

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
UNDER SECTION 55(1) OF THE TRADE UNION AND LABOUR RELATIONS  
(CONSOLIDATION) ACT 1992**

**Mr N Kelly**

**v**

**Union of Construction, Allied Trades and Technicians**

**(No. 2)**

**Date of Decision**

**16 November 2012**

**DECISION**

Upon an application by Mr Noel Kelly ("the claimant") under section 55(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

1. I refuse Mr Kelly's application for a declaration that the Union of Construction, Allied Trades and Technicians breached section 50(1) of the 1992 Act between 11 November and 13 December 2011 by allegedly not according equally to all members the right to vote in an election for general secretary.

**REASONS**

1. Mr Kelly is a member of the Union of Construction, Allied Trades and Technicians ("the Union" or "UCATT"). By an application received at the Certification Office on 18 April 2012, Mr Kelly alleged breaches of sections 47(1) and 50(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 and a breach of rule 23(5) of the rules of the Union in relation to an election for the position of general secretary which took place in November/December 2011.
2. Mr Kelly's application that the Union had breached rule 23(5) of its rules and section 47(1) of the 1992 Act related to its exclusion of a Mr Dooley and a Mr Ritchie from standing as candidates in the general secretary election held in 2011. These allegations were effectively in the same terms as complaints that had previously been made to me by Mr Dooley. I heard Mr Dooley's equivalent complaints on 24 May 2012 (Dooley v UCATT (No.2) (D/7-8/12-13)). I found that the Union had breached both rule 23(5) of its rules and section 47(1) of the 1992 Act in relation to the selection of candidates for the General Secretary election of 2011. Having determined these complaints in the claimant's favour, I required Mr Kelly to show cause why his two complaints, requiring me to adjudicate again on the same facts and the same alleged breaches, should not be struck out. Having considered Mr Kelly's response, I struck out those two complaints in a decision dated 14 September 2012.

3. Mr Kelly's further complaint, which proceeded to a hearing, was agreed by him in the following terms:

*"The Union breached section 50(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 from 11 November 2011 to 13 December 2011 by not sending ballot papers to a large number of the Union's members who were entitled to vote, therefore not according equally to all members the right to vote in the election for General Secretary".*

4. I investigated the alleged breach in correspondence and a hearing took place on 25 October 2012. At the hearing, the claimant represented himself. Mr Kelly produced a written witness statement and gave oral evidence. The Union was represented by Mr Oliver Segal QC, instructed by Mr Steve Cottingham of OH Parsons and Partners. The Union submitted a written witness statement from Mr George Guy, North West Regional Secretary and its former General Secretary pro tem, who gave oral evidence. Mr Kelly and Mr Segal each provided skeleton arguments. There was in evidence a 97 page bundle of documents consisting of letters and other documentation supplied by the parties as well as the rules of the Union, and the decisions in *Dooley v UCATT (No.1)* and *(No.2)*. A further 11 pages of documents, some of which were submitted by Mr Kelly and some by the Union, were added to the bundle by consent at the beginning of the hearing.

#### **Findings of Fact**

5. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows.
6. Mr Kelly is 75 years of age. He is a retired painter. He was a member of the Painters Union from 1958 and became a member of UCATT in 1971 upon the formation of that union by amalgamation. Mr Kelly has held every branch office within UCATT.
7. UCATT has been the subject of various legal challenges since its election for the position of General Secretary in 2009. These challenges provide the context to Mr Kelly's complaint and so I briefly summarise the most relevant:

7.1 In **Dooley v UCATT (Decision 11 March 2011) ("Dooley (No. 1)")** I determined that a considerable number of members had been denied the entitlement to vote in the General Secretary election of 2009 in breach of section 50(1) of the 1992 Act. I ordered that Mr Ritchie, the person who had been elected in the disputed election, was to stand down and a further election held. At the time of that election, the Union had about 129,000 members but had distributed only 66,529 voting papers. It was claimed by the Union that those members who did not receive a voting paper were 26 weeks or more in arrears with their subscriptions and were therefore ineligible to vote. However, in order for this to be a valid defence to an alleged breach of section 50(1) of the 1992 Act, the Union had to rely upon section 50(2) which enables a union to deny members the entitlement to vote in relevant elections if the rules of the Union exclude such entitlement to members who fall within specific classes of members; one such class being *"members who are in arrears in respect of any subscription or contribution*

*due to the Union*". I heard evidence that the Union had excluded members in arrears for 26 or more weeks from voting in each of its relevant elections from at least 2000 and possibly from 1991 but I found that this was no more than a policy or practice of the Union and there was no rule upon which it could rely. Accordingly I upheld Mr Dooley's complaint that entitlement to vote had not been accorded equally to all members of the Union.

