

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS
MADE UNDER SECTIONS 25 AND 55 OF THE TRADE UNION
AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**IN THE MATTER OF COMPLAINTS AGAINST
THE MANUFACTURING SCIENCE AND FINANCE UNION**

Date of decisions

8 April 1998

DECISIONS

- 1.1. Under section 25 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) any member of a trade union who claims that his or her trade union has failed to comply with any of the provisions of sections 24 or 24A of Chapter III Part 1 of the 1992 Act may apply to me for a declaration to that effect. Section 24 places a duty on all trade unions to compile and maintain a register of names and addresses of its members and ensure, so far as is reasonably practicable, that it is accurate and kept up to date. Section 24A relate to the confidentiality of the register during ballots. Similarly under section 55 of the 1992 Act I am empowered to make, or refuse to make a declaration on the application of any person who claims that his or her union has failed to comply with one or more of the provisions of Chapter IV Part 1 of the Act concerning the need for, and the conduct of, elections to certain positions. In each case I am required to give reasons for my decision.

1.2. In making a declaration under either of these sections of the 1992 Act I am required to specify the provisions with which the trade union has failed to comply.

1.3. On 13 June 1997 I received a letter from a member of the Manufacturing Science and Finance Union (MSF) complaining about the conduct of the election process and ballot in that union's elections for Regional Seats on its National Executive Committee (NEC).

The complainant alleged that:

- in failing to maintain a register of the names and addresses of its members and in failing to secure, so far as is reasonably practicable, that the entries in the register were accurate and kept up to date, the union had breached section 24(1) of the Act (Complaint 1).

1.4 In subsequent correspondence the complainant was joined in the complaint by two further members of the union and a number of issues were clarified and further complaints made.

These were that:

- in failing to secure the confidentiality of the register of members the union had breached section 24A of the 1992 Act (Complaint 2);
- in allowing a union official to undertake certain functions in connection with the elections of the NEC and of the General Secretary (those functions being more properly the duty of the scrutineer), the union had breached sections 49(3), 49(4) and 49(6) of the Act (Complaint 3);

- in allowing a number of ballot papers to be issued to individuals who were no longer members, the union had breached section 50(1) and/or section 51(6) of the Act (Complaint 4); and
- in failing to notify the membership of the appointment of the Electoral Reform Ballot Services (ERBS) as the independent scrutineer for the General Secretary and NEC elections, the union had breached section 49(5) of the Act (Complaint 5).

1.5. I investigated all the complaints in correspondence and, in that way, have reached decisions on complaints 2, 3 and 5. I eventually held a formal hearing on 14 January to hear argument on complaints 1 and 4. The union was represented by Mr Roy Lewis of Counsel, instructed by Mr C Ettinger of Irwin Mitchell Solicitors. The three complainants represented themselves.

1.6. Under section 55(6) of the Act I am required, “..so far as is reasonably practicable...” to determine an application before me within six months of the application being made. I am aware that this application has taken longer than normal to determine. This was because my Office was also involved in an important and urgent merger complaint which involved two hearings and a subsequent appeal to the EAT at which a two-day hearing was held on 18 and 19 February. In the course of that appeal issues were raised which have a direct bearing on my consideration of one of the complaints in the present case. The EAT’s decision covering that matter was issued on 2 March and challenges to it were dismissed on 17 March. I have kept the parties informed of the reasons for the delay.

Declarations

1.7. For the reasons which follow:

“I declare that the Manufacturing Science and Finance Union in respect of its register of members’ names and addresses is in breach of the requirements of Chapter III of Part 1 of the 1992 Act by not securing, so far as is reasonably practicably, that the entries in the register of the names and addresses of its members are accurate and kept up-to-date - contrary to section 24(1).”

1.8. Also for the reasons that follow I decline to make declarations in the other complaints relating to the security of the register during the ballot (complaint 2) and aspects of the election process (complaints 3 to 5).

Background to the Applications

1.9. The election complaints relate to the elections held between 31 January and 26 February 1997 for the Regional Seats on the National Executive Committee of the union; all of which are posts covered by the statutory election procedures. All three complainants were candidates in those elections. The results, which were certified by the Electoral Reform Ballot Services on 28 February 1999, showed that the three complaints had lost in the respective regional seat elections in which they had stood.

