

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION  
UNDER SECTIONS 55(1) and 108A(1) OF THE TRADE UNION AND LABOUR  
RELATIONS (CONSOLIDATION) ACT 1992**

**Mrs Hallam Black**

**v**

**Voice**

**Date of Decisions**

**2 May 2013**

**DECISION**

Upon an application by Mrs Hallam Black ("the claimant") under sections 55(1) and 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

1. I declare that on or around 8 June 2012, Voice breached section 48(4) of the 1992 Act when the election address of a candidate in the 2012 General Secretary election was modified from the text submitted by that candidate
2. I refuse the claimant's application for a declaration that on or around 8 June 2012, Voice breached section 51(3)(a) of the 1992 Act when it allegedly failed to ensure every person who was entitled to vote in the 2012 General Secretary election was allowed to do so without interference from, or constraint imposed by, the union or any of its members, officials or employees.
3. I declare that on or around 16 August 2012, Voice breached paragraph 8a of Appendix A of the rules of the Union when a disciplinary panel was not convened to deal with the complaints made in Mrs Hallam Black's letter to the Union of 15 August 2012.

**REASONS**

1. Mrs Kay-Lesley Hallam Black brought these complaints as a member of Voice ("the Union"). Her application was received at the Certification Office on 12 October 2012. It alleged a breach of the rules of the Union relating to its disciplinary procedures and breaches of the 1992 Act in relation to the 2012 General Secretary Election.
2. Following correspondence, the claimant confirmed the complaints she sought to pursue in the following terms:

**Complaint 1**

*On or around 8 June 2012, the union breached section 48(4) of the 1992 Act when the election address of candidate Mr Toone was modified from the text being justified to the left to fully justified despite both election addresses produced by the candidates being presented justified to the left.*

**Complaint 2**

*On or around 8<sup>th</sup> June 2012, the union breached section 51(3)(a) of the 1992 Act when it failed to ensure every person who was entitled to vote in the 2012 General Secretary election was allowed to do so without interference from, or constraint imposed by, the union or any of its members, officials or employees. The interference and constraint consisted of the inadequate union response to Deborah Lawson naming the following (either former or current) Executive Council members – Yvonne Johns, Rhona Burchick, Val Payne, Peter Wilkinson, Gill Lapworth, Susan Leslie, Margaret Volpé and Joyce Watts – in her election address as endorsing her candidacy for General Secretary of Voice which led many members to think that she was the preferred candidate*

**Complaint 3**

*On or around 10<sup>th</sup> July and 16<sup>th</sup> August 2012, the union breached paragraph 8a and 8b of Appendix A when a disciplinary panel was not convened to deal with the complaints made in Mrs Hallam Black's letters of 9<sup>th</sup> July and 15<sup>th</sup> August 2012.*

3. I investigated the alleged breaches in correspondence and a hearing took place on 10 April 2013. At the hearing, Mrs Hallam Black represented herself. She produced a witness statement and gave oral evidence. Mrs Hallam Black also produced written witness statements signed by Ms Attwater, Ms Woolley and Ms Chandler of the Kirk Hallam Community Technology and Sports College, none of whom attended the hearing. The Union was represented by its in-house solicitor, Mr David Brierley. Oral evidence for the Union was given by Ms Deborah Lawson, its General Secretary, Mr Michael Barton, its National Chair and Ms Susan Cornish, its in-house accountant. Each produced a written witness statement. Mrs Hallam Black and the Union provided skeleton arguments. There was in evidence a 148 page bundle of documents consisting of letters and other documentation supplied by the parties. At the hearing I admitted into the bundle by consent a further four pages adduced by the claimant. There was also a bundle of four authorities and extracts from the Oxford Compact Thesaurus 2011. Complaints 2 and 3 were originally presented to my office by Mrs Hallam Black in the reverse order to the order in which they appear above. However, it was agreed at the hearing that the more logical way of proceeding was for them to be dealt with as set out above.

**Findings of Fact**

4. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
5. Mrs Hallam Black is a retired English teacher. She started teaching in 1967 and joined the Union in 1983. For about 18 years she was a workplace representative of the Union at her school, The Kirk Hallam Community Technology & Sports College, Ilkeston. On or about 12 October 2012 Mrs Hallam Black was elected to the National Council of the Union, where she still sits.
6. The Union was founded in about 1970 as the Professional Association of Teachers. It changed its name to Voice in January 2008. It is based in Derby and has about 32,000 members.