7.2 In **Dooley v UCATT (Decision 9 July 2012) ("Dooley (No. 2)")** I considered whether Mr Dooley and Mr Ritchie had been correctly excluded from standing for election in the rerun 2009 General Secretary Election, which concluded in December 2011. I found that their exclusions were in breach of the rules of the Union and of section 47(1) of the 1992 Act. On the facts of the case, however, I did not order that the election be rerun. By that time neither Mr Dooley nor Mr Ritchie were members of the Union.

7.3 In **Dooley v UCATT (Decision 9 July 2012) ("Dooley (No. 3)")**, Mr Dooley complained that his expulsion from the Union for a disciplinary offence on or about 27 February 2012 was in breach of various rules of the Union. I found that his expulsion had not been carried out in breach of those rules. Mr Dooley has made a combined appeal to the EAT with regard to Dooley (No. 2) and (No. 3). At the time of this decision there had been no disposal of that appeal.

8. Following my decision in **Dooley (No.1)** on 11 March 2011, Mr Ritchie duly stood down as General Secretary and Mr George Guy was appointed as the General Secretary pro tem, as he was called within the Union. Mr Guy retained this position until January 2012. He has been a member of the Union and a predecessor union since 1970 and has served as its North West Regional Secretary since 1997.

9. On 21 March 2011 there was a meeting of the Executive Committee ("the EC") of the Union at which the Union's solicitors were present. The EC noted that the reason the Union had lost **Dooley (No. 1)** was the absence of any express rule which provided for those members in arrears with their subscriptions to be denied the entitlement to vote in relevant elections. The EC decided to call a meeting of the Rules Revision Committee of the Union and to seek the inclusion of such an express rule. Some members of the EC expressed concern that the proposed amendment would have the effect that members who pay their contributions by check off (see paragraph 18 below) might be unfairly excluded if their subscriptions had been deducted by their employers but not forwarded to the Union. Despite the recognition of this problem, the EC decided to proceed with the proposed amendment to the rule whilst seeking to mitigate its adverse impact by suggesting a form of words which gave the EC a discretion to contact members who appeared on the Union's records as being 26 or more weeks in arrears so as to give them the opportunity to resolve any potential arrears prior to the date of the assessment of eligibility, namely 21 days prior to the start of the period of balloting.

10. By rule 30 of the rules of the Union, the body which is empowered to revise its rules is the Rules Revision Committee. It is elected every 6 years, at about which time it would appear that there is a sexennial meeting of the committee at which resolutions from branches, Regional Councils and other bodies can be put. Rule 21(14)

provides that the EC may call a meeting of the Rules Revision Committee between the sexennial reviews, whenever, in its opinion, an alteration or addition to any existing rule is necessary. Rule 30(6) provides that the Rules Revision Committee may alter or amend any rule change proposed by the EC or any other body. It goes on to state, "On matters of major importance the decision of the membership shall be obtained by a vote".

11. The Rules Revision Committee met on 4 April 2011 and approved the rule changes proposed by the EC. For the purposes of this case, the relevant new rules are now to be found as rules 7(3) to 7(8) in the 2012 edition of the Union rules. The most relevant are as follows;

Rule 7(5) provides:

*Subject only to (4) above all members of the union who are not in arrears with their dues by 26 weeks or more are entitled to vote in any election.*

Rule 7(7) provides:

*Prior to the date fixed by the EC for the start of the period of balloting, the Union may contact members in arrears with their dues by 26 weeks or more, by means of communication that shall include the Union's website, a circular to Union branches, and an edition of the Union's journal the Building Worker, to inform members of the forthcoming election and the fact that should they appear to be more than 26 weeks in arrears of their dues then such members will be given 28 days to resolve the issue of their arrears and bring their dues up to date. Any member who fails to clear their arrears by noon 21 days prior to the date fixed for the EC for the start of the period of balloting, will not be sent a ballot paper for the election in question.*

12. In conformity with the first sentence of rule 7(7), the Union sent a circular to all Branch Secretaries and Regional Secretaries on 1 August 2011. The Union also sent by post to the given addresses of all members on its membership register a special edition of the Union's journal, Building Worker. Both these communications related solely to the further General Secretary election in 2011. They informed members that the voting period would be between 11 November and 13 December, with the result being declared on 13 December. Both contained a similar form of words under the heading 'Contributions'; as follows:

