978 the committee, known as the Trade Union Ad Hoc Committee, had evidently reached the stage of making initial proposals because the minutes of the Finance and General Purposes Sub-Committee of the Union's National Executive Committee for 9 May 1978, receiving a report from Mr Gormley, say the Ad Hoc Committee had concluded that "the new Labour Party Offices earmarked for construction on the Walworth Development be the exclusive

financial responsibility of a Trade Union Limited Company, yet to be formed, who would become the full owner of the property resulting". The Sub-Committee agreed that the Ad Hoc Committee's proposals "be accepted in principle".

54 During the succeeding months the Ad Hoc Committee took professional advice which led to changes in the form of its proposals. In September 1978 the members of the Committee wrote to all unions affiliated to the Labour Party to explain the proposals. The letter began as follows:

"Since David Basnett originally wrote to you on 5 April 1978 a group of Trade Union National Officials (known as Trade Union Ad Hoc Committee) have, with their aides and together with representatives of the Labour Party Executive Committee, further carefully considered the legal, technical and practical problems relating to a Trade Union Consortium providing the funds for the above development. It is clear that other than funding from market sources (if this were to be obtainable) the development can only be financed from sympathetic commercial funding from Trade Union sources. The T. U. Ad Hoc Committee have considered the various alternatives that are available and having regard to legal advice, (in what is acknowledged to be an area of law lacking in clear authority), there seems no major obstacle in the way of Trade Unions affiliated to the Labour Party providing investment funds for the project having regard to the contents of this communication.

The T. U. Ad Hoc Committee are advised that a Union, subject to its objects, rules, its investment rule and political rule and to any rules concerning gifts or grants, can participate in investing in the Walworth Road Development on a commercial investment basis resting on professional property advice and that,

- (1) The recommended course is to use the General Fund.
- (2) Subject to the foregoing, the use of the Political Fund is also permissible."

The letter went on to recommend "that unions be asked to invest from their General Funds a sum in approximate proportion to their affiliated membership".

55 The letter was accompanied by a more detailed summary of the proposals and since it describes the arrangements which were subsequently put into effect, I shall quote the first four paragraphs:

"1. The scheme relates to the proposed financing of the project to provide a headquarters building for the Labour Party at 144/152 Walworth Road London SE17 and involves:

- (a) The completion of the redevelopment of the property which is now owned by the Labour Party and in respect of which the proposals are well advanced, and, possibly,
- (b) The acquisition of an adjoining property at 140/142 Walworth Road, owned by the Confederation of Ship-Building & Engineering Unions (negotiations for which are in progress, but are at an early stage).

If these premises can be acquired it is believed that this will contribute an important improvement to the whole investment value of the site.

2. The project is for the Labour Party to retain its ownership of the freehold and to grant a lease for 999 years at a nominal rent and also the Labour Party will give the Unions an option to purchase the freehold for a nominal consideration. In return the Unions will take over the building and other contracts and pay sufficient money to complete the development. The Unions will then grant a reasonable commercial lease on investment terms to the Labour Party to secure their occupation.

The net rents will be payable to the Unions of the Consortium according to the proportions of their contributions.

3. The ownership of the Unions' interest in the property will be held by Trustees (under a Trust Deed) for the benefit of the Unions which contribute to the development. The active management of the property and the collection and distribution of rents will be carried out by a Management Company acting as agent for each of the Unions. This should be a limited liability company but only a small share capital is needed. Each Union's liability will, therefore, be confined in respect of the Company's operations to the amount of share capital which it holds. The shares should be issued to each Union, in the names of the Trustees of the Union, on a basis proportionate to the amount of that Union's commitment. A Board of Directors must be appointed, and the number and identity of the Directors should be decided. The Board should operate the practical side of the Company's affairs through a Management Committee. An Annual General Meeting must be held once a year, at which representatives of each Union will be entitled to attend, and Special General Meetings can always be convened when necessary.

4. It is recommended that Unions should use their General Funds rather than their Political Funds and should not mix investments from the two funds."

56 The Union's response to the request contained in that letter appears in the minutes of the Finance and General Purposes Sub-Committee for 2 November 1978 which read in part as follows:

"As a result of the agreement, in principle, to subscribe for capital ..., our representatives had been parties to discussions leading to proposals which had now been circulated to all Unions with Labour Party affiliation. After detailed study and discussion it was agreed:

'That we should:-

- (a) Take up our full allocation of £73,924 from the General Fund, the contribution being regarded as an unquoted commercial investment;'

By the end of 1978 the Union had made the investment because in its balance sheet as at 31 December 1978 there is an entry under the heading "INVESTMENTS, at cost" of "Trade Union Consortium for Walworth Road Development ... £73,924".

