

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

Mr John Flanagan

v

Union of Construction, Allied Trades and Technicians

(No. 2)

Date of Decisions

1 July 2014

DECISIONS

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

1. I refuse the claimant’s application for a declaration that on or around 25 June 2013 the Union of Construction, Allied Trades and Technicians breached rule 26.4 of its rules by its North West Regional Council setting up a hearing to consider charges against him made by the Everton Branch.

2. I refuse the claimant’s application for a declaration that the Union of Construction, Allied Trades and Technicians breached rule 26.5 of its rules by its North West Regional Council allegedly not having provided him with a written notice of the charges against him that were to be the subject of a hearing on 25 July 2013.

3. I refuse the claimant’s application for a declaration that the Union of Construction, Allied Trades and Technicians breached rule 26.8 of its rules by allegedly not having given Mr Flanagan a full and fair hearing before the North West Regional Council on 25 July 2013, the Executive Council on 30 October 2013 and the General Council on 11 December 2013 on the grounds that he was allegedly not provided with valid written charges that had been made against him.

4. I refuse the claimant’s application for a declaration that the Union of Construction, Allied Trades and Technicians breached rule 27.2 of its rules at an appeal hearing before the Executive Council on 30 October 2013 by the Executive Council having allegedly accepted and considered as evidence a letter from the Everton Branch dated 13 May 2013, when it should not have done so given that this letter was not presented as evidence before the North West Regional Council at the hearing on 25 July 2013.

REASONS

1. Mr Flanagan brought this application as a member of the Union of Construction, Allied Trades and Technicians (“UCATT” or “the Union”). He did so by a registration of complaint form which was received at my office in its final form on 23 January 2014.
2. Following correspondence with my office, Mr Flanagan confirmed his complaints in the following terms:

Complaint 1

On or around 25 June 2013, the North West Regional Council breached rule 26.4 in setting up a hearing to consider charges against Mr Flanagan made by the Everton Branch UD 088. The only charges that could have been made in compliance with this rule were those made by Mr Winstanley, acting in the capacity of a member, on 30 April 2013 and 2 May 2013. These charges were withdrawn by Mr Winstanley in a letter dated 29 May 2013.

Complaint 2

In breach of rule 26.5, the North West Regional Council did not provide Mr Flanagan with a written notice of the charges against him that were to be the subject of a hearing on 25 July 2013.

Complaint 3

In breach of rule 26.8, the Union did not give Mr Flanagan a full and fair hearing before the North West Regional Council on 25 July 2013 as Mr Flanagan was not provided with valid written charges that had been made against him. In upholding the decision of the North West Regional Council, despite there not having been valid written charges made against him, neither the Executive Council on 30 October 2013 nor the General Council on 11 December 2013 gave Mr Flanagan a fair hearing.

Complaint 4

In breach of rule 27.2, at an appeal hearing on 30 October 2013, the Executive Council accepted and considered as evidence a letter from the Everton Branch UD088, dated 13 May 2013, when it should not have done so given that this letter was not presented as evidence before the North West Regional Council at the hearing on 25 July 2013.

3. At the hearing on 5 June 2014, Mr Flanagan was represented by a friend, Mr Terry Brough. Evidence for Mr Flanagan was given by himself and Mr Roy Bentham. Both produced written witness statements. The Union was represented by Ms Rebecca Tuck of counsel, instructed by Mr Steve Cottingham of OH Parsons. Evidence for the Union was given by Terrence Egen, President of the Everton Branch, Andrew Fisher, North West Regional Secretary, Neil Vernon, President of the UCATT Executive Council and Andrew Wilson, member of the Union’s General Council, all of whom produced written witness statements. There was also in evidence a bundle of documents of over 162 pages containing correspondence and other documentation as supplied by the parties for use at the hearing, together with the rules of UCATT. Both Mr Flanagan and UCATT provided skeleton arguments. Mr Flanagan also provided a short bundle of legal authorities but this bundle was not referred to at the hearing.