**"Contribution**

*To be able to participate in the election all members are being reminded that it is their responsibility to ensure that their contributions are up to date and, in any event, not more than 26 weeks in arrears. If individuals are in any doubt about their contributions and pay at Branch, they should contact their Branch Secretary (address on membership card). If they pay through deduction from wages and are in any doubt, they should check that their employer has (a) notified UCATT of payments and (b) forwarded those payments to UCATT.*

**NB: The time and date upon which the eligibility of a member of the Union to vote is determined is noon 21 days prior to the date fixed by the Executive Council for the start of the period of balloting.**

*Please notify the Union of any change of address if this letter has been forwarded to you.*

*If you require any further advice or assistance, please telephone: 0207 622 7707 or contact the office below*

Yours sincerely  
UCATT Executive Council"

Accordingly, the date for assessing eligibility for voting was 21 October 2011.

13. Voting took place between 11 November and 13 December 2011. As noted above, Mr Dooley and Mr Ritchie had been excluded from standing as candidates. On 13 December, Mr Steve Murphy was declared the winner of this election. The independent scrutineer for the election was Electoral Reform Services Limited. Its report of 13 December recorded that there were 48,146 eligible voters, that Mr Murphy received 5,475 votes and Mr Swaine 3,529 on a turnout of 9,055 (18.8% of 48,146). This report placed an asterisk against the number of eligible voters and by way of an explanation at the foot of the letter, set out what are now rules 7(3) to 7(7).
14. Mr Kelly contrasts the 48,146 members declared eligible to vote with the number of Union members included in the annual returns ("AR21s") made by the Union to my office for 2010 and 2011. They report a membership of 106,448 on 31 December 2010 and 79,723 on 31 December 2011. The AR21 for 2011 also reports that the Union did not have current or authorised addresses for 12,322 members. Accordingly, the maximum number of members that the Union could have engaged in a postal ballot in November/December 2011 was in the region of 67,401, some 19,255 more than in fact were sent voting papers.
15. Mr Kelly submitted a Registration of Complaint Form to my office on 18 April 2012.

#### **Arrears of subscriptions within UCATT**

16. In Dooley (No. 1) I noted that rule 7(18) provides for members who are 26 or more weeks in arrears with their subscriptions to be excluded from the Union but that such exclusions rarely occur, either by branch secretaries or the EC. In paragraph 10 of that decision I recorded the reasons that were given in evidence for them not doing so.
  10. *On the evidence before me, however, I find that members are rarely excluded by branch secretaries or the EC for arrears in their contributions under the above procedures. A number of reasons for this were given in evidence, including:*
    - 10.1. *Branch secretaries are reluctant to exclude members from benefits in the hope that they will return to the Union and start paying contributions again.*
    - 10.2. *Branch secretaries are construction workers, not administrators, and do not have the time or resources to go through their membership lists and exclude members who have not paid contribution for more than 26 weeks. Branch secretaries receive a list of members quarterly from Head Office which contains the date on which each member has last paid a contribution according to the Union's records. They are required to tick a box to state whether a member who has not paid has resigned, been found to be a duplicate, died or been excluded. Such forms are usually not completed and returned to Head Office.*
    - 10.3. *Very few members attend branch meetings.*

- 10.4. *The nature of the construction industry is such that many members move from contract to contract, sometimes with a gap in between. Some members who join for one contract, may cease to pay contributions when not working and may rejoin at a later date when employed on a further contract, perhaps in a different location. Such persons may then appear more than once on the membership register and are known as duplicate members. The first membership of such persons may well have fallen into arrears.*
- 10.5. *Another aspect of the construction industry which impacts on the timely collection of Union contributions is the manner in which the check off system is operated by some employers. The check off system is a method of paying Union contributions through an employer's payroll system. A periodical amount in respect of Union contributions is deducted from the members' wages by consent, usually on a weekly basis, and remitted to the Union at an agreed time. UCATT normally invoices such employers every 13 weeks. However, many employers delay payment to the Union beyond 26 weeks. There were in evidence quarterly schedules of check off arrears by region. These showed the number of weeks, beyond the 13 week invoicing period, that payments from specific employers were overdue. The majority were overdue by a further 13 weeks and many were overdue by much greater periods, often over 52 weeks and up to 214 weeks. Members who worked for these employers would consider that they were paid-up members of the Union, as their contributions were shown on their wage slips as a deduction. On the other hand, the Union's last recorded receipt of a contribution from such members could be more than 26 weeks previously, in some cases considerably more than 26 weeks.*

Such factors were also put forward in this case as an explanation for why so many members who are 26 or more weeks in arrears with their subscriptions remain on the register of members of the Union.