1.10. The outline of the complainants case was that (a) throughout the election process it was completely unclear who was the returning officer or scrutineer; (b) the Assistant General Secretary of the union, Mr Chowcat, had carried out some of the duties more properly the duties of the independent scrutineer; (c) their opponents in the election had access to confidential union mailing lists to circulate unofficial canvassing material to members and; (d) because of inadequacies in the union’s register of members, ballot forms were sent to

people who were former members of the union and who had not been in membership for some considerable time and who were not eligible to vote. They alleged that these features involved breaches of the statutory requirements governing the elections.

Requirements of the Legislation

1.11. The relevant statutory requirements in respect of the complaints about the maintenance of the register of members' names and addresses and the confidentiality of the register are as follows:

Section 24 deals with the requirement placed on the union to compile and maintain a register of members names and addresses. The relevant parts of that section states:

“24.-(1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.”

Section 24A deals with the security of the register during ballots covered by the statute.

The relevant parts of that section state:

“(2) Where this section applies in relation to a ballot the trade union shall impose the duty of confidentiality in relation to the register of members' names and addresses on the scrutineer appointed by the union for the purposes of the ballot and on any person appointed by the union as the independent person for the purposes of the ballot.

(3) The duty of confidentiality in relation to the register of members' names and addresses is, when imposed on a scrutineer or on an independent person, a duty

(a) not to disclose any name or address in the register except in permitted circumstances; and

(b) to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances;

and any reference in this Act to “the duty of confidentiality” is a reference to the duty prescribed in this subsection.”

- 1.12. The relevant statutory requirements in respect of the election complaints which all relate to the conduct of the ballot rather than to anything which occurred after the votes were counted are as follows:

Section 49 of the Act deals with the requirements of the scrutineer’s appointment. Section 49(3) concerns the scrutineer’s duties. Section 49(4) concerns the trade union’s duty regarding the terms of the scrutineer’s appointment. Section 49(5) concerns the notification by the trade union to the members of the name of the scrutineer and section 49(6) concerns the trade unions duty to ensure there is no interference to the scrutineer in the carrying out of his functions. The relevant parts of section 49 state:

- “49.-(1) The trade union shall, before the election is held, appoint a qualified independent person (“the scrutineer”) to carry out -*
- (a) the functions in relation to the election which are required under this section to be contained in his appointment; and*
 - (b) such additional functions in relation to the election as may be specified in his appointment.*
- (2)*
- (3) The scrutineer’s appointment shall require him -*
- (a) to be the person who supervised the production of the voting papers and (unless he is appointed under section 51A to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;*
- (aa) to -*
- (i) inspect the register of names and addresses of the members of the trade union, or*

(ii) *examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),*

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;

(b) *to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 52).*

(c) *.....*

(3A) *The conditions referred to in subsection (3)(aa) are:*

(a) *that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and*

(b) *that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.*

(3B) *.....*

(3C) *The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.*

(4) *The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.*

(5) *The trade union shall, before the scrutineer begins to carry out his functions, either -*

(a) *send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or*

(b) *take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.*

- (5A) *The trade union shall -*
- (a) *supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and*
 - (b) *comply with any request made by the scrutineer to inspect the register.*
- (5B) *Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.*
- (6) *The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.*
- (7) *.....”*

1.13. That then is the background. I now set out the arguments put by the parties on each complaint and the reasons for my decisions.

THE COMPLAINTS RELATING TO THE REGISTER OF MEMBERS' NAMES AND ADDRESSES

Complaint 1 (That the union did not maintain an accurate and up to date register of members names and addresses)