7. In early 2011 the then General Secretary of Voice, Philip Parkin, gave notice of his intention to resign in June 2012. In March 2011, the National Council of Voice considered an electoral timetable for his replacement. Since at least 2001 the procedure used by the Union in the election of its General Secretary is for the post to be advertised, both inside and outside the Union. Suitable candidates are then interviewed by a Committee of Council. The candidate successful at interview is offered the post, subject to a statutory election. That person becomes known as the Council's Preferred Candidate ("CPC").
8. Ms Lawson has been a member of the National Council of the Union for about 25 years. In October 2011, she put herself forward for selection as the CPC for the position of General Secretary. In November 2011 she was interviewed by a Committee of Council and in December she was informed that she had been chosen as the CPC. The next stage of the process was for there to be a general invitation for nominations for the statutory election, which invitation was to be made by 9 January 2013.
9. Before the general invitation for nominations was issued, the Union received a complaint about the process for the selection of the CPC. It instructed solicitors to investigate. Their report was considered by a Complaints Panel, which upheld the complaint. On 10 March 2012 the National Council accepted the decision of the Complaints Panel and decided to rerun the process for the selection of the CPC. Four candidates were interviewed in March 2012. The Appointments Panel reported to the National Council on 31 March. The National Council decided by eight votes to six to "go to a ballot for the position of General Secretary, by fully paid up members, with no Council Preferred Candidate".
10. The election process started on 2 May 2012. The Acting Returning Officer in the election was to be the Union's in-house accountant, Ms Cornish. The independent scrutineer was to be Electoral Reform Services ("ERS"). Nominations were to be submitted by 30 May. Election addresses were to be submitted by 8 June. The ballot was to be run between 27 June and 25 July. The result was to be declared on 27 July.
11. At the end of the nomination period, there were only two valid nominations; those of Ms Lawson and Mr Ian Toone, a Senior Professional Officer employed by the Union. On 30 May 2012 Ms Cornish wrote to both candidates inviting them to submit an election address of no more than 1,000 words and a passport size photograph. There were no other restrictions on the content of the election addresses, which were to be received by noon on 8 June.
12. The election address submitted by Mr Toone had its text justified to the left. Mr Toone stated that he had the endorsement of the outgoing General Secretary.
13. The election address of Ms Lawson was submitted at 10.52am on 8 June 2012. Its text was also justified to the left. Ms Lawson's election address contained a section headed 'Endorsements'. As this has proved to be controversial, I set it out in full:

**“Endorsements**

*I am greatly humbled and encouraged by the support, endorsement and numerous nominations I received from members in England, Scotland, Wales and the Channel Islands, representing all phases of education and care from nursery to tertiary. I am extremely proud that my work over 25 years as a volunteer at local and national level of Voice is recognised and has earned the confidence and trust of those who nominated me, who include current and past members of the National Council of Voice, including the incoming Vice Chairman Yvonne Johns and the chairman of the Scottish Executive Committee.*

*We consider Deborah Lawson to be the best candidate for General Secretary because of her understanding of the needs of members, the business of education and care, her passion and commitment to the core principles and her 25 years experience as a council member working for Voice.*

*Val Payne, Nursery Manager, Jersey, Peter Wilkinson, Former National Council Member and Welsh Executive Committee, Gill Lapworth, council member Leicestershire, Susan Leslie, former council member Scotland, Sharon Insull, community nursery nurse, Derby, Margaret Volpe, Deputy Honorary Treasurer, Joyce Watts, Chairman Emeritus.*

*Thank you to my supporters and especially to those who have allowed me permission to use your names and endorsement in this address. “*

14. Ms Cornish had been the Acting Returning Officer in all elections since 2001, but had never before administered a General Secretary election in which there had not been a CPC. She was concerned about the ‘endorsements’ section in Ms Lawson’s election address, having regard to the decision of the National Council not to have a CPC. She telephoned the ERS for advice as to whether such endorsements were permissible. Ms Cornish informed the ERS that the election address was accurate and did not breach any of the Union’s rules. ERS advised that a disclaimer could be put on the front sheet of the election address publication and it sent Ms Cornish examples of similar disclaimers that had been used by two other Unions. Ms Cornish drafted her own disclosure based on these examples. Her draft was intended to be more in keeping with the Union’s style. The disclaimer was to be printed on the front sheet of the election address publication between tramlines and states:

---

*Legislation requires that VOICE publishes all election addresses without amendment or deletion and irrespective of the fact that they may contain a statement that does not necessarily reflect the view of the Executive Council.*

*VOICE wishes to make it clear that there is no Council Preferred Candidate in this election*

---

*Please read carefully before casting your vote.”*

I find that this disclaimer is both prominent and clear. Contrary to the submission of Mrs Hallam Black, I find that no recipient of this document could reasonably conclude that the Union had a Council Preferred Candidate in that election.