17. Mr Kelly estimated that 40-50% of the 19,255 or so members who were not sent a voting paper fell into the category of members in quoted paragraph 10.5 above, namely those on check off who had had their subscriptions deducted from their wages by their employer but whose employer had not remitted those subscriptions to the Union. Mr Guy considered that a more accurate estimate would be in the region of 20% of those members.

### **The check off arrangement**

18. Check off or payroll deduction of subscriptions, as it is sometimes known, is the process by which trade union members pay their union subscriptions through their employers. The employee/union member signs a written consent to his or her union subscriptions being deducted from his or her wages. The sums deducted are then forwarded by the employer to the union. Usually there is an express agreement between the union and the employer which provides for the frequency with which the subscriptions are to be remitted and for a small commission to be deducted from that sum by the employer for its administrative costs. The check off arrangement is recognised in section 68 of the 1992 Act in which it is described as a subscription deduction arrangement.
19. An issue arose on the facts of this case as to the legal ownership of the subscriptions deducted by the employer before they are handed to the Union. Mr Kelly argued that upon their deduction from wages they became the property of the Union and that accordingly a member's debt to the Union for the payment of those subscriptions was

satisfied at that stage. On the other hand, Mr Segal QC argued that the subscriptions that are deducted by the employer remain the property of the member until such time as they are remitted to the Union. He stated that he had not specifically researched this point of law but noted Mr Guy's evidence that when employers have become insolvent whilst holding members' subscriptions, the Administrators, Receivers or Liquidators have always rejected the Union's demands for payment on the grounds that the money belongs to the individual members and not the Union. Mr Guy stated that the Union has never tested this argument in the courts. The Union did not put in evidence the terms upon which the members of UCATT consent to a deduction from their wages nor the terms of any agreement UCATT has with employers for the remission of members' subscriptions. The terms of either or both of these documents could be highly relevant to this issue. I am therefore left to consider this point on assertions from the parties without researched legal argument or written evidence. Doing the best I can in these circumstances, I find with some hesitation that subscriptions deducted by an employer from UCATT members remain the property of the individual employee until an equivalent amount is remitted to the Union. This finding is supported by the hearsay evidence I have received about the position adopted by those professional insolvency practitioners charged with the responsibility of dealing lawfully with insolvent employers in possession of monies deducted from employees' wages by way of check off. It is however not a finding which should be regarded as binding or authoritative in any other case or situation, in which I would hope those adjudicating would have the benefit of fuller argument and documentary evidence.

### **The Relevant Statutory Provisions**

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

#### **Section 50 Entitlement to vote**

*(1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.*

*(2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following –*

- (a) members who are not in employment;*
- (b) members who are in arrears in respect of any subscription or contribution due to the union;*
- (c) members who are apprentices, trainees or students or new members of the union.*

*(3) The rules of the union may restrict entitlement to vote to members who fall within –*

- (a) a class determined by reference to a trade or occupation,*
- (b) a class determined by reference to a geographical area, or*
- (c) a class which is by virtue of the rules of the union treated as a separate section within the union,*

*or to members who fall within a class determined by reference to any combination of the factors mentioned in paragraphs (a), (b) and (c). The reference in paragraph (c) to a section of a trade union includes a part of the union which is itself a trade union.*

#### **Section 55 Application to the Certification Officer**

*(1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.*

- (2) On an application being made to him, the Certification Officer shall—  
 (a) make such enquiries as he thinks fit, and  
 (b) give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.

**The Relevant Rules**

21. The rules of the Union which are relevant for the purposes of this application are as follows:-

**Rule 7 Contributions**

- 1. ...
- 2. ...

**A Right to Vote in Union Elections**

3. This rule applies to all elections held by postal ballot for offices within the Union.

4. Where an election is for a post within a defined electoral area only members of the union who are eligible to vote and who belong to branches within that electoral area are entitled to vote.

5. Subject only to (4) above all members of the union who are not in arrears with their dues by 26 weeks or more are entitled to vote in any election.

6. The time and date upon which the eligibility of a member of the union to vote is determined is noon 21 days prior to the date fixed by the EC for the start of the period of balloting.