Findings of Fact

4. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:

5. Mr Flanagan was a member of UCATT for about 42 years during which time he served as a shop steward for 11 years, branch secretary for 19 years and branch president for 4 years. He was a member of the Everton UD008 branch and was known to be critical of the leadership within the Union in recent years.
6. At a meeting of the Everton Branch on 8 April 2013, attended by 9 members, Mr Flanagan proposed a motion calling upon the Union's Executive Council ("EC") to ask the Government that no public funds should be spent on the funeral of the late Margaret Thatcher. The motion was seconded by Mr Bentham but was lost by 7 votes to 2. Mr Flanagan maintains that it was lost solely because of the antipathy felt towards him and Mr Bentham by the other members of the branch. He states that he left the meeting feeling angered, disappointed and frustrated.
7. On 12 April 2013 Mr Flanagan sent a group email to those on his 'contact list'. The email gave the facts of what had occurred at the branch meeting on 8 April, without editorial, and is as follows:-

"UCATT. Everton Branch meeting 8 April 2013.

Motion to Everton Branch 8 April 2013.

The following motion was drafted shortly before the branch meeting was opened as Margaret Thatcher's death had just been announced.

"That this branch calls upon the EC to ask the Government not to spend any tax payers money on the funeral of the late Margaret Thatcher".

Proposed by John Flanagan.

Seconded by Roy Bentham.

Votes For 2 Votes against 7 Members Present 9 Abstentions 0."

Mr Flanagan's contact list contained about 32 names. Most were members of UCATT but some were not. At least one is a member of Unite the Union, others are journalists or members of pressure groups involved in the construction industry.

8. A copy of Mr Flanagan's email of 12 April 2013 came into the possession of Mr Winstanley, the branch secretary of the Everton Branch, who was not on Mr Flanagan's 'contact list'. On 30 April, Mr Winstanley wrote to the general secretary of the Union, Mr Steve Murphy, seeking to have Mr Flanagan charged under the Union's internal disciplinary processes. By rule 26.1 a member may be charged with any offence against rule 25 or against any other rule of the Union by any other member, branch committee, branch, regional council or the EC. Mr Winstanley asserted that Mr Flanagan, by circulating the business of the branch via the internet, was in breach of rule 3.1 and rule 25 sub clauses 1-2 and 3. He requested that rule 25.1 be invoked if an investigation showed that there was a case to answer.
9. Also on 30 April 2013 Mr Flanagan sent a further group email to the same 'contact list'. It reproduced the same record of the branch meeting of 8 April as had appeared in his earlier email (although now headed, "Motion 15") but also included a lengthy article by John Pilger that had appeared in the New Statesman in April

2000. The article is headed, "How Thatcher Gave Pol Pot a Hand". Again, the email contained no editorial by Mr Flanagan explaining or commenting upon the content of the email. It is this email that led to Mr Flanagan's expulsion from the Union.

10. On 2 May 2013, Mr Winstanley sent a further letter to the general secretary with which he enclosed the email that Mr Flanagan had circulated on 30 April. He asked that this material be included as evidence of Mr Flanagan's complete disregard and contempt for the branch, UCATT and normal procedures.
11. On 13 May 2013, there was another meeting of the Everton Branch. Mr Flanagan states that the meeting was attended by a number of members who seldom come to branch meetings, but there were still only about 12 attendees. The meeting was heated. Mr Flanagan describes it as a verbal lynching of himself and Mr Bentham. Indeed, Mr Bentham was asked to leave the meeting for being disruptive after about 10 or 15 minutes. The members had two concerns. Principally, they were concerned that the business of the branch, and especially its voting record, had been widely circulated within and outside the Union but they were also concerned at the implication that by having voted against Mr Flanagan's motion they would be seen in some way as being supportive of Mrs Thatcher, someone who had allegedly given Pol Pot a hand. No minute of this meeting was put in evidence but it is common ground that no formal resolution was approved which instigated a branch charge against Mr Flanagan for having distributed this email. As to the outcome of this meeting, there is a conflict of evidence between Mr Flanagan and the other members who were present throughout the meeting. Mr Flanagan maintains that the branch merely indicated that it wished the branch secretary, Mr Winstanley, to make a complaint about what he had done. On the other hand, Mr Egan, the branch president who chaired the meeting, gave evidence that they frequently complained about Mr Flanagan's behaviour in the past and nothing had been done about it. He had a clear recollection that on this occasion the branch had instructed Mr Winstanley to charge Mr Flanagan under the rules of the Union. This evidence is supported by the notes of the subsequent hearing before the Regional Council in which Mr Winstanley and two other members, Mr Routledge and Mr Sherman are recorded as having stated that the branch had decided to charge Mr Flanagan. Mr Routledge and Mr Sherman had been asked to give evidence by Mr Flanagan. Mr Winstanley refers to an overwhelming consensus to this effect. Mr Bentham was called to give evidence before me on this point but accepted that he had left the meeting at the relevant time. On the balance of probabilities, I find that the branch decided to charge Mr Flanagan under the rules and left it to Mr Winstanley to give effect to its decision.
12. Later on 13 May 2013 Mr Winstanley wrote to Mr Fisher, the regional secretary of the North West Region of the Union. He enclosed the emails sent by Mr Flanagan and stated,