The Complainant's Case

- 2.1. The complainants argued that the union's membership records were not comprehensive and contained many inaccuracies such as the inclusion of a substantial number of people whose membership had lapsed or who were no longer paying subscriptions and therefore classified as "not in compliance".
- 2.2. In support of this complaint they produced a union document circulated internally by the Assistant General Secretary in December 1996 which stated that the system "...fails the union in a number of key areas, specifically..." "It fails to allocate subscription income against individuals for monies received via check-off..." "...The absence of this basic principle is the biggest single cause of incorrect data..."
- 2.3. The complainants claimed that at the time of the elections in February (1997) there were many people on the union's electoral roll who were substantially in arrears of contributions and whose membership was out of compliance.
- 2.4. In further correspondence the complainants stated that they had been informed by staff within the subscription department that the system for updating the register did not, and could not, be operated in the way the union claimed. For example it was untrue that the register was updated on information from employers via check-off as the system was

unable to do this and that furthermore employers frequently did not provide the raw data to enable this to be done. They also stated that branch secretaries in general did not handle subscriptions and could not be expected to check individual circumstances of branch members. This problem was further exacerbated by the fact that the system of making changes to the register was haphazard. I heard evidence of examples where changes input to the computer system had not been made when a print out was subsequently examined. It was also claimed that it was difficult for branch secretaries to maintain membership records within branches because it was the practice of the union Head Office to communicate direct with the member, not always through branch secretaries and that therefore arrears lists produced by the HO were inadequate. As a result branch secretaries were embarrassed to follow them up with members.

2.5. In evidence, the complainants produced examples of differences between total membership and the membership in compliance. They produced figures for 7 branches in the finance sector which showed that in September 1996 out of a total membership of 3,560 only 1,484 or 42% were shown to be “in compliance” (which in that context meant that their subscriptions were no more than 3 months in arrears). They also quoted another example within London Region of the union where as a result of work by an audit team, subsequent to the elections, over 6,000 members (between 10 and 15% of ‘members’ in those branches) were lapsed and removed from the register of union members by reason of their being six months in arrears with their dues.

2.6. They argued that free and fair elections were not possible because the membership register was inaccurate. They commented that the union did not do enough to maintain the

membership register, and that it was a standing joke, in the union, that “once a member always a member” because membership was not lapsed. They quoted to me union rule 15(c) this states:

“Any member who is over six months in arrears with subscriptions and levies may be excluded at the discretion of the NEC, following consultation with the Branch.”

They noted that this rule gave discretion (to the NEC) on whether or not to lapse members. This means that the union would not be breaking its own rules if it allowed members out of compliance, and who may no longer be union members, to receive ballot papers and to vote. This problem was exacerbated because the union seldom acted on rule 15(c).

- 2.7. They maintained that the union were aware of the problem with the register but did little before the election to clean up the register in that only 204 out of 2,600 groups were audited and that the pruning of the London Branches (see 2.5 above) had been carried out by union officials after the elections in question.
- 2.8. The complainants argued that there were substantial differences in the number of ballot papers issued at different times. They quoted 371,000 for the leadership election in 1996 and produced evidence of 402,000 papers being issued in March 1995 for the union’s political fund resolution ballot. Further they stated the union’s annual return to my Office for the year ending 31 December 1996 showed 424,000 members. Some of this difference, they recognised was legitimate in that some categories of membership would not have been entitled to vote.

The Union's Response

2.9. The union stated that they were aware of their obligation to keep a register of names and addresses of their members and to ensure that it was accurate and kept up-to-date insofar as is reasonably practicable. They claimed they kept such a register and did so on computer. At the time of the election the register provided them with the names and addresses of members for electoral purposes and was also used to keep details of their subscription payments so that the union could act if there were arrears. They stated the union was composed of branches with each branch having a secretary. Where no "check-off" agreement was in operation the branch secretaries would, on a quarterly basis, be required to complete a return checking the data held by the Head Office for each member. This would be returned to the Head Office of the union where any alterations that were required to addresses, or other details would be processed. In addition to this, the union would also use the information that they received from employers in respect of members who were on check-off. They stated that about 60% of their members paid their subscriptions by check-off. The subscriptions from employers were received on a monthly/bimonthly or quarterly basis, depending on the employer. Once received, this information would be input to the computer system on which the register was held. This was done by manual input, which they say took some time and was therefore supplemented by additional auditing work carried out by Head Office staff. It was by these methods the union stated, that the register was kept up to date.