7. Prior to the date fixed by the EC for the start of the period of balloting, the Union may contact members in arrears with their dues by 26 weeks or more, by means of communication that shall include the Union's website, a circular to Union branches, and an edition of the Union's journal the Building Worker, to inform members of the forthcoming election and the fact that should they appear to be more than 26 weeks in arrears of their dues then such members will be given 28 days to resolve the issue of their arrears and bring their dues up to date. Any member who fails to clear their arrears by noon 21 days prior to the date fixed for the EC for the start of the period of balloting, will not be sent a ballot paper for the election in question.

8. This rule does not apply to political fund ballots.

9-17 .....

18. Members in arrears shall be suspended from benefit in accordance with the following table

<u>Weeks in Arrears</u>		<u>Weeks of Suspension</u>
12	Suspension from all benefits except trade privileges	8
26	To be excluded from the Union	

Suspension as above shall commence at the time the member's arrears amount to 12 weeks contributions, and s/he shall continue to be suspended from benefit until eight weeks have elapsed after his or her arrears have been reduced below 12 weeks, in accordance with the above tabular form. A member under suspension



shall not be liable to further suspension unless at the end of the term, his or her arrears exceed the limit specified by rule.

If the books close on any meeting night with arrears amounting to 12 weeks' contributions, suspension immediately follows and continues until the expiration of eight weeks dating from the meeting night on which such arrears are reduced below the stipulated amount according to the above table.

**Rule 21 Duties and Powers of the EC**

14. The EC shall transact the ordinary business of the Union. They may determine anything whereon the rules are silent, and decide on opening new branches and amalgamating or closing existing ones. The EC together with the GC shall have representation on the RRC. Where, in the opinion of the EC, an alteration or addition to any existing rule is necessary between the sexennial reviews, a meeting of RRC shall be called in accordance with the provisions of General Rule 30.

**Rule 30 Alteration of Rules**

1. All the rules herein contained shall be the rules under which the Union shall be worked and governed. New rules shall be made when required or the existing rules rescinded or altered by a majority decision of those members who are present and voting at the Rules Revision Committee meeting summoned for that purpose, and such new rules, rescissions, and alterations shall be binding on all members.

Any previous rules or arrangements governing the organisations which are incorporated in this Union are hereby rescinded.

2. Suggestions for alterations to rule shall be considered by the branches at special meetings convened within a period of 12 months prior to 24th April previous to the sexennial meeting of the Rules Revision Committee and forwarded to GO before the above date. Regional Councils will be permitted to submit alterations and amendments to rule for consideration of the Sexennial Rules Revision Committee.

When 15 Branches, at specially summoned meetings held within eight weeks of the first such meetings, request the GS to call a meeting of the Rules Revision Committee on any matter involving an alteration of rule, s/he shall immediately place this request before the Executive Council for their consideration.

The request to the GS must be accompanied by a list of the signatures of the members voting and a copy of the notice of summons convening the meeting.

3. The Rules Revision Committee shall be elected every six years and shall consist of two members elected from each Region subject to postal ballot, with five EC members, elected by the Executive Council, and five GC members, elected by the General Council. In addition, the Chairman of the General Council or his/her deputy shall attend meetings of the Rules Revision Committee and preside over the proceedings. S/he shall have a deliberate vote only, but no casting vote.

Representatives elected from the Regions shall not be over six weeks in arrears and otherwise qualified in accordance with General Rule, and must have completed five years' successive membership in the Union.

4. Decision of the Rules Revision Committee to be decided by a free vote of the Committee and on no account shall any member remain neutral. The Rules Revision Committee shall publish their minutes.

5. The Standing Orders Committee shall consist of five members, composed of one member of the EC, one member of the GC and three elected delegates. Three delegates to be nominated and elected by ballot for the ensuing Sexennial Meeting. Whether elected or not as delegates for the ensuing Sexennial Meeting, they shall attend as members of the Standing Orders Committee. In the event of a

*vacancy occurring the next highest candidate shall be called upon to fill the vacancy.*

*It shall be the duty of the Standing Orders Committee to draw up and submit to the Rules Revision Committee standing orders for the conduct of business, and the regulation of discussion.*

*Such standing orders shall not be suspended except by the consent of the Rules Revision Committee.*

*The Standing Orders Committee shall draw up the agenda for each Sexennial Meeting, detailing the subject to be taken at each session, and make provision for time to discuss proposals.*

*6. It shall be competent for the Rules Revision Committee to alter or amend any suggestion in relation to these rules made by the EC, the Standing Orders Committee of the Rules Revision Committee, Regional Councils or Branches. On matters of major importance the decision of the membership shall be obtained by vote.*