"The branch agreed following full discussion they be submitted to the council for there examination and consideration. Should following this they feel as branch does Bro Flanagan has a case to answer we call on the council to charge Bro Flanagan Rule 26 Clause One and such rules the council feels he violates by his actions, of which he was totally unrepentant".

13. Mr Fisher did not consider that Mr Winstanley's letter of 13 May 2013 constituted a charge against Mr Flanagan and that it was not for the Regional Council to bring charges in these circumstances. He telephoned Mr Winstanley and told him that if the Everton Branch had wished to charge Mr Flanagan, it should do so.
14. On 26 May 2013, Mr Winstanley wrote again to Mr Fisher. This letter is headed, "Branch Charge. Rule 26 clause One – J Flanagan UD088". It again enclosed copies of the relevant email and continued,

"... Following discussion, branch decided to charge Bro Flanagan with breach of rule. On behalf of branch I submit Bro Flanagan by his actions is in breach of Rule 3 – clause one –Rule 25 sub clause one-two and three. Please place this charge before the regional council Rule 26 Clause three".

The letter is date stamped as having been received on 28 May. Mr Flanagan challenged the authenticity of this letter for reasons which will emerge but I accept it as a genuine letter written by Mr Winstanley on 26 May and received by the Union on 28 May.

15. On 29 May 2013 Mr Winstanley wrote to the general secretary withdrawing the charge that he had made in his capacity as a member against Mr Flanagan by his letters of 30 April, as supplemented by his letter of 2 May. The general secretary had previously informed Mr Flanagan of this charge and so he wrote to Mr Flanagan on 25 June to inform him that Mr Winstanley's intended charge against him had been withdrawn.
16. On 14 June 2013, Mr Winstanley's letter to Mr Fisher of 26 May was placed before the Regional Council and accepted as a charge that should be processed. Accordingly, on 25 June, Mr Fisher wrote to Mr Flanagan with the charges, attaching copies of the offending email. This letter is the subject of a specific complaint by Mr Flanagan and I therefore set it out in full.

*"Dear Brother Flanagan,
At the meeting of the North West Regional Council – held on 14th June 2013 – the Council considered correspondence received from Everton Branch, UD088 with regard to a charge/charges against you – specifically a breach of Rules:-*

*Rule 3, clause One
Rule 25, sub-clause One, 2 and 3*

The charges relate to correspondence distributed by you – deemed to be in violation of the said Rules. Copies attached.

The Regional Council have requested that I write to you to advise that the charge against you will be heard at this office on Thursday, 25th July, 2013 at 10am. Please also find attached copy of Protocol to be adhered to by all – for the benefit of the hearing and the security of these premises.

Would you kindly confirm receipt of this correspondence and your attendance on 25th July, 2013.

I look forward to hearing from you.