2.10. The union stated that it had in excess of 400,000 members employed by over 13,000 employers in over 1,000 branches and that the task of keeping the register up to date was an enormous one and impossible to keep 100% accurate at all times. They employed 13

staff in the union's subscription department alone. Their system relied on information from branches in the form of quarterly returns (of members in the branch). This return was sent to branch secretaries who were expected to update and return the form. The register would then be updated.

2.11. Information from employers was dealt with as follows. Once a cheque was received in relation to employees on check-off it was assumed that the member employed by that employer had paid his subscriptions. A manual audit was then carried out to ensure that the individual members were on the employers list of those who had paid their subscriptions. Of the 40% of members not on check-off the union informed me that a substantial number were on direct debit or standing order and that there were no problems with these methods.

2.12. The union stated that under the check-off arrangements the employer was obliged from time to time (depending on the specific agreement) to provide the union with information and that it was rare for the information not to be provided. Then it was necessary to carry out a manual audit checking lists for individual name variations and, if necessary, for the information to be checked with the employer.

2.13. The union stated that under rule 42(1) which gave details of the duties of the branch secretary it states:

“He/She shall be responsible for maintaining membership records and for notification to members of arrears in contributions.”

And that branch secretaries were paid a commission for carrying out their duties, in respect of arrears that were recovered, so that there is an incentive for them to keep their records up to date.

2.14. The union also quoted rule 20(e) of the union which defined members in compliance for the purposes of determining the number of delegates who can be sent to the union's annual conference. For this purpose no more than 3 months arrears were ignored. Sometimes this would mean excluding those where the employer had deducted a subscription but not yet sent it to the union. This might be an important factor explaining the 42% compliance figure in the complainants evidence (see para 2.5).

2.15. The union admitted there were inadequacies in the system because there was no automatic link between subscription and members names and addresses and, that there had been problems due to a loss of experienced staff and the reliance on temporary staff within the subscription department. They informed me that a new system had been introduced (after the election) from August 1997 which was being quality tested and would be fully implemented in the very near future.

2.16. Finally they informed me that the register had been manually audited before the election and although only a small proportion of branches had been covered, the larger ones had, and around 80% of members covered by check-off had been subject to such an audit and the necessary corrections made before ballot papers were sent out.

Reasons for my Decision

- 2.17. I recognise MSF is the fifth largest trade union listed by me and that the union has a membership spread throughout the country with 13,000 employers and controlled through a system of over 1,000 branches. Keeping such a union's membership details up to date and accurate is a full time task and one which I do not in any way underestimate.
- 2.18. I do not place any significance on the differences between the number of members returned to me, the number of members balloted on the political fund and the number sent ballot papers in national union elections. These differences can be explained largely by quite legitimate differences in the constituencies covered.
- 2.19. It is important to distinguish two of the union's methods of collecting subscriptions. One group (about 40% of members) paid by direct debit, standing order or similar methods of payment direct to the union. The second group (60%) paid through "check off" deductions made by their employers. For the first group the union had a clear way of linking payments to individuals. For those members on "check-off" the Head Office of the union would input manually into the union's system the information received from the employer and carry out a manual audit to ensure that individual members were on employers lists. Lists of members updated in part from subscription information were sent quarterly to branch secretaries whose task it was to check and correct any inaccuracies.
- 2.20. It is clear that at the time of the 1997 elections there were significant shortcomings in this system for updating the register. On the union's own admission the system did not allow subscription income for check-off members to be allocated to individuals. That meant that

the union did not know how much money a check-off employer owed it. More importantly for the purpose of this complaint, it threw into disarray the whole process of identifying among some 60% of the union's membership those who were and who were not paying subscriptions to the union. The information derived in this way was so unreliable that some branches were either unwilling or unable to correct it. This impacted both on those paying by check-off and by other means. I recognise that national unions must rely on local officials for much of the information about members. Indeed this is formulated in MSF rules and, in part, in the financial incentive to branch secretaries to collect arrears. But in this case the system facilitating the necessary interchange of information between branch and head office was fundamentally flawed because of head offices' inability to allocate effectively check-off income to individuals.