15. Ms Cornish sent the election addresses, photographs and membership database to ERS for them to prepare the voting papers, election address publication and envelopes for a postal ballot.
16. On 19 June 2012, ERS sent a draft of the election address publication to Ms Cornish for her to proof-read. She carefully checked that the content of the candidates' election addresses had been faithfully reproduced but she did not notice that the layout of Mr Toone's election address had been modified. Instead of it being left justified, as it had been submitted by Mr Toone, it was fully justified. Both sides of the text extended to their margins.
17. Voting began on 27 June 2012.
18. The Union held its AGM on Saturday 30 June 2012, the last Saturday of the month. Mr Barton became the National Chairman and Mr Parkin resigned as General Secretary. Mr Brierley and Ms Cornish became Acting Joint General Secretaries.
19. On 4 July 2012 there was an exchange on Facebook between a member of the Union, Papu Patel, and Ms Lawson. Papu Patel asked *"I'm confused. Why have you included the endorsement of several council members when the ballot paper clearly states there is 'no Council Preferred Candidate in the election'. Are these renegade members?"* Ms Lawson's reply included the following, *"You are correct, there is no Council Preferred Candidate in this election but that does not prevent individual members of the National Council from endorsing or supporting one of the candidates."*
20. About a week after voting had begun, Mr Toone went to see Ms Cornish. He pointed out that the text of his election address was justified differently to that of Ms Lawson. He asked Ms Cornish to find out why this had happened but he did not make a complaint about it. On 5 July Ms Cornish emailed ERS for an explanation but received just a holding response that day. On 24 July Mr Toone asked for an update on his enquiry and Ms Cornish contacted ERS again. It replied the same day as follows: *"Our artwork team have confirmed that the justification issue was just a quirk of the way the inDesign artwork tool processed the statements. There was no particular reason for it, just that the programme automatically justified the statement on pages 4 and 5 of the document"*. After the commencement of this application, Ms Cornish asked ERS why it was only Mr Toone's election address that had been fully justified. In an email of 6 March 2013, ERS stated *"I have discussed the matter this morning with our artwork team and I'm afraid we cannot explain why the artwork was justified for one statement and not the other. The tool usually processes all artwork the same way – we are not sure why it didn't in this instance. Sorry I can't provide more information on this."* Mr Toone was provided with a copy of the email from ERS of 24 July and has not raised the matter further with the Union.
21. On 9 July 2012 Mrs Hallam Black wrote to Mr Barton as National Chairman stating that Ms Lawson's inclusion of endorsements from members of council was a 'blatant contradiction of council's corporate disclaimer'. She asked to be informed what action Mr Barton proposed to take in order to remedy the situation "which surely demands a disciplinary investigation". Mrs Hallam Black went on to comment that

she was contemplating bringing a complaint to the Certification Office on the grounds that members had not been allowed to vote without 'constraint/interference'.

22. Mr Barton responded to Mrs Hallam Black by a letter of 19 July 2012. He stated that the election addresses had been published after having obtained advice from ERS and that individual members of Council had the same democratic rights as other members to support a candidate of their choice. He commented that the disclaimer on the front cover of the election address publication would leave no reasonable person in doubt as to its meaning. As to the suggestion that there had been interference or constraint, Mr Barton asked Mrs Hallam Black to supply him with any evidence that this had happened and that, without evidence, he would not be able to uphold her complaint.
23. On 27 July 2012 the results of the election were declared. Ms Lawson received 1,747 votes and Mr Toone 1,286 votes. Ms Lawson was declared the winner.
24. On 15 August 2012 Mrs Hallam Black wrote again to Mr Barton. In a three and a half page letter, Mrs Hallam Black asked Mr Barton to present her complaint about Ms Lawson's election address to the Complaints Tribunal of the Union. She specifically asked that it be presented "in accordance with Rule A/12" (i.e. paragraph 12 of Appendix A)". Paragraph A/11 provides that any such complaint should meet six criteria and Mrs Hallam Black had constructed her letter to comply with this requirement. She continued to complain about the former and current members of Council who had "*proactively sought to influence members voting by asserting that Mrs Lawson is the best candidate for General Secretary*". She stated that she still considered it possible that their conduct amounted to an infringement of the law but that, in any event, she believed that what had happened is improper as, in her words, "*it falls well below the standard that we should expect from elected members of council and should therefore be subject to a disciplinary enquiry*". Mrs Hallam Black stated "*As such conduct is, ipso facto, 'conduct which ... is unbecoming a member of the Union or contrary to its interests or objects' (Rules of the Union, section A/9(a)(ii), I must ask you to present my complaint to the Complaints Tribunal of the Union, in accordance with Rule A/12*".
25. Mr Barton received this letter when he returned from holiday and responded by a letter dated 12 September. He commented that he was unable to uphold Mrs Hallam Black's complaint as she had not supplied him with any evidence of interference or constraint. Mr Barton further commented that members of Council were entitled to support the candidate of their choice and that to do so was not "*unbecoming a member of the Union or contrary to its interests or objects*".
26. Mrs Hallam Black submitted evidence of two other members who had written to Mr Barton complaining, inter alia, about the endorsement section of Ms Lawson's election address. They were letters from Ms Woolley of 25 September 2012 and Ms Luty on or about 16 July 2012. Mr Barton responded to both these letters in a similar fashion to the responses he had sent to Mrs Hallam Black.
27. Ms Lawson took up her appointment as General Secretary on 15 October 2012 and at about the same time, Mrs Hallam Black was elected unopposed to the National Council as the replacement to Ms Lawson.