*Yours fraternally
Andy Fisher Regional Secretary"*

17. Accordingly, shortly after 25 June 2013, Mr Flanagan had received two apparently contradictory letters; one from the general secretary saying that the charge of the branch secretary of the Everton Branch had been withdrawn and one from his regional secretary saying that a charge from the Everton Branch was being processed. Not surprisingly, Mr Flanagan sought clarification. By a letter dated 1 July, Mr Flanagan asked Mr Fisher who was bringing the present charge, who would be hearing it and for copies of the branch correspondence referred to in Mr Fisher's letter of 25 June. Mr Fisher responded on 3 July informing Mr Flanagan that the charge that would be heard by the Regional Council was the one made by the Everton Branch. However, Mr Fisher stated that the branch correspondence was addressed to the Regional Council and it would be inappropriate to supply him with a copy.
18. Mr Flanagan was not satisfied with Mr Fisher's refusal to provide him with a copy of the branch correspondence. He was aware that his opposition to certain events within the Union had made him unpopular and was suspicious that the proper procedures had not been undertaken. He accordingly persisted in his requests for the branch correspondence but each request was met with a refusal. Indeed, Mr Winstanley's letter to Mr Fisher of 13 May 2013, stating that the branch wished Mr Flanagan to be charged, did not emerge until the time of Mr Flanagan's subsequent appeal to the EC in October 2013. Further, Mr Winstanley's letter to Mr Fisher of 26 May 2013, stating that the branch wished to charge Mr Flanagan, did not emerge until March 2014 as a part of these proceedings. The delay in providing these documents fuelled Mr Flanagan's suspicions and contributed to him calling these letters "Dodgy Document One" and "Dodgy Document Two".
19. The hearing of the charges against Mr Flanagan took place before the Regional Council on 25 July 2013. Mr Flanagan maintained he had a right to distribute information under Article 10 of the Human Rights Act and that he was the subject of a personal vendetta. In its subsequent Statement of Findings, the Regional Council decided:-

"That Brother Flanagan had carried out the action of distributing unacceptable correspondence/documentation relating to the Everton Branch. Further, that there was a clear inference that they (the Everton Branch) in voting against the motion were, in some way, associated and in support of Margaret Thatcher and, as she was associated with Pol Pot, so was the Everton Branch.

That Brother Flanagan's deliberate act brought UCATT into disrepute and he was clearly acting against the interest of the Union in not accepting a democratic decision made by the UCATT members of that Branch.

What gave them more cause for concern was that Brother Flanagan confirmed that he was unrepentant and would disregard any future democratic vote and repeat this type of action, as an individual, including sending such materials to individuals outside of the Branch and UCATT."

The Regional Council decided that Mr Flanagan should be excluded from the Union.

20. By rule 25.3 any decision to exclude a member made by a Regional Council must be confirmed by the EC. This confirmation was obtained as a matter of formality

and Mr Fisher wrote to Mr Flanagan on 3 September 2013 stating that his exclusion was “*live – as at today’s date*”.

21. On 9 September 2013 Mr Flanagan appealed to the EC. Such an appeal suspends the operation of the sanction until after the appeal has been determined, by virtue of rule 27.4.
22. The hearing before the EC was set to take place in London on 17 October but, on the day, it was decided there was insufficient time. The appeal was reset for 30 October in the North West regional office in Liverpool.
23. By a letter dated 22 October 2013 the general secretary confirmed the rearranged date for the appeal and enclosed the documentation which would be placed before the EC. Mr Flanagan noticed that this documentation contained the letter from Mr Winstanley to Mr Fisher of 13 May which had not been before the hearing by the Regional Council. He considered this to be a breach of rule 27.2 which provides that,

“No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with the appeal”.

Mr Flanagan wrote to the general secretary on 24 October to bring this matter to his attention.

24. The appeal before the EC took place on 30 October 2013 and was chaired by Mr Vernon. Mr Flanagan was accompanied (but not represented) by Mr Brough. At the outset of the appeal, Mr Flanagan complained that Mr Winstanley’s letter to Mr Fisher of 13 May had not been withdrawn from the hearing bundle. Mr Vernon said that they would make a decision on this matter at the end of the hearing but Mr Flanagan persisted with his objection. Mr Vernon then called an adjournment and, upon the resumption of the hearing, informed Mr Flanagan that the letter in question would be withdrawn. Mr Vernon gave evidence that no member of the EC had taken much notice of it. Mr Flanagan argued that the charge had been brought out of time, that the rules had been wrongly cited, that the charge was vexatious and that the sanction of exclusion was wrong. The EC decided to uphold the decision of the Regional Council. It found that there was a clear inference in Mr Flanagan’s email that the decision of the Everton Branch on 8 April to reject Mr Flanagan’s motion in some way associated that branch with Margaret Thatcher and in turn with Pol Pot, that Mr Flanagan’s deliberate act had brought the Union into disrepute and that he was clearly acting against the interests of the Union by not accepting a democratic decision of the branch. The EC also stated that it took into account that Mr Flanagan was not only unapologetic but had confirmed that he had no intention of abiding by any future democratic decision and would continue to send such materials to individuals outside the branch and the Union.
25. On 11 November 2013 Mr Flanagan appealed to the General Council of the Union. He provided the grounds of his appeal in a letter dated 28 November in which he also gave reasons why he would be unable to attend the hearing before the General Council that had since been set for 11 December.