## **Consideration and Conclusions**

22. Mr Kelly's complaint is as follows:

*"The Union breached section 50(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 from 11 November 2011 to 13 December 2011 by not sending ballot papers to a large number of the Union's members who were entitled to vote, therefore not according equally to all members the right to vote in the election for General Secretary."*

23. Sections 50(1) and (2) of the 1992 Act provide as follows:

*(1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.*

*(2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following -*

*(a) members who are not in employment;*

*(b) members who are in arrears in respect of any subscription or contribution due to the union;*

*(c) members who are apprentices, trainees or students or new members of the union.*

## **Summary of submissions**

24. Mr Kelly observed that at the time of the 2011 General Secretary election, the Union had in the region of 79,000 members but had only distributed 48,146 voting papers. Having regard to those members for whom the Union held no ballot address, he argued that about 19,250 members had been denied a vote. He submitted that this established a breach of section 50(1) of the 1992 Act, as I had found in equivalent circumstances in my decision in Dooley (No.1). Mr Kelly went on to address the argument put forward by the Union that it had properly denied the entitlement to vote to those members who were 26 or more weeks in arrears with their subscriptions by having amended the rules of the Union on 4 April 2011 in such a way as to enable it to rely upon section 50(2) of the 1992 Act. Mr Kelly made two submissions in this regard. First, he submitted that the amendment made to the rules on 4 April 2011 had not been properly made and should therefore be ignored. He noted the final sentence of rule 30(6) which provides that, "*On matters of major importance the decision of the membership shall be obtained by vote*". Having observed that neither

the EC nor the Rules Revision Committee had put the proposed amendments to the rules to a vote of the membership for its decision, Mr Kelly argued that a denial of entitlement to vote in a General Secretary election was clearly a matter of major importance. Secondly, if I should find that the amendment had been validly made, Mr Kelly argued that those members on check off whose subscriptions had been deducted at source by their employers but had then been withheld from the Union for such a period that their records at head office showed them as being 26 or more weeks in arrears should not have been denied an entitlement to vote. He submitted that such members' subscriptions were paid at the time the employer deducted an appropriate amount from their wages and that the receipt for such payment was the wage slip recording a deduction for trade union dues. Mr Kelly argued that from that time the member was entitled to consider he was up to date with his subscriptions and that the money in the hands of his or her employer now belonged to the Union. On that basis, he maintained that such members were not in arrears within the terms of new rule 7(5) or 7(7) if the employer subsequently failed to remit the deducted sums to the Union. On his estimate of the percentage of members in arrears who fell into this category, he thought about 8,000-10,000 members may have believed themselves to have paid their subscriptions but be recorded as being in arrears at General Office. Even on Mr Guy's reduced estimate, about 4,000 members fell into this category. Mr Kelly submitted that on either estimate a breach of section 50(1) of the 1992 Act had been established. Mr Kelly's skeleton argument accepted that if the Union had amended its rules to clearly state that members would be excluded from voting when there is no record of their subscriptions to be found in the Union's accounts within a 26 week period, it could have safely relied upon the section 50(2)(b) exemption but that the amendment approved by the Rules Revision Committee was not correctly worded to achieve this outcome. .

25. Mr Segal QC, for the Union, submitted that the amendments that had been made to rule 7 of the rules of the Union by the Rules Revision Committee in April 2012 had been validly made. He noted that no separate complaint had been made to either the Union or to me of a breach of rule 30(6). He argued that it was for the Union to decide what constituted a matter of major importance and that the context of the Union's decision was very important. He noted the evidence that there had probably been no previous such membership vote on a rule change in the history of the Union and that the amendment in question was seen as putting into written form what had been the custom and practice of the Union since at least 2000 and probably since 1991. On the basis that the amendment to rule 7 had been made validly, Mr Segal submitted that Mr Kelly's application was misconceived as the Union could clearly rely upon the provisions of section 50(2)(b) to exclude the entitlement to vote to those in arrears with their subscriptions. He argued that, from both a legal and a practical perspective, the criterion for deciding if a member is in arrears must be whether the Union had received the appropriate payments of subscription and had duly entered them in its records. Mr Segal maintained that Mr Kelly was wrong in law to assert that the Union should be deemed to have received a member's subscription upon its deduction from his or her wages by the employer. In Mr Segal's submission, the sums deducted by way of check off remained the property of the member until such time as they were paid over to the Union. He further argued that any other analysis would give rise to the impractical situation that the Union would only know which of its members on check off was in arrears (if the employer had not remitted the sums

deducted) by individually examining the wage slips of those members which was clearly not possible.