28. Mrs Hallam Black commenced this complaint to me by a complaint received on 12 October 2012.

### **The Relevant Statutory Provisions**

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

#### **Section 48 Election addresses**

(4) *The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except -*

- (a) *at the request or with the consent of the candidate, or*
- (b) *where the modification is necessarily incidental to the method adopted for producing that copy.*

#### **Section 51 Voting**

(3) *Every person who is entitled to vote at the election must -*

- (a) *be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and*
- (b) *so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.*

#### **Section 55 Application to 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 the 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.*

(5A) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements -*

- (a) *to secure the holding of an election in accordance with the order;*
- (b) *to take such other steps to remedy the declared failure as may be specified in the order;*
- (c) *to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future*

*The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.*

#### **Section 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.*

**Section 108B Declarations and orders**

- (3) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements –*
- (a) *to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
  - (b) *to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

**The Relevant Rules of the Union**

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

**APPENDIX A: TRIBUNALS**

- A/1 a. *The Union shall have the power to convene either of two types of tribunal, a disciplinary tribunal and a complaints tribunal; the Union shall also have the power to convene an appeals panel;*
- b. *The administrative arrangements for the convening of a tribunal or an appeals panel shall be the responsibility of the General Secretary or his or her nominated deputy; in the absence of an appropriate member of the executive staff, the Chairman shall assume this responsibility.*
- A/2 *The procedures for determining the composition of a tribunal or an appeals panel shall be in accordance with the provisions of this appendix.*
- A/3 *The tribunal shall consist of not fewer than three and not more than six secretaries of federations or other valid groups who do not currently hold any national office, including membership of the Council.*
- A/4 *The General Secretary shall notify the Chairman, the Immediate Past Chairman, all Chairmen Emeriti who are current members of the Council and as many of the most recent chairmen remaining in paid-up membership as shall be necessary to bring the number of Chairmen Emeriti up to five that a tribunal is to be held, and shall invite these persons to nominate to the tribunal from the list of secretaries provided between three and six persons; the Chairmen shall reply to the General Secretary within seven days of receiving the invitation, failing which their nominations shall be invalid.*
- A/5 *The General Secretary shall then invite the six eligible members with the highest number of votes to form the tribunal. If fewer than three accept nomination, he or she shall invite so many more in order of votes as may be necessary to form the tribunal. In the event of an equality of votes at any stage, those members with the same number of votes shall be elected in alphabetical order.*
- A/6 *The General Secretary, or his or her nominated deputy, shall attend meetings of the tribunal for the purposes of recording the proceedings and of offering advice including, where appropriate, legal advice.*
- A/7 *In the event of the General Secretary's being summoned to appear before a tribunal, he or she shall forfeit all duties described above and below within this appendix and shall be replaced in the execution of those duties by the Chairman.*



A/8 a. *An allegation that a member is in breach of discipline shall be investigated by a disciplinary tribunal;*

b. *An allegation that a member, or the Union, or any officer of the Union is in breach of these rules shall be investigated by a complaints tribunal.*

A/9 a *The following shall be deemed to be breaches of discipline and shall be sufficient grounds for sanction as specified by rule 19:*

i) *conduct involving dishonesty or serious physical or sexual assault in respect of which the member concerned has been convicted; or*

ii) *any other conduct which, in the opinion of the tribunal, is unbecoming a member of the Union or contrary to its interests or objects.*

b. *Any action, which is contrary to these rules, whether taken by a member, by the Union or by any officer of the Union shall be deemed to be in breach of these rules and shall be sufficient grounds for sanction as specified by rules A/15 and rule A/19.*

A/10 a *Any member who considers that another member's conduct has amounted to a breach of discipline on any of the grounds specified in rule A/9 of this appendix may make a complaint to the General Secretary, or if necessary to the Chairman, who shall convene a tribunal under the provisions of this appendix.*

b. *Any member who considers that any action contrary to these Rules has been taken by the Union or by any Officer thereof may make a complaint to the General Secretary, or if necessary to the Chairman, who shall convene a tribunal under the provisions of this appendix.*

A/11 *Any such complaint shall:*

a) *be in writing and shall give the name and details of the person making the complaint;*

b) *state against whom the complaint is directed;*

c) i. *in the case of an alleged breach of discipline, state the nature of the conduct which is the subject of the complaint and specify under which of the grounds listed in rule A/9a the complaint is being lodged;*

ii. *in the case of an alleged breach of these rules, specify the breach of rules which is the subject of the complaint;*

d) *specify details of any evidence supporting the complaint, including the names and addresses of any witnesses whom the member may wish to call on his or her behalf;*

e) *state the nature of the complainant's interest in making the complaint; and*

f) *state the nature of the injury or damage suffered by any person in consequence of the alleged breach.*