26. The General Council heard Mr Flanagan's further appeal on 11 December 2013 in his absence. It concluded that his email of 30 April was grossly insulting and unpleasant. It took into account that Mr Flanagan was not only unapologetic but was adamant that he would have no hesitation in circulating such material in future. The General Council dismissed Mr Flanagan's appeal but considered that the penalty of expulsion for life was too harsh. It decided that his expulsion should be for a period of three years from 3 September 2013.
27. Mr Flanagan commenced this application by an online registration of complaint form dated 13 January 2014, the final iteration of which was received at the Certification Office on 23 January 2014.

The Relevant Statutory Provisions

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

108A Right to apply to Certification Officer

- 1) *A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7)*
- 2) *The matters are –*
 - (a) *the appointment or election of a person to, or the removal of a person from, any office;*
 - (b) *disciplinary proceedings by the union (including expulsion);*
 - (c) *the balloting of members on any issue other than industrial action;*
 - (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
 - (e) *such other matters as may be specified in an order made by the Secretary of State.*

The Relevant Rules of the Union

29. The rules of the Union which are relevant for the purposes of this application are:

RULE 3

Branch Meetings

1. *The business of the Union shall be conducted through branches which shall elect a President, Secretary, Treasurer, and three Committee members, who shall act as trustees for the branch. Where financially practicable a branch may be served by a full-time Branch Secretary as provided for in General Rule.*

RULE 25

Disciplinary Powers

1. *The EC shall have power to impose a fine not exceeding £75, suspend from all or any benefits or from holding any office, or exclude from the Union, any member who, in the opinion of the EC:*
 - (i) *by his or her conduct acts against the interests of the Union; such conduct to include racist or sexist behaviour;*
 - (ii) *refuses to carry out any decision of any governing body of the Union made in virtue of the Rules, or disregards such decision, or acts against it;*
 - (iii) *wilfully or otherwise breaks or evades any provision of the Rules of the Union;*

- (iv) wilfully or otherwise breaks the working rules and conditions of employment applicable to the industry in which s/he is working;
 - (v) misappropriates or fraudulently receives any money, funds or other property of the Union, or make any false declaration in regard thereto.
2. The EC shall have power to take all or any of the measures specified in the preceding clause against all or any of the members of any Branch, council, or committee, who in the opinion of the EC is or are guilty of any offence specified in the preceding clause.
 3. The powers specified in Clause 1, shall also be exercisable, within their jurisdiction, by any Regional Council or Branch at any specially summoned Branch meeting, acting against any member who, in its opinion, is guilty of any of the offences specified in Clause 1.
Provided always that no decision of a Regional Council or Branch involving the exclusion of any member under this or any other Rule of the Union except Rule 7, Clause 18, shall become operative until it has been confirmed by the EC, except in the case of full-time officials who shall be subject to discipline by the EC under Rule 18, Clause 16.
 4. No decision shall be taken by virtue of the provisions of Clauses 1, 2 or 3 of this Rule unless and until the requirements as to procedure in rule 26 have been complied with.

RULE 26

Procedure for Dealing with Charges

1. The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the union.
- ...
4. Any such charges must be made and received by the appropriate council within 28 days of the discovery of the relevant facts
5. The Secretary of the Union authority before whom the charge is made shall give to the member charged written notice of the charge, specifying the facts on which the charge is based and the Rule or Rules of the Union under which the charge is made. S/he shall notify in writing the complainant and the member charged of the date and place of the hearing and of their right to address the Union authority and to produce evidence, including a witness or witnesses, in order to support or rebut the charge or charges. Such notice shall constitute a summons to the complainant and to the member charged to attend at the time and place stated in the notice.
- ...
8. The union authority before whom the charge is made shall give to the complainant and to the member charged a full and fair hearing of their case at the time and place stated in the notice. It shall consider such documentary and, in so far as it is reasonably practicable, oral evidence as is produced by both sides.