57 On 17 May 1979, an Interim Declaration of Trust was executed by Mr Moss Evans, Sir John Boyd, Mr David Bassett and Mr Alan Fisher declaring the trusts upon which they held the funds subscribed by the unions which had responded and setting out provisions which would be included in the definitive Trust Deed. By that time some 20 unions affiliated to the Labour Party, including the NUM, are recorded in the Schedule to the Deed as having made contributions.

58 On 25 July 1979, Labour Party Nominees Limited leased 144/152 Walworth Road to the Trustees in consideration of the expense of developing and refurbishing the present buildings and erecting offices on the land and in consideration of £277,177.78. The rent was a nominal £100 per annum.

59 On 12 October 1979 a company was incorporated entitled Walworth Road Trade Union Management Company Limited to carry out the management functions referred to in the letter from the members of the Ad Hoc Committee quoted above.

60 On 3 December 1979, the Trustees entered into a definitive Trust Deed which provided that the Trustees would hold the trust property, that is any property including the property at Walworth Road held by the Trustees on the trusts declared, in trust for the trade unions named in the Schedule to the Deed as tenants in common according to the share of each union. All the unions named were affiliated to the Labour Party. The first preamble to the Trust Deed reads:-

"The principal object of this Trust Deed is to define the trusts upon which the Trade Unions have contributed funds to enable new Headquarters Buildings to be provided for the use and occupation of the Labour Party."

61 On 24 June 1980 the Trustees leased back 144/152 Walworth Road to Labour Party Nominees Limited for the initial yearly rent of £160,000. An independent firm of valuers, Bernard Thorpe and Partners, had advised that the current rental value of the property could reasonably be put at £194,000 subject to certain conditions. However the Board of Management decided to reduce that figure to £160,000 to take account of the fact that no premium had been paid by the Trustees to the Labour Party when the property was leased to them in respect of the site value (which Bernard Thorpe and Partners had assessed at £410,000) and that a promise had been given to the Party on behalf of the Consortium to take that fact into account when the rent was fixed.

#### Submissions

62 Counsel for the unions made a number of submissions the substance of which, as I understand it, is set out in the following paragraphs. The Union's first submission was that there had been no expenditure of money on or in connection with any of the matters specified in rule 47(1) because there was an essential difference, both in terms of language and commonsense and on the evidence, between the expenditure of money on something and the investment of money in something; a person who invested money in something was not in common language expending his money on it. The point about an investment is that everything that has been paid out has been paid for by way of return so that no money has been given, advanced, loaned or expended on any of the political objects.

63 I was referred by Mr Richards to the case of Bennett v National Amalgamated Society of Operative House and Ship Painters and Decorators and others\* in which the union had invested in the shares of a company established to publish a newspaper for the Labour Party. The complainant alleged that the application of the funds in that manner was improper because it was outside the scope of its constitution and powers. The 1913 Act was not in issue. Mr Justice Warrington held that this application of the funds was more than a "mere investment of the funds, it was an application of the funds for a particular purpose". It was submitted by the Union that Mr Richards' complaint was to be distinguished, in so far as the point about investment was concerned, because there was no evidence upon which I could conclude that the

contribution to the project was other than an investment.

64 The Union's second submission was that even if there had been expenditure that expenditure had not been in the furtherance of a political object because it had been made with the purpose of furthering profitable investment and not with the purpose of furthering any of the political objects. The subjective test in *Express Newspapers v McShane* was not therefore satisfied.

65 The Union's third submission was that even if money had been spent with the purpose of furthering any of the political objects it had not in fact been spent on any of those objects but on an investment. Investment in the Cafe Royal, it was argued, is not expenditure on or in connection with food and drink but an investment in property. Similarly an investment in the Labour Party building is not expenditure on or in connection with the political objects, but an investment in property. Another way the submission was put is that the final result of furthering the political objects was too remote or indirect from the making of the payment. These contentions were supported by the proposition that payments in the furtherance of the holding of political meetings meant expenditure on the holding of meetings and there had been no such expenditure.