A/12 *The tribunal, on receiving such a complaint, shall make such preliminary investigation as it deems necessary to determine whether or not prima facie grounds exist for the allegation. Where it considers that such grounds do not exist it shall dismiss the complaint and inform the complainant accordingly, otherwise it shall proceed to hold a full investigation in accordance with rule A/13.*

## **Consideration and Conclusions**

### **Complaint One**

31. Mrs Hallam Black's first complaint is as follows:

*"On or around 8 June 2012, the union breached section 48(4) of the 1992 Act when the election address of candidate Mr Toone was modified from the text being justified to the left to fully justified despite both election addresses produced by the candidates being presented justified to the left".*

32. Section 48(4) of the 1992 Act provides as follows:

**Section 48 Election addresses**

(4) *The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except -*

(a) *at the request or with the consent of the candidate, or*

(b) *where the modification is necessarily incidental to the method adopted for producing that copy.*

**Summary of Submissions**

33. Mrs Hallam Black submitted that it was not in dispute that Mr Toone's election address had been modified in that it had been submitted to the Union by Mr Toone with its text justified to the left whereas it had been published by the Union with its text fully justified and that it was not in dispute that the modification was not with the consent of Mr Toone. She maintained that this established a breach of section 48(4) of the 1992 Act regardless of whether the modifications had been made by the Union or a third party, ERS. Mrs Hallam Black commented that, in any event, the error should have been picked up by the Union at the proof reading stage. She accepted that the modification was not malicious but, in her submission, it did not matter whether the error arose out of a software fault or the incompetence of ERS staff, as the breach does not require 'intentionality'.

34. Mr Brierley, for the Union, admitted that Mr Toone's election address had been modified, albeit to a minor extent. He observed that the only evidence was that the modification had occurred during the publishing process and was a result of the use of the inDesign software by ERS. In these circumstances, Mr Brierley submitted that the modification came within the exception in section 48(4)(b) of the 1992 Act in that it was "*necessarily incidental to the method adopted for producing that copy*".

**Conclusion – Complaint One**

35. I find that there was a modification to the election address of Mr Toone which was made without his consent. Mr Toone had presented his election address to the Union with its text justified to the left only. The Union had published it in the election address publication with its text fully justified.

36. The issue for me to determine is whether this modification comes within the exemption in section 48(4)(b) of the 1992 Act, that is was the modification "*necessarily incidental to the method adopted for producing the copy*"?

37. In my judgement, the modification to Mr Toone's election address was not done deliberately by the Union or by ERS. It was the result of either a glitch in the relevant software used by ERS or human error on the part of an ERS operative. The modification should have been picked up by the Union at the proof reading stage but it was not. In these circumstances, I find that the modification was incidental to the method adopted for producing the election address publication. However, I do not find that it was "necessarily" incidental to that method. On the basis that the software was not intended to produce this result and the operator's task was to reproduce the election addresses without modification, I find that it was not a necessary part of either the technical or manual aspect of the production process that caused the

modification to be made. This is further demonstrated by the fact that Ms Lawson's election address was presented to the Union with its text justified to the left and it appeared in the election address publication similarly laid out.

38. For the above reason I uphold Mrs Hallam Black's complaint that on or around 8 June 2012 the Union breached section 48(4) of the 1992 Act by publishing a modified version of the election address that Mr Toone had submitted for publication, without his consent to the modification.
39. When I make a declaration in a complaint of a breach of statute, I am required by section 55(5A) of the 1992 Act to also make an enforcement order unless I consider that to do so would be inappropriate. Mrs Hallam Black requested that I make an order requiring that the election be rerun. In considering this request I have had regard to the layout of Mr Toone's election address, both left justified and fully justified, viewed individually and alongside that of Ms Lawson. I have also had regard to the majority achieved by Ms Lawson in the election and to the absence of any specific complaint by Mr Toone. In my judgement, the nature of the inadvertent modification of Mr Toone's election address was not such as would render it appropriate that I order the election to be rerun or make any other enforcement order. I am satisfied that both the Union and ERS have taken this complaint with the seriousness that it merits and will take steps to ensure that there is no repetition.