RULE 27

Appeals of Members, Branches and Regional Councils

- ...
2. In all cases, appeals must be made in writing through the Branch Secretary or Regional Secretary in the case of Regional Council appeals. The appellant or appellants in all cases shall have the right to appear at all levels of the appeals procedure if s/he so wishes and be accompanied by a member. No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal. Appeals must be lodged to reach the appropriate council within 28 days of receipt by the member or members of the decision appealed against, failing which such decision shall be final and binding, subject to any power vested in any court or tribunal. The BS shall forward the appeal without delay. In no case shall a Branch withhold the appeal of a member or members.

Consideration and Conclusions

Complaint One

30. Mr Flanagan's first complaint is as follows:

On or around 25 June 2013, the North West Regional Council breached rule 26.4 in setting up a hearing to consider charges against Mr Flanagan made by the Everton Branch UD088. The only charges that could have been made in compliance with this rule were those made by Mr Winstanley, acting in the capacity of a member, on 30 April 2013 and 2 May 2013. These charges were withdrawn by Mr Winstanley in a letter dated 29 May 2013.

31. Rule 26.4 of the rules of the Union provides as follows:

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

Summary of Submissions

32. Mr Brough, for Mr Flanagan, submitted that no valid charge had been brought against Mr Flanagan. He contended that although Mr Winstanley had brought a 'members' charge against Mr Flanagan by his letters of 30 April and 2 May 2013, in relation to Mr Flanagan's email of 12 April, that charge had been withdrawn and therefore no valid charge remained. Mr Brough disputed that the branch itself had decided to charge Mr Flanagan and disputed the authenticity of Mr Winstanley's letter of 26 May ("Dodgy Document Two"), on the grounds that there had been no good reason for the Union not providing Mr Flanagan with a copy of that letter despite his many requests and the subsequent convenient appearance of Dodgy Document Two during the course of these proceedings.

33. Ms Tuck, for the Union, submitted that the branch UD008 had decided that Mr Flanagan should be charged at its meeting on 13 May 2013 and that Mr Winstanley's letter to Mr Fisher of 26 May 2013 was genuine. She noted that all those present at the relevant part of the branch meeting of 13 May whose evidence was before me (other than Mr Flanagan) had stated that the branch had decided to charge him. She further noted that the letter from Mr Winstanley of 26 May had been date stamped upon its receipt, that it was referred to and considered by the Regional Council on 14 June and that it was referred to in the letter from the regional secretary of 25 June. Ms Tuck observed that, on the basis that Mr Winstanley's letter of 26 May was genuine, there was clearly no issue that the charge had been brought out of time as it had been brought within 28 days of the email of 30 April. She further argued that the date of relevant knowledge was 13 May, being the date that the branch became aware of Mr Flanagan's email of 30 April.

Conclusion – Complaint One

34. Mr Flanagan alleges that no valid charge had been made against him which could be determined by the Regional Council, following the withdrawal of the charge brought by Mr Winstanley in his capacity as a member. He disputes that the branch decided that he should be charged. However, I have found at paragraph 11 that the branch did decide that Mr Flanagan be charged. In my view it is unsatisfactory that a decision of this importance is not recorded in the branch minutes. I assume that, if

it had been so recorded, the branch minutes would have been adduced in evidence before me. Nevertheless, rule 25.1 does not require there to be a branch minute and I am left to determine on the evidence before me whether the branch did in fact charge Mr Flanagan. On the balance of probabilities, I find that it did. Similarly, I accept the genuineness of Mr Winstanley's letter to Mr Fisher of 26 May for the reasons given by counsel to the Union. Accordingly, I find that a charge against Mr Flanagan was decided upon by the Everton Branch at its meeting on 13 May which its branch secretary communicated to the regional secretary by his letter of 26 May, within the time period allowed by the rules.

35. For the above reasons I refuse Mr Flanagan's application for a declaration that on or around 25 June 2013, the Union breached rule 26.4 of its rules by its North West Regional Council setting up a hearing to consider charges against Mr Flanagan made by the Everton Branch.

Complaint Two

36. Mr Flanagan's second complaint is as follows:

In breach of rule 26.5, the North West Regional Council did not provide Mr Flanagan with a written notice of the charges against him that were to be the subject of a hearing on 25 July 2013.