66 It was argued that the third submission was supported by the decision of the Chief Registrar of Friendly Societies in *Forster* and the National Amalgamated Union of Shop Assistants Warehousemen and Clerks (reported in Part 4 of the Chief Registrar's Annual Report for 1925). In that case the complaint was that the union had paid its affiliation fee to the Trades Union Congress which had later applied part of its funds, which included money subscribed by the union, on political objects and accordingly the payments had been made indirectly by the union in furtherance of political objects. The Chief Registrar agreed that one of the payments by Congress had been made on a political object but held that the union had made no payment in furtherance of a political object. He said "The Union sent its affiliation fee to the Congress for the year 1924, and in October of that year the Congress spent a small sum of money on a political object. Neither the Union nor anyone else knew that there would be a general election in December 1924 and still less that, if there were, the Congress would send out a document in support of

Labour candidates".

### Findings

67 With regard to the Union's first submission, I have no doubt that the contribution made by the Union to the Trade Union Consortium was an investment. A considerable amount of evidence was placed before me that the investment was made in a highly professional manner and that the yield from the rent paid by the Labour Party was above that normally to be expected from the type of investment; I therefore have equally little doubt that the investment was made on a commercial basis and is correctly described as a commercial investment.

68 Although I agree with the Union that it does not follow from the Bennett case that the contribution was not an investment, the question I have to consider under rule 47(2) is whether any "payment" has been made. Counsel, conscious of the confusion of language between the "application of funds", "payments" and "expenditure", concentrated on the meaning of "expenditure". I do not consider that any sensible distinction can be drawn between "payments" and "expenditure" in the 1913 Act. It seems to me that both words refer to an outgoing of money from the Union so that the money is no longer controlled by the Union or vested in its trustees.

69 Is investment an outgoing of such a different kind that it is wrong to regard it as payment or expenditure? Evidence was given that in accounting terms "expenditure" and "investment" are different matters, but I have to decide on the meaning of "expenditure" in rules made under the 1913 Act and I do not think it would be right to regard it as having only a particular accounting meaning. Certainly, expenditure on investments would come from a capital account and ordinary expenditure would come from a revenue account, but that does not in my view mean that there is no expenditure or payment within the meaning of the rules; I see no reason why the source of the outgoing should affect whether there is expenditure or not.

70 In Forster's case mentioned earlier, the Chief Registrar appears to have suggested, obiter, that expenditure of money in a commercial way where a

return was expected might not be expenditure under the rules or within the meaning of the Act. With respect, I am unable to agree with that suggestion; it seems to me that there is expenditure whether or not a return is expected. I note that the comment on this passage in 'Citrine's Trade Union Law' (3rd Edition page 435) is "this reasoning is unsound ... upon this basis a Union would be entitled to loan, advance or invest any of its funds for political objects of any kind, provided the money were ultimately recoverable. The test is whether the funds have been applied, not whether the venture has been a commercial success."

71 Much emphasis was placed by the Union on the fact that there was here a bona fide commercial investment, presumably with the implication that while a bona fide investment was not a payment or expenditure, an investment falling short of that standard would be. I do not think it would be right to draw that distinction because whether the investment is a true commercial one or not does not affect the nature of the monetary transactions involved; whether there is a payment is a matter of fact, and is not dependent on the commercial viability of what is done. If it were right to make such a distinction, what would be the position in relation to bona fide but admittedly highly speculative investments, or other bona fide investments which fail so that the union loses its money?

72 In this instance there was a transfer of money from the Union to the Management Company as agents for the Trustees. That money is no longer under the control of the Union and is no longer available to be spent by it. Instead the Union holds shares in the trust. Its freedom to dispose of any or all of its shares is limited by Clause 12 of the Trust Deed; broadly it can not sell its shares except to trade unions which already hold shares or, with the consent of the existing trade unions, to other trade unions. On these facts I have no hesitation in holding that there was a payment or expenditure.

73 Turning to the Union's second submission, I have already said that if the subjective test in Express Newspapers v McShane is to be applied, the furtherance of the political objects has only to be one of the purposes and not the sole or the predominant purpose. Mr Daly, who was in my view speaking as Treasurer and a member of the Finance and General Purposes Sub-Committee,

have evidence that the decision to invest was taken solely because it was a commercial and potentially very profitable investment and it was submitted on behalf of the Union that there was no evidence on which I could properly conclude that the payment was made other than for the purpose of furthering profitable investment.

74 I accept that in the end the decision was taken on a commercial basis and indeed that the Union might well have refused to make the investment if it had not considered it to be a good one. However, I have no doubt that the intention which led to this investment being considered at all was the intention to help the Labour Party and that therefore the Union did have the purpose of furthering a political object.