## Complaint Two

40. Mrs Hallam Black's second complaint is as follows:-

*"On or around 8<sup>th</sup> June 2012, the union breached section 51(3)(a) of the 1992 Act when it failed to ensure every person who was entitled to vote in the 2012 General Secretary election was allowed to do so without interference from, or constraint imposed by, the union or any of its members, officials or employees. The interference and constraint consisted of the inadequate union response to Deborah Lawson naming the following (either former or current) Executive Council members – Yvonne Johns, Rhona Burchick, Val Payne, Peter Wilkinson, Gill Lapworth, Susan Leslie, Margaret Volpé and Joyce Watts – in her election address as endorsing her candidacy for General Secretary of Voice which led many members to think that she was the preferred candidate."*

41. Section 51(3)(a) of the 1992 Act provides as follows:-

### **Section 51 Voting**

(3) Every person who is entitled to vote at the election must -

(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

## Summary of Submissions

42. Mrs Hallam Black referred to the Oxford Compact Thesaurus for the meaning of "interference or constraint". She also relied on the case of **Higginbottom v. United Road Transport Union (CO - 9/11/06)** in support of her argument that a statement in an election address could amount to a breach of section 51(3)(a) if it was *"the most blatant lie or seriously misleading statement"*. Mrs Hallam Black submitted that the endorsement section of Ms Lawson's election address amounted to interference or a

constraint by Ms Lawson, which interference or constraint was permitted by the Union by its publication of her election address. She argued that members generally were misled by the endorsement section of Ms Lawson's election address into believing that she was the Council's Preferred Candidate. Mrs Hallam Black maintained that members were also misled by Ms Lawson's response on Facebook to Papu Patel of 4 July 2012 in which she stated, "*There is no Council Preferred Candidate in this election but that does not prevent individual members of the National Council from endorsing or supporting one of the candidates.*" Mrs Hallam Black considered that the disclaimer on the front sheet of the election address publication was insufficient to correct the misleading impression created by the endorsement section of Ms Lawson's election address as it was not in bold type, not large enough and did not follow more closely the examples of other disclaimers given by ERS, which referred to the personal liability of the candidates for their election addresses. Mrs Hallam Black stated that whilst she, as a former English teacher, correctly understood the disclaimer, other members with different educational backgrounds, including the teaching assistants at her former school, who had given pro forma witness statements, had not done so.

43. Mr Brierley, for the Union, referred to the cases of **RJB Mining (UK) Limited v. NUM (1997) IRLR 621** and **Higginbottom v. United Road Transport Union (CO - 9/11/06)** as authorities on the meaning of "interference or constraint". He noted that a restricted view had been taken of these words which, he argued, were primarily intended to cover physical interference in voting. He noted the comment in **Higginbottom** that they would only be given an extended meaning in the most exceptional circumstances. Mr Brierley submitted that Ms Lawson's election address was completely accurate and that there is nothing to prohibit a candidate from naming in an election address her supporters and those who endorse her. Indeed, Mr Brierley commented that Mr Toone's election address also referred to the endorsement he had received from the former General Secretary. Whilst not conceding that Ms Lawson's election address was misleading in any way, Mr Brierley, argued that the situation was made clear beyond any doubt by the statement of the front sheet of the election address publication that there was no Council Preferred Candidate in that election.

### **Conclusion Complaint Two**

44. The meaning of the words "be allowed to vote without interference from or constraint imposed by" in section 51(3)(a) of the 1992 Act has been considered in a number of cases. In this case I have not been persuaded to depart from the approach that I adopted in the **Higginbottom** case in which I found the following at paragraph 25:

*"Counsel for both parties agreed on the relevant law. The statutory concept of interference or constraint implies improper interference or constraint. The most obvious example of such interference and constraint is that which will intimidate or put a member in fear of voting or amount to physical interference. To extend the coverage of this provision to the making of statements during the electioneering process involves a considerable leap. Trade Union elections, like many others, are often conducted in a robust manner with each candidate seeking to put his or her case at its highest and to comment adversely on any opponent. I find it improbable that Parliament intended that the Certification Officer should become involved in unpicking and adjudicating upon the rival claims that might be made by, or in support of, candidates in statutory elections. This approach to the interpretation of section 51 is supported by the heading to this particular section being "voting", which suggests that it is directed more to the physical process of*

*voting than to the hustings. It is further supported by a consideration of who is restrained from imposing improper interference or constraint. The restraint is not only imposed on the Union but also on "any of its members officials or employees". In any normal election it is to be expected that lay members, shop stewards and branch officials will campaign for the person they consider most suited for the position. Not all such campaigning will be fair and balanced in the eyes of the rival candidates but I doubt if Parliament intended that its fairness and accuracy should be justiciable before the Certification Officer. If that had been the intention, I would have expected it to be expressed in clear language. Accordingly, whilst I do not dissent from the comments of my predecessor, Mr Whybrew, that section 51(3)(a) might encompass "the most blatant lie or seriously misleading statement". I incline to the view that such an argument is only likely to succeed in the most exceptional case."*