2.21. The union claimed under its rules a person remains a member, however much in arrears with his or her subscription, until such time (after 6 months) that the union's executive exercises its discretion to take away membership. It was argued that in these circumstances the union's inability to accurately determine the extent of any individual's arrears is irrelevant to the question of that individual's membership of the union and hence to the accuracy and "up-to-dateness" of the union's register. I also note that, among the many changes now implemented to the union's system of membership records, check-off income is allocated to individuals so their subscription position is as up to date as the flow of information from check-off employers allow.

2.22. I am not convinced that what the complainants enunciated as the "once a member always a member" effect of rule 15(c) (which remains unchanged) is consistent with the intention

of section 24(1) of the 1992 Act. Nor, on a proper construction of the rule, am I convinced that it has this effect. What the rule permits is for the union to terminate a member's membership when he or she is more than 6 months in arrears. It does not in my view continue membership which has otherwise effectively ceased. For example a member may terminate his membership by stopping his arrangements to pay his subscriptions. This may entail terminating his check-off arrangement or stopping his direct debit or standing order mandate. He may consider that his membership is over. Clearly in many circumstances the stopping of the subscription payments (particularly where the member has terminated a check-off or direct debit/standing order arrangement) without making an alternative arrangement is a clear indication that the member has left the union. Where this is indeed the case, rule 15(c) should not be construed as continuing membership when in fact it has already terminated. Whilst it may be open to a union to agree to keep in membership someone who has failed through oversight or temporary financial difficulty to maintain his or her subscription, it is not open to them to treat as a member for the purposes of the Act a person who has left the union. Unfortunately MSF's system of updating its register makes insufficient allowance for this. If a member sends in a letter of resignation that member's name will be removed from the register of members. However, if a member signals his or her wish to cease membership by stopping payments, he or she will be treated the same way as anyone else who is in arrears. That would be of little or no significance if membership automatically lapsed after a certain period, but the rules and practice of this union leave such a person on the list of members for at least one year even though they have no wish to be there. The union might have avoided some of these difficulties if it applied rule 15(c) systematically and regularly to clear away dead wood from the register but it did not do so. The obligation to keep the register of

members as up to date as reasonably practicable includes an obligation to operate a system for removing the names of those who no longer wish to be members. MSF did not and, as far as I have ascertained, do not operate such a system.

2.23. It is for these reasons that I find them to be in breach of section 24(1) of the 1992 Act.

Complaint 2 (That the union failed to secure the confidentiality of the register of members names and addresses)

The Complainant's Case

2.24. The complainants alleged that their opponents (in the election) had access to confidential union mailing lists to circulate unofficial canvassing material to members. They further alleged that this was the second successive election in which this had happened and that similar events had occurred in 1994 when material was circulated using official mailing labels. They argued that this breached the “duty of confidentiality on the union and the scrutineer with regard to the electoral list of members eligible to vote”.

2.25. In support of this complaint the complainants stated that a group representative regularly received three copies of every union mailing at his workplace and had received three envelopes containing unofficial material addressed in an identical manner to the official mailing he had received. Further they alleged that the same canvassing material was sent to the husband of one of the candidates at a former address despite his having changed his address with the membership department.

2.26. The complainants stated that, following similar events in 1994 and a subsequent investigation, a motion was passed at a union conference, that year, requiring the NEC to draw up a complaints procedure; prepare a new draft rule to permit canvassing within certain guidelines; to devise a set of guidelines for candidates in elections and that the NEC should seek to discourage unsolicited and anonymous canvassing material in elections. They allege that none of these actions had been initiated.

2.27. The complainants further alleged that the union's rule book states that:

“No written material of any kind may be circulated in support of a candidate in any national election within the union without the approval of the NEC.”

2.28. They also referred to “an incident” in the election when the General Secretary wrote to a substantial number of full time officials seeking support for his re-election. They felt that by gaining access to, and utilising, the names and addresses of full time officers employed by the union, the General Secretary was exercising a privilege not open to other candidates.

The Union's Response

2.29. The union denied that the confidentiality of the register had been breached. They stated that access to the register, which was held on computer, was secure and could only be gained by use of a password. This password was only used by those who were required, as part of their job, to keep the register updated. They maintained that no evidence that the confidentiality (of the register) was breached or that any list of members taken from the register was prepared and distributed had been produced.