75 I have already recited some of the evidence which makes this intention clear. In particular there are first, the minutes of the Finance and General Purposes Sub-Committee of the Union's National Executive Committee for 9 May 1978 which show the acceptance in principle of the Ad Hoc Committee's proposals for trade union financing of the Labour Party Headquarters before it had been decided, on advice, that unions should participate on a commercial investment basis; second, the contents of the Ad Hoc Committee's letter of September 1978 which was, I note, sent only to unions affiliated to the Labour Party; and third, the first preamble to the Trust Deed dated 3 December 1979, to which Mr Richards drew attention.

76 In addition, a statement by Mr David Bassett, the Chairman of the Ad Hoc Committee, was put in evidence at the hearing. The second paragraph reads:

"The Walworth Road Consortium of Unions was brought together in March 1978, following earlier discussions between the unions and the Labour Party about the difficulties in obtaining finance for the Party's Headquarters. That Consortium took detailed legal and financial advice and drew up a plan for the property to be leased to the Consortium and back to the Labour Party on commercial terms. This was thus allowable investment of Union General Funds."

77 Finally, Mr Jarvest, Secretary of the Ad Hoc Committee said in answer to the question "How did this Consortium come into being?":

"It came into being as a result of the problems that the Labour Party were

encountering. They had gone ahead with this development without ensuring resources for the completion of development, and the trade unions were accustomed to meeting ... with the Labour Party Conference, a group met together and considered the establishment of a Consortium for the purposes of finding the finance on a commercial basis to take over the development."

78 I conclude as a matter of fact that the decision-making process which ultimately led to the payment by the Union to the Trade Union Consortium fell into two parts; there was first a decision in principle that the Union would help the Labour Party by providing finance for its proposed headquarters; secondly, and after very careful consideration and the taking of professional advice by the Ad Hoc Committee, there was a separate decision to do this by way of a commercial investment on the basis of the professional advice which had been given.

79 I now turn to the Union's third submission, which in my view incorporates part of the correct test to be applied to rule 47(2), the question whether the payment had in fact been made on any of the political objects. Mr Richards maintained that the payment was in the furtherance of all the political objects with the possible exception of that contained in rule 47(1)(c) relating to the "maintenance of any person who is a Member of Parliament or who holds a public office". To justify his complaint Mr Richards has to show only that there was a payment in the furtherance of one of the political objects, and I shall concentrate first on rule 47(1)(e) since it was not disputed that political meetings, including meetings of the Labour Party's National Executive Committee, are customarily held at Walworth Road. Those political meetings are clearly not held for the main purpose of furthering the statutory objects.

80 I have referred to the submission on behalf of the Union that I should follow certain dicta of the Chief Registrar of Friendly Societies in Forster's case and hold that the payment was too remote to be in the furtherance of a political object. In my view the Chief Registrar decided Forster's case on the basis that in principle the political fund rules cover cases where the payment which is literally on the political object is made by an intermediary who has received a payment from the union. I think he was right and I also agree with his view that in such a case there is no payment in the furtherance of the political objects if the union, when it makes the payment to the

intermediary, is unaware that the latter is likely to make a payment on those objects. I would however distinguish the position in this case because the Union knew from the start that its payment would be used for the purpose of providing a headquarters for the Labour Party and accordingly that the premises would be used for some or all of the political objects. I therefore consider the fact that the payment was made through the Trustees as intermediaries cannot of itself prevent the payment by the Union from being in the furtherance of the political objects, in particular the object in rule 47(1)(e).

81 The other way that the Union put this submission was that money spent on the ownership of buildings is not in fact spent on the holding of meetings. In my view that would be an unduly restrictive interpretation of the word "holding." It seems to me that if money spent to hire a hall for a meeting is money spent on the holding of a meeting, so also is money spent on the acquisition of a building which will provide a political party with a headquarters when one of the principal functions of a headquarters is the holding of political meetings.

82 I also consider that the contribution to the consortium was a payment in the furtherance of the political object in rule 47(1)(e) on another basis. In my opinion "furtherance" covers indirect payments of a second kind apart from those through an intermediary which I have already discussed in relation to Forster's case. It seems to me that where a payment is made upon something which will in fact be used in carrying on the activities mentioned in the political objects, and the union knows this when it makes the payment, there is a payment in the furtherance of the political objects. Those criteria are met in this case and I therefore find that the Union's payment was not only literally on the holding of political meetings but also in the furtherance of the holding of such meetings.