45. The issue to which section 51(3) gives rise is whether or not a member has been allowed to vote without interference from or constraint imposed by the Union or by a relevant person. The words of the statute cannot be replaced by or substituted with reference to an obiter observation about "seriously misleading statements". It is not correct that a breach of sections 51(3)(a) will occur every time an election address contains a passage that another member considers misleading to some degree or other.
46. On the facts of this case I find that Mrs Hallam Black's complaint is misconceived. It is barely arguable that the election address of Ms Lawson is such as would prevent a member from voting without interference from or constraint imposed by that election address. No member was physically impeded from casting his or her vote and I find that Ms Lawson's election address did no more than put forward her case to the voter. First, it has not been suggested that the information in her election address is anything other than wholly accurate. Secondly, there is no rule of the Union preventing any member (even former or current members of Council) from individually endorsing a candidate. Thirdly, the number of endorsements was less than half the number of members on Council. Fourthly, as I have found above in paragraph 14, any reasonable reader would have understood from the disclaimer on the front sheet of the election address publication that there was no Council Preferred Candidate in that election. Fifthly, even Ms Lawson's opponent included in his election address an endorsement from the former General Secretary, an ex officio (but non-voting) member of Council. In my judgement there was nothing in Ms Lawson's election address which interfered with or imposed constraints upon the voting of members in the Union in this election.
47. For the above reasons I refuse the Claimant's application for a declaration that on or around 8 June 2012 the Union breached section 51(3)(a) of the 1992 Act, as alleged, in relation to the 2012 General Secretary election.

### **Complaint Three**

48. Mrs Hallam Black's third complaint is as follows:-

*"On or around 10<sup>th</sup> July and 16<sup>th</sup> August 2012, the union breached paragraph 8a and 8b of Appendix A when a disciplinary panel was not convened to deal with the complaints made in Mrs Hallam Black's letters of 9<sup>th</sup> July and 15<sup>th</sup> August 2012".*

49. Paragraph 8a and 8b of Appendix A of the rules of the Union provides as follows:-

- A/8
- a. *An allegation that a member is in breach of discipline shall be investigated by a disciplinary tribunal;*
  - b. *An allegation that a member, or the Union, or any officer of the Union is in breach of these rules shall be investigated by a complaints tribunal.*

### **Summary of Submissions**

50. Mrs Hallam Black accepted at the hearing that her complaint should only proceed on the basis of an alleged breach of paragraph 8(a) of Appendix A, as paragraph 8(b) concerns disciplinary action for a breach of the rules, which she did not allege.
51. It was Mrs Hallam Black's case that Ms Lawson and the former and current members of Council who had endorsed her candidature had behaved in a manner unbefitting a member of the Union and/or contrary to its rights, interests or objects. She considered that this was the case because National Council had decided that there was to be no Council Preferred Candidate for that election. Mrs Hallam Black submitted that once this allegation had been put to Mr Barton, he was obliged to cause it to be investigated by a Disciplinary Tribunal as paragraph A/8 contained the mandatory word "shall". Mrs Hallam Black considered that there was a breach of paragraph A/8 when Mr Barton rejected the request for disciplinary action to be taken that she had made in both her letters 9 July and 15 August 2012.
52. Mr Brierley, for the Union, submitted that this claim should be rejected both on the grounds of jurisdiction and on its merits. On the issue of jurisdiction, Mr Brierley relied upon **Irving v GMB (2008) IRLR 202** as authority for the proposition that my jurisdiction under section 108A of the 1992 Act in relation to disciplinary rules is limited to breaches of disciplinary rules that occur during the conduct of disciplinary proceedings and where the claimant is the person who is the subject of the disciplinary proceedings. On the merits, Mr Brierley submitted that the National Chairman was only required by the rules to submit an allegation to a Disciplinary Tribunal when it was put forward as a complaint. He derived this proposition from paragraph A/10(a) which provides:

*A/10(a) Any member who considers another member's conduct has amounted to a breach of discipline on any grounds specified in rule A/9 may make a complaint to the General Secretary, or if necessary to the Chairman, who shall convene a Tribunal under the provisions of this Appendix.*

Mr Brierley further argued that a complaint is defined in paragraph A/11 and that, in order to qualify as a complaint, it has to satisfy each of the six sub paragraphs of that provision. Paragraph A/11 provides as follows

- A/1 .Any such complaint shall:*
- a) *be in writing and shall give the name and details of the person making the complaint;*
  - b) *state against whom the complaint is directed;*
  - c)
    - i. *in the case of an alleged breach of discipline, state the nature of the conduct which is the subject of the complaint and specify under which of the grounds listed in rule A/9a the complaint is being lodged;*
    - ii. *in the case of an alleged breach of these rules, specify the breach of rules which is the subject of the complaint;*
  - d) *specify details of any evidence supporting the complaint, including the names and addresses of any witnesses whom the member may wish to call on his or her behalf;*
  - e) *state the nature of the complainant's interest in making the complaint; and*

*f) state the nature of the injury or damage suffered by any person in consequence of the alleged breach.*

In Mr Brierley's submission, Mrs Hallam Black had consistently failed to satisfy paragraph A/11(d) and (f) with the consequence that Mr Barton was under no obligation to submit her allegation to a Disciplinary Tribunal. Mr Brierley emphasised that Mr Barton's decision not to process Mrs Hallam Black's allegation was not based on any view he may or may not have formed on its merits.