2.30. The union commented that throughout the union various full time and lay officials keep mailing lists. This they claim was inevitable as, for example, most branch secretaries were likely to have a list of their members and similar officers of the union would have lists of groups of members or representatives at various workplaces. The union felt that if lists of names and addresses of members had been used, as stated in the complaint, then it would have been by using one of those mailing lists and not by gaining access to the register.

2.31. Further the union stated that the alleged breach of rule had been investigated and no indication was found that the confidentiality of the members register had been breached.

Reasons for my Decision

2.32. I dealt with this complaint by way of correspondence with the complainants and with the union. The facts do not appear to be in dispute in so far as material was circulated. The issues in dispute are whether the scrutineer allowed the register to be used for this purpose; and whether the circulation of material was against the rules of the union. The first issue is for me to decide; the second is outwith my jurisdiction.

2.33. The Act requires that in relation to a ballot of the members of a trade union the trade union shall impose the duty of confidentiality in relation to the register on the scrutineer and on any independent person appointed by the union under the statute for the purposes of the ballot.

- 2.34. This duty of confidentiality requires the scrutineer or independent person (my emphasis) not to disclose any name or address except in permitted circumstances and to try to ensure that no other person does.
- 2.35. Against this background all I have to decide is whether the union failed to impose a duty of confidentiality in relation to the register in the terms of appointment of the scrutineer or independent person. I received no evidence to suggest that they did so fail (nor did I hear any evidence that the scrutineer breached his duty) and therefore dismiss this complaint.
- 2.36. Under the Act the union is obliged to be even handed in the preparation and circulation of election addresses. However there is no wider requirement. The union may, using its own records and resources if it wishes, legitimately express or canvass support for particular candidates and may circulate other campaign literature separate from the election address. It does not have to offer the same opportunity to all candidates. It may be that this gives some candidates in an election an advantage but this is not a breach of the Act. Whether or not it is a breach of union rules is not a matter for me.

THE COMPLAINTS RELATING TO THE ELECTION

Complaint 3 (Functions and independence of the scrutineer)

The Complainant's Case

- 3.1. The complainants argued that in allowing a union official to undertake certain functions in connection with the election the union had breached sections 49(3), 49(4) and 49(6) of the Act.

3.2. Their complaint was that throughout the election process it was completely unclear who was the returning officer or scrutineer or indeed whether this was one person or two or the Electoral Reform Ballot Services (ERBS). They claimed that within the union information was produced indicating that the Assistant General Secretary Mr Chowcat occupied this position (presumably of returning officer) and that Mr Alex McKenna also held the post” and that “at other times we (sic) were told to speak to ERBS on matters which would generally concern the returning officer”. In the event, they claimed that Mr Chowcat could not be neutral as he was directly accountable to one of the candidates in the election for General Secretary.

3.3. In further correspondence they complained that, while the ballot paper identified ERBS Ltd as the independent scrutineer, Mr Chowcat performed two of the functions of the independent scrutineer. Firstly, that he and his office received and processed branches’s nomination forms and made decisions as to whether they were valid nominations to be included on the document accompanying the ballot form and secondly, that Mr Chowcat and his office received and processed complaints (received on the unions ‘hotline’ set up for this purpose) regarding the non- receipt of ballot papers. It was argued that this was in breach of sections 49(3) and 49(4) of the Act and that 49(6) had also been breached as the union had failed to ensure an independent person had been appointed. They added that, in carrying out some of the duties of the independent scrutineer, Mr Chowcat reported to Mr Lyons the union’s General Secretary who was standing for re-election. In that sense he had not the independence required of a scrutineer.

The Union's Response

- 3.4. In reply the union stated that Mr Chowcat was the returning officer but that the role was very limited. Essentially they stated he had two functions. One, as liaison officer with the independent scrutineer ERBS in that he received from ERBS the result of the ballot and in turn informed the NEC and secondly, that as the returning officer he received and dealt with complaints that were made concerning the electoral process insofar as there were any allegations that union rules may have been broken. The union added that if there was any contention that the statutory process in relation to the election procedures may have been broken, that these would have been dealt with by ERBS. For election purposes he reported to the NEC not to the General Secretary.
- 3.5. They added that the union "hotline" was for members who had any concerns relating to the election who could then contact the union. If any of these concerns related to matters that were being dealt with by ERBS, this information would be passed onto them immediately to enable them to deal with it and that accordingly ERBS was responsible for the supervision of the production of the voting papers at all times as well as their distribution.
- 3.6. In further correspondence the union stated that ERBS was appointed under section 49 of the Act and did not have any additional functions. The "hotline", they stated, was advertised in the union's journal giving a telephone number to ring if there was any problems relating to the ballot. This "hotline" was operated by a member of staff. If calls were received the details were immediately passed on to the independent scrutineer who would then investigate and deal with them.