### Conclusions

26. Mr Kelly's complaint in this case concerns the 2011 General Secretary election and is very similar to the equivalent complaint in Dooley (No. 1) in relation to the 2009 General Secretary election. The key factual difference, in the Union's submission, is that it amended its rules in April 2011 to enable it to rely upon the exemption in section 50(2)(b) of the 1992 Act and so render lawful that which was found to be unlawful in Dooley (No. 1).
27. Mr Kelly's first submission is that the amendment to rule 7 of the rules of the Union was not carried out in accordance with the rules relating to their revision and is therefore void. He maintains that the Union cannot therefore rely on its purported amendment to rule 7. It is notable that no separate complaint for breach of rule has been brought and I consider the issue only in so far as it may relate to the Union's reliance on the amendments to rule 7 for the purposes of the exemption in section 50(2)(b) of the 1992 Act.
28. The means by which the rules of UCATT are to be revised is provided for in rule 30, together with rule 21(14) which enables the EC to call meetings of the Rules Revision Committee between its sexennial meetings. Rule 30(1) provides for the alteration of the rules by the Rules Revision Committee which is to be elected in accordance with rule 30(3). The sexennial meetings of the Rules Revision Committee and the ability of branches to requisition a meeting are provided for in rule 30(2). The procedures for the Rules Revision Committee are contained in rules 30(4) and (5). Finally, rule 30(6) provides for the ability of the Rules Revision Committee to alter or amend any proposed rule change it is required to consider. The last sentence of rule 30 states "*On matters of major importance the decision of the membership shall be obtained by vote*". These are the words upon which Mr Kelly relies.
29. Mr Kelly's submission based on rule 30(6) is attractive. Considered in isolation, the denial of entitlement to vote in a General Secretary or other statutory election is likely to be an important matter both for the Union and its members. However, Mr Segal QC argued that the amendment to rule 7 must be seen in context and that it is not necessarily a 'matter of major importance' to make express a practice of such long standing. I find that this issue is not as clear cut as Mr Kelly contends and that it is necessary to consider the circumstances as a whole. First, even though rule 30(6) does not specify which body must decide what constitutes a matter of major importance, it appears from the context that the appropriate body is either or both of the EC or the Rules Revision Committee. That determined, what criteria should be used to establish what is a matter of major importance? There may be very different views as to what is "major". In my judgement, the rule affords the EC or the Rules Revision Committee a wide margin of appreciation in determining this issue, so that its decision may only be successfully challenged if it is one to which no reasonable body could have come. Each such decision of the EC or Rules Revision Committee will be fact specific, having regard to the context of the proposed rule change and its understanding of what is of major importance to the Union and its members. Further, it was pointed out in evidence that no proposed rule change has been put to a membership vote in accordance with rule 30(6) since the foundation of the Union in

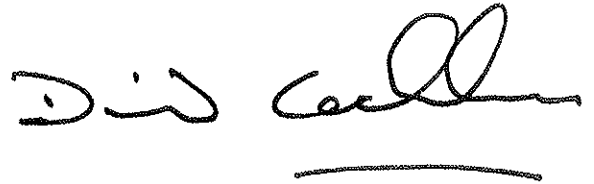
1971 and no challenge has been made to the absence of any such vote. It was suggested that a membership vote in 1995 to confirm the removal of certain members of the General Council who were then full time and their replacement by lay members may have fallen into this category but no witness had any clear recollection of the constitutional significance of that vote.