83 Turning to the other political objects in rule 47(1)(a) to (d), whether or not the payment was literally on any of those objects, I consider it clear, on the basis that "furtherance" carries the second indirect meaning I have just described, that there was a payment in the furtherance of some if not all of them. Thus the headquarters of a political party would normally be used -

and the Union could not have been unaware of this -

during election campaigns, for work for Parliamentary or other candidates so that expenses are indirectly incurred by them (rule 47(1)(a)); for the holding of meetings and the organisation of meetings held in support of such candidates and for the distribution of literature in their support (rule 47(1)(b)); for work in connection with the selection of Parliamentary or other candidates (rule 47(1)(d)); and for the distribution of political literature (rule 47(1)(e)).

It may even be that Members of Parliament enjoy facilities at the headquarters, for example office or secretarial facilities, and that such facilities amount to maintenance (rule 47(1)(c)).

84 My conclusions are therefore that the contribution to the consortium was a payment in the furtherance of the political objects in rule 47(1); and, in relation to the Union's second submission (the subjective test), that one of the purposes of the Union in making the contribution was to further the political objects in that rule. Accordingly I find that there was a breach of rule 47(2) and that this complaint is justified.

#### Procedure

85 Counsel appearing on behalf of the unions raised a number of objections to the evidence produced by Mr Richards in support of his complaints and in particular to the production of newspaper articles. The 1913 Act provides simply that after giving the complainant and the union an opportunity of being heard the Certification Officer may, if he considers that a breach has been committed, make such order for remedying the breach as he thinks just in the circumstances; there are no provisions as to the procedure I should adopt and in particular there are no provisions as to disclosure of documents, nor do I have powers to require that evidence be given on oath or to compel the attendance of witnesses. Until 1971 (and again briefly between 1974 and 1975) there was no appeal from my predecessors' decisions. I conclude first that

the procedure was designed to enable union members to bring their complaints before me in person, and second that it was envisaged that a hearing before me would be a relatively informal one in which the strict rules of evidence which apply in normal court proceedings would be out of place.

86 Moreover the 1913 Act envisages two types of complaint. The first is where the action complained of is directed at the complainant personally, as with Mr Richards' third complaint. In a case of that kind the complainant should be in a position to produce evidence which would be just as acceptable before a court of law as it is before me. The second kind of complaint is where the complainant alleges that there has been a breach of the political fund rules which is not directed at him personally; expenditure in breach of the political fund rules is the most obvious example. In such a case the complainant will not normally have been a party to the transactions involved or a recipient of any documents passing between the parties; he may, therefore, be unable to produce evidence of a kind which would be admissible before a court of law. To apply the normal rules of evidence to such a case would make it difficult, and perhaps impossible, for the complainant to justify his complaint. In my view that would be quite contrary to the intentions of the legislation. However, it is clearly right that I should carefully assess how much weight should be placed on any evidence before me which might not be admissible before a court and I record that in this case I have not relied on the newspaper reports produced to me by Mr Richards.

#### Orders

87 At the hearing I invited Counsel for the unions to make any submissions he wished to about the form of the orders I should make if, hypothetically, I found any of the complaints to be justified. He declined to do so and submitted that it would be preferable if, having made my decisions, I then heard further submissions as to whether it would be just in the circumstances for me to make any orders.

88 I suggested to Counsel that there was little scope for argument about the form of the order in the case of those complaints in which it was alleged that expenditure had been made from the Union's general fund in breach of the

rules. I still hold that view; I cannot see how any order other than one to transfer funds from the political fund to the general fund could effectively remedy such a breach and I consider that it would be an exceptional case in which there was any reason to order that less than the full amount of the payment complained of should be transferred. In particular, I cannot see any reason (and Counsel declined the opportunity to persuade me of one) for ordering that less than the full amount of the payments be transferred in the case of these complaints.

89 Accordingly, I hereby order the Union:

- (a) in relation to the first complaint, to transfer the sum of £11,501.63 from its political fund (taking that term to include the political fund administered by the Nottingham Area Political Committee under the Union's rules) to the general fund of the Nottingham Area;
- (b) in relation to the second complaint, to transfer the sum of £550 from its political fund to its general fund;.
- (c) in relation to the fourth complaint, to transfer the sum of £73,924 from its political fund to its general fund.