Reasons for my Decision

3.7. This complaint, in common I believe with some of the others, stems from a misunderstanding of the requirements of the law in relation to trade union elections. The Act, in section 49, requires that the union shall, before the election is held, appoint a qualified independent person (the scrutineer) to carry out:

- (a) the functions in relation to the election which are required under this section to be contained in his appointment; and
- (b) such additional functions in relation to the election as may be specified in his appointment.

3.8. In paragraph 1.12 above I set out the provisions of the Act relating to the scrutineers appointment (section 49(3)) and the union confirmed that no additional functions were specified in the appointment. The question of whether members knew who the scrutineer was is dealt with in complaint 5 below. But it is clear to me that ERBS was appointed as, and was, the independent scrutineer for these elections. Mr Chowcat was not the scrutineer and the question of his independence or otherwise is not for me to decide.

3.9. Nothing to which the complainants objected was a breach of the legislation. There is no statutory requirement for the scrutineer to deal with nominations for the election. Indeed sections 47-48 of the Act place the onus on the union to deal with candidates and their election addresses.

- 3.10. I find that the union did not breach the legislation by its use of a telephone “hotline”. The purpose of the “hotline” was as a focal point for members who encountered any problems relating to the election. If a member claimed he or she had not received a ballot paper the details of such a call were passed to ERBS. I find that this did not breach section 49(6).
- 3.11. The report, on the ballot issued by ERBS under section 49(3)(c) did not show any problems relating to the ballot and the complainants have failed to show that Mr Chowcat for the union carried out any of the functions in relation to the election which were required to be performed by the independent scrutineer.
- 3.12. For these reasons I dismiss this complaint.

Complaint 4 (Allowing voting papers to be issued to individuals who were not members of the union)

The Complainant’s Case

- 3.13. The complaint was in two parts, it was alleged that contrary to the provisions of section 50(1) of the Act, (i) entitlement to vote in the election was not accorded equally to all members of the union and, (ii) contrary to section 51(6) the ballot was not conducted so as to secure that the result was determined solely by counting the number of votes directly cast for each candidate.
- 3.14. In correspondence the complainants stated that “a number of ballot papers were sent to people who are former members of the union...”. They claimed that it was common knowledge within MSF that the union did not know how many members it had in compliance as the subscription and membership lists had been in disarray for a number

of years. At the time of the election they claimed that many people on the union's electoral roll were substantially in arrears of contributions and yet these people received ballot papers.

The Union's Response

- 3.15. The union stated that the only complaint received about non eligible individuals receiving ballot papers had come from one of the complainants. They stated that no other complaints of this nature had been received and that the ERBS report of voting stated that they had examined the register of voters and that it did not reveal any matters that should be brought to the attention of the union.
- 3.16. The union further argued that it had audited its register in respect of 80% of check off paying members prior to the elections. Moreover under rule 15(c) (see para 2.6 above) members remained members (and therefore entitled to vote) until the NEC decided to remove them for non payment of subscriptions.

Reasons for my Decision

- 3.17. As this complaint was linked to complaint 1,1 heard argument at the formal hearing.
- 3.18. In view of my decision on complaint 1 it would seem likely that a number of people who were no longer members of the union, received ballot papers because of the union's failure to maintain an up to date membership register. Moreover I do not believe that the way rule 15(c) is operated is consistent with either the spirit or (because of the treatment of people no longer wishing to be in the union) the letter of the statutory requirements

relating to registers and elections. However, the complainants failed to produce any evidence, either in correspondence or at the hearing on this complaint, that any non-member actually voted in the ballot, or that any non-valid votes cast were sufficient to determine the result of the ballot. As previously stated the scrutineers report (see para 3.11 above) did not reveal any concerns on this point.