30. In my judgement, although the EC or Rules Revision Committee would have been entitled to call for a membership vote on the proposed rule change, it cannot be said that the Union acted outside the scope of its lawful discretion by not calling for such vote on the facts of this case. It is significant that all relevant elections had been conducted in accordance with the proposed amended rules since at least 2000 and possibly since 1991 and that no complaint was made about this practice until Mr Dooley in 2009. I upheld Mr Dooley's complaint in Dooley (No1) because I found that the Union could not take advantage of the exemption in section 50(2)(b) in the absence of an express rule. I did not accept the Union's argument that former rule 7(12) ( now rule 7(18) was such an express rule, even having regard to past practice and the expectation of members. Shortly after I determined Dooley (No.1) in March 2011 the EC resolved to correct the situation with a rule amendment which it put to the Rules Revision Committee in April 2011. In these circumstances, I find that the EC treated the rule change not as a means of changing the voting expectation of members that had existed previously, but as a means of regularising a state of affairs to coincide with the expectation of members that had continued over numerous elections. Having regard to all the circumstances that prevailed at the time of the rule change in question and the circumstances which gave rise to it (including the absence of any previous ballot pursuant to rule 30(6)), I find that the implied decision that the proposed rule change was not a matter of major importance within the meaning of the rules is one to which a reasonable EC or Rules Revision Committee properly directing itself could have come. Accordingly, I find that the amendment to rule 7 of the rules of the Union was properly made by the Rules Revision Committee on 4 April 2011.
31. The remaining question is whether the amendment approved by the Rules Revision Committee was sufficient for the purpose intended by the EC and the Rules Revision Committee. Mr Kelly argued that members who paid by check off whose submissions are not remitted to the Union by their employer do not thereby fall in arrears with their subscriptions. He submitted that rules 7(5) and 7(7) therefore do not bite on them, with the result that their exclusion from the entitlement to vote is a breach of section 50(1) of the 1992 Act. There is some force in this argument viewed from the position of those individual members who have wage slips which record deductions for Union subscriptions. How are such members to know they are in arrears and thereby not entitled to vote?
32. On the other hand, viewed from the position of the Union, the situation is quite different. As I found in Dooley (No. 1), the nature of the construction industry and the fluctuating employment patterns of construction workers presents UCATT with considerable challenges in managing its membership register and subscriptions. On the evidence I have considered in the recent cases involving UCATT, not all those challenges have yet been overcome. There are probably many members who are considerably in arrears with their subscriptions who have not been removed from membership for the reasons set out in paragraph 16 above and probably for other

reasons. Nevertheless, the Union appears to be grappling with this problem, as can be seen by the number of recorded members as at December 2011 being 79,723 as opposed to 106,448 in December 2010. Not only does current rule 7(18) provide that those members 26 or more weeks in arrears are to be excluded from the Union but Mr Guy stated in evidence that, in his opinion, it was simply not fair that those who had not paid subscriptions for over 6 months should be entitled to vote in elections. Having regard to the practical problems of organising and collecting subscriptions in the construction industry, the Union has adopted a simple test for who is in arrears and who is not; namely those who have paid money which has been received by the Union and duly recorded in its accounts. At the time that the proposed rule change was being discussed by the EC on 21 March 2011, it was recognised that the established practice gave rise to some anomalies and apparent unfairness, particularly to those on check off with whom Mr Kelly is concerned. The EC had to balance the various organisational, financial, democratic and other considerations and concluded that the proposed rule change was the best way forward. It recognised that there might be difficulties and therefore agreed to insert the first sentence into new rule 7(7), providing for members to be told of the ballot and their need to check their membership position if in any doubt. In my decision in Dooley (No. 1), I commented at paragraph 42 that the balancing of policy considerations in the formulation of a rule which removed from members the entitlement to vote was quintessentially a matter to be decided by the Union according to its democratic processes. I find that this is the exercise that UCATT undertook at the meeting of its EC on 21 March 2011 and at the meeting of its Rules Revision Committee on 4 April 2011.

33. Returning to Mr Kelly's argument, he submitted that although the amendment made by the Union was deficient, it could have achieved its desired outcome if it had referred in rules 7(5) and 7(7) to there being no record of a member's subscriptions in the Union's accounts within a 26 week period, rather than to a member simply being in arrears for 26 weeks. Mr Kelly based this submission on his belief that the money paid by members by way of a check off deduction from their wages becomes the property of the Union upon deduction and thus discharges the member's obligation for that week. However, I have found in paragraph 19 above, albeit with some diffidence, that Mr Kelly's submission is not correct. I have found, for the purposes of this case, that the obligations of members to pay their subscriptions are only discharged when the money is received by the Union so that it might be properly recorded in the Union's accounts. Accordingly, I find that the amendments made to rule 7 by the Rules Revision Committee express with sufficient clarity that members who are in arrears with their subscriptions by 26 weeks or more, in accordance with the properly kept accounts of the Union, are not entitled to vote in a relevant election.
34. I therefore conclude that rule 7 of the rules of the Union was lawfully amended at the Rules Revision Committee on 4 April 2011 and that the effect of that amendment was to create a class of members from whom the entitlement to vote at relevant elections was removed. I further find that those on check off whose subscriptions had not been remitted to the Union by their employers for a period of 26 weeks or more fell within that class and were accordingly members from whom the entitlement to vote in a relevant election had been removed.

35. For the above reasons, I refuse Mr Kelly's application for a declaration that the Union breached section 50(1) of the 1992 Act between 11 November and 13 December 2011 by allegedly not according equally to all members the right to vote in an election for General Secretary.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath it.

**David Cockburn**  
**The Certification Officer**