37. Rule 26.5 of the rules of the Union provide as follows:

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

Summary of Submissions

38. Mr Brough, for Mr Flanagan, submitted that a "written notice of the charge" must include a copy of the letter from the branch making the charge. He accepted that this is not an express provision of the rules but argued that it is an implied term. In his submission, the rules are intended to provide for fair play and this requires that an accused person can see the letter which has originated the charge and allow the accused person to test whether the charge has been brought in time. Mr Brough further argued that it was a custom and practice that previous general and regional secretaries had always provided the person charged with the letter from the branch raising the charge. He referred to two such examples in the bundle of documents. In the absence of the branch letter, Mr Brough contended that Mr Flanagan had not been provided with a "written notice of the charge" as required by rule 26.5. He further argued that Mr Fisher's letter of 25 June 2013 did not identify the charge with sufficient particularity as the reference to "rule 25, sub clause 1, 2 and 3" left it unclear if this was a reference to rule 25.1, 25.2 and 25.3 or to rule 25.1(i) (ii) and (iii).
39. Ms Tuck, for the Union, submitted there is nothing in the rules which requires the branch letter to be sent to the person charged and that no such rule could be

implied by way of custom and practice or necessity. She further observed that no rule provides that a charge can only be brought by a branch if it originated from a formal branch resolution. Ms Tuck submitted that a valid written notice of charge was made by Mr Fisher's letter to Mr Flanagan of 25 June 2013. She also argued that the reference to the rules in Mr Fisher's letter replicated the way the branch had described the rules in Mr Winstanley's letter of 25 May. In her submission, there was no breach of rule 26.5 by the regional secretary having replicated the charge made by the branch. She further maintained that there was no confusion, as the rules which it was alleged Mr Flanagan had broken were quite clear. She observed that it was never argued by Mr Flanagan that he was confused about either the facts of his case or the rules he had allegedly breached.

Conclusions – Complaint Two

40. Mr Flanagan alleges that he had not received a valid 'written notice of the charge'. Rule 26.5 specifies what must be included in such a notice, namely the facts upon which the charge is based and the rules under which the charge is made. Significantly it does not specify that a copy of the letter giving rise to the notice of charge must be included. There is no such express rule. In my judgment, there is similarly no such implied rule. I find that there is insufficient evidence of a custom and practice to establish an implied rule to that effect, Mr Fisher having given evidence that he was unaware of any such common practice. I further find that the basic requirement of natural justice that an accused person must be aware of the charges that he or she must face does not require copies of originating correspondence to be sent to the accused.
41. In my judgment, the requirement of rule 26.5 was met by Mr Fisher's letter to Mr Flanagan of 25 June, which enclosed copies of the emails about which complaint was made. Further, I do not find that the requirement to notify Mr Flanagan of the rules under which the charge was made was breached by the reference in Mr Fisher's letter to rule 3 clause 1 and rule 25 sub clauses 1, 2 and 3. I find the alleged ambiguity as to whether the latter rules are a reference to rule 25.1, 25.2 and 25.3 or to rule 25.1(i), (ii) and (iii) to be without foundation. Rules 25.2 and 25.3 are not rules which are capable of being breached so as to cause a disciplinary offence. They are rules which give powers to branches, regional councils or the EC. The only sensible reading of Mr Fisher's letter is that it is a reference to rule 25.1(i), (ii) and (iii). Any other reading is disingenuous.
42. For the above reasons, I refuse Mr Flanagan's application for a declaration that the Union breached rule 26.5 of its rules by its North West Regional Council allegedly not having provided him with a written notice of the charges against him that were to be the subject of a hearing on 25 July 2013.

Complaint Three

43. Mr Flanagan's third complaint is as follows:

In breach of rule 26.8, the Union did not give Mr Flanagan a full and fair hearing before the North West Regional Council on 25 July 2013 as Mr Flanagan was not provided with valid written charges that had been made against him. In upholding the decision of the North West Regional Council, despite there not having been valid written charges made against him, neither the Executive Council on 30 October 2013 nor the General Council on 11 December 2013 gave Mr Flanagan a fair hearing.

44. Rule 26.8 of the rules of the Union provide as follows:

“The union authority before whom the charge is made shall give to the complainant and to the member charged a full and fair hearing of their case at the time and place stated in the notice. It shall consider such documentary and, in so far as it is reasonably practicable, oral evidence as is produced by both sides”.