### **Conclusion Complaint Three**

53. The rules of trade unions which permit a member to make complaints against another member frequently give rise to problems in their application. Such rules may be misused for political, personal or other reasons. It has therefore become increasingly common for trade unions to build into such rules a sieving mechanism to remove unmeritorious complaints and prevent abuse. One such mechanism in the rules of Voice is rule A/12. This provides that a tribunal can dismiss a complaint after a preliminary investigation if it considers that there are no prima facie grounds for the allegation. Although I was informed that no one could remember Appendix A having been used previously in Voice, rule A/11 may have been included as a means of preventing a Disciplinary Tribunal being triggered at all if the allegations are vague and/or unsubstantiated. This approach is supported by the relatively complex rules relating to the establishment of a Disciplinary Tribunal. Indeed, Mr Barton gave evidence that Appendix A is now so out of date that he doubted whether it would be possible to constitute a Disciplinary Tribunal in accordance with it. Against this background, I find that the National Chairman is not under an obligation to convene a Disciplinary Tribunal upon receipt of an allegation unless that allegation is in the form of a complaint which complies with paragraph A/11.
54. On the above basis, I find that Mrs Hallam Black's letter to Mr Barton of 9 July 2012 does not satisfy the requirements of paragraph A/11 in a number of respects. For example, it does not state against whom the complaint is directed. It does not specify under which of the grounds listed in rule A/9(a) the complaint is being lodged. It does not state the nature of the complainant's interest. These omissions are understandable as, in my judgement, this letter was not written to commence disciplinary proceedings but to alert Mr Barton to a situation in which he might decide to take further action himself. Accordingly, I find that the Union was not in breach of paragraph A/8(a) by not convening a disciplinary panel to deal with the allegations in Mrs Hallam Black's letter of 9 July 2012.
55. As to Mrs Hallam Black's letter of 15 August 2012, I find that the terms of this letter disclose a clear intention to raise a formal complaint under paragraph A/11. By this time, Mrs Hallam Black had considered the rules of the Union and her letter is drafted so as to cover those sub-paragraphs of A/11 which she considered necessary or possible. Mrs Hallam Black names those against whom the complaint is directed. She specifies the grounds listed in paragraph A/9(a) under which the complaint is being lodged. She also states the nature of her interest. However, the Union argues that she fails to deal with sub-paragraphs (d) and (f). Indeed, it is apparent that she has failed to deal expressly with those sub-paragraphs. On the other hand, this rule must be interpreted in context and having regard to the intended readership. The rules are not to be construed as a commercial contract or a criminal statute. The

purpose of paragraph A/11 is to require a degree of specificity from the complainant to avoid vague and unsubstantiated complaints. It is not to be applied pedantically but purposefully. On the facts of this case, I find that the failure by Mrs Hallam Black to address sub-paragraph (d) is immaterial as it only requires the complainant to specify details of any evidence upon which the complainant seeks to rely. It was Mrs Hallam Black's case that the facts that she put to Mr Barton in her letters of 9 July and 15 August were sufficient to establish her case. She did not need to rely on further supporting evidence. As to sub-paragraph (f), it was Mrs Hallam Black's complaint that the named individuals were guilty of conduct unbecoming a member of the Union or contrary to its interests or objects. I find that the nature of this allegation sufficiently describes the nature of the injury or damage Mrs Hallam Black considers was caused to the Union by the alleged breach. In any event, her case in this regard is sufficiently clear from the content of her letters of 9 July and 15 August, read as a whole. Accordingly, in my judgement, Mrs Hallam Black's letter of 15 August 2012 satisfied the requirements of paragraph A/11 and constituted a complaint. As such, Mr Barton was obliged by paragraph A/8(a), read together with paragraph A/10(a), to convene a Disciplinary Tribunal. In deciding not to do so, the Union breached paragraph A/8(a) of the rules of the Union.

56. For the above reasons I uphold Mrs Hallam Black's complaint that on or around 16 August 2012 the Union breached paragraph 8(a) of Appendix A of the rules of the Union by not convening a Disciplinary Panel to deal with the complaints made in Mrs Hallam Black's letter of 15 August 2012.
57. When I make a declaration in a complaint involving a breach of rule, I am required by section 108(B)(3) of the 1992 Act to make an enforcement order unless I consider that to do so would be inappropriate. In this case, Mrs Hallam Black does not seek an enforcement order, having regard to the fact that the Union is now in the process of reviewing the whole of Appendix A to its rules and she is now on National Council. In the circumstances of a complainant not wishing to proceed with her complaint, I find that it is clearly inappropriate to grant an enforcement order requiring that the complaint should be taken forward to a Disciplinary Tribunal.



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