3.19. Section 50(1) of the Act provides that entitlement to vote shall be accorded equally to all members of the trade union and section 51(6) of the same Act provides that the ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.

3.20. The complainants failed to produce any evidence that any person not entitled to vote actually voted in the elections and for that reason I dismiss this complaint.

Complaint 5 (Failure to notify the members of the name of the scrutineer)

The Complainant's Case

3.21. The complainants claimed that throughout the election process it was completely unclear who was the returning officer or scrutineer. They also claimed that the union had not fulfilled its duty to notify the name of the scrutineer to all members under section 49(5) by either method (see para 1.12 above). They stated that the most that had occurred was that the name (of the scrutineer) had been recorded in circular G902 which notified branch secretaries and others of the forthcoming election. In later correspondence they stated that it was unacceptable and unrealistic to expect branch secretaries to inform members of the name of the scrutineer. They added that branch secretaries were

volunteers who carried out their tasks in their spare time and that many would not have the resources to circulate such information to hundreds of members.

The Union's Response

3.22. The union accepted that they did not send a notice to all members. Instead they had relied on the union's usual method of communicating with the members which was via the branches by way of a general circular. This they stated was sent to all branch secretaries and regional council secretaries and the union would expect the branch secretary in turn to communicate the information to members.

3.23. In farther correspondence they added that it was established practice that information relating to scrutineers was sent to branch secretaries and that if the branch secretaries duties proved onerous on occasions, that they could request support from the union Head Office.

3.24. The union added that the union Journal is distributed to all members once a quarter and that because of the timing of the preparation and distribution of the Journal it may be inappropriate to be used as a means of informing members of the identity of the independent scrutineers.

Reasons for my Decisions

3.25. At issue here was whether the action taken by the union satisfied section 49(5) of the Act.

- 3.26. The complainants submitted a copy of the branch circular G902 which was addressed to “All branch Secretaries (London Region)”, it was dated 2 October 1996 and referred to forthcoming elections to the NEC elections for the union’s London Region. The circular was comprehensive in dealing with procedures and timetables for the elections and, in part 6, named ERBS as being the organisation who shall be appointed as independent scrutineers. The union confirmed that this was the method used to notify members of the name of the scrutineer for these elections.
- 3.27. Section 49(5) requires the union, before the scrutineer begins to carry out his functions, to inform the members of the scrutineers name by one of the two methods shown. The union confirmed that they did not take the first of these options and send a notice stating the name of the scrutineer to every member of the union to whom it was reasonably practicable to send such a notice but, that they satisfied section 49(5)(b) of the Act by taking “all such other steps for notifying members... as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.”
- 3.28. I have seen a list of branch circulars issued by the union and I accept their argument that the alternative provision (b) of section 49(5) of the Act was satisfied by the issue of the branch circular.
- 3.29. I am satisfied that section 49(5)(b) requires a union to use all such steps in whatever system it normally adopts for advising members of matters of general interest to all of them. In my view this provision does not require the union to notify all members but

rather to adopt the practice it normally uses when disseminating information of interest to all its members. For many unions this will be the union's journal or similar notification to all members. But there are alternatives.

3.30. The MSF's method of distributing information to members is by despatch of material to branch secretaries for them to disseminate the information to branch members. The system of using branch circulars and relying on the branch secretaries does have a weakness. It relies on the branch secretary having both the time and necessary resources to pass the information on to members. While I am satisfied that many members will receive information by this system, I am equally sure some information will fall through the net. The over reliance on branch secretaries is, I feel, a matter for some concern. However I am satisfied that as a matter of fact in sending out branch circulars the MSF, used its normal practice to notify members when matters of general interest to all its members need to be brought to their attention.

3.31. For these reasons I dismiss this complaint.

Observations

4.1. Section 25(5) of the Act gives me power to make observations arising from or connected with the proceedings. I do so in this case.

4.2. I have been informed by the union, both in correspondence, and at the hearing that the inadequacies in the system used at that time were recognised by the union and that a new system using better technology is now