45. Mr Brough, for Mr Flanagan, accepted that this complaint succeeded or failed depending upon the outcome of Mr Flanagan’s second complaint. He argued that if Mr Flanagan had not received a ‘written notice of complaint’, which was compliant with rule 25.6 he had not been given a full and fair hearing of his case by the Regional Council, EC and/or the General Council.

46. Ms Tuck, for the Union, submitted that Mr Flanagan had been given a ‘written notice of the charge’ which was compliant with rule 25.6 and that accordingly this complaint should be dismissed. She further argued that, even if her primary submission did not succeed, the information contained in Mr Winstanley’s letter of 26 May 2013 did not put Mr Flanagan at such a disadvantage that it could be said that he had not had a full and fair hearing before the Regional Council, EC and/or the General Council.

47. I have found in Mr Flanagan’s second complaint that the Union complied with its obligations in rule 26.5 to give him a ‘written notice of the charge’. Accordingly, I find that the basis upon which it is now alleged that he did not have a full and fair hearing before the Regional Council, EC and/or the General Council is not well founded.

48. For the above reasons, I refuse Mr Flanagan’s application for a declaration that the Union breached rule 26.8 of its rules by allegedly not having given Mr Flanagan a full and fair hearing before the North West Regional Council on 25 July 2013, the Executive Council on 30 October 2013 and the General Council on 11 December 2013 on the grounds that he was allegedly not provided with valid written charges that had been made against him.

Complaint Four

49. Mr Flanagan’s fourth complaint is as follows:

In breach of rule 27.2, at an appeal hearing on 30 October 2013, the Executive Council accepted and considered as evidence a letter from the Everton Branch UD088, dated 13 May 2013, when it should not have done so given that this letter was not presented as evidence before the North West Regional Council at the hearing on 25 July 2013.

50. Rule 27.2 of the rules of the Union provides as follows:

Appeals of Members, Branches and Regional Councils

“...

In all cases, appeals must be made in writing through the Branch Secretary or Regional Secretary in the case of Regional Council appeals. The appellant or appellants in all cases shall have the right to appear at all levels of the appeals procedure if s/he so wishes and be accompanied by a member. No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal. Appeals must be lodged to reach the appropriate council

within 28 of receipt by the member or members of the decision appealed against, failing which such decision shall be final and binding, subject to any power vested in any court or tribunal. The BS shall forward the appeal without delay. In no case shall a Branch withhold the appeal of a member or members”.

Summary of Submissions

51. Mr Brough, for Mr Flanagan, submitted that rule 27.2 clearly provides that, “no evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal”. He noted that, despite Mr Flanagan’s previous written objections of 24 October 2013, the documents placed before the members of the EC hearing Mr Flanagan’s appeal on 30 October contained a copy of Mr Winstanley’s letter to Mr Fisher of 13 May, which had not been before the Regional Council which made the decision appealed against. In Mr Brough’s submission, this was sufficient to constitute a breach of rule 27.2.
52. Ms Tuck, for the Union, accepted that Mr Winstanley’s letter of 13 May 2013 had been in the documents before the EC at the appeal hearing on 30 October. However, she argued that this letter had not been admitted or accepted by the EC following the objections made by Mr Flanagan at the outset of the appeal. She further argued that in any event the content of that letter was not such that would have caused any prejudice to Mr Flanagan.

Conclusions – Complaint 4

53. There is no dispute in the evidence as to how the EC dealt with the inclusion of Mr Winstanley’s letter of 13 May 2013 in the appeal documentation and Mr Flanagan’s objection to its inclusion. I deal with this at paragraph 24 above. On those facts, I find that the EC neither admitted nor accepted Mr Winstanley’s letter as evidence in the appeal. I do not find that its presence in a bundle prepared in advance of the hearing constitutes an act of admittance or acceptance, especially having regard to the bundle having been sent in advance to Mr Flanagan for his consideration and to his objections to the document having been accepted by the EC at the outset of the appeal before any discussion of substantive matters.
54. For the above reasons I refuse Mr Flanagan’s application for a declaration that the Union breached rule 27.2 of its rules at an appeal hearing before the Executive Council on 30 October 2013 by the Executive Council having allegedly accepted and considered as evidence a letter from the Everton Branch dated 13 May 2013, when it should not have done so given that this letter was not presented as evidence before the North West Regional Council at the hearing on 25 July 2013.



David Cockburn
The Certification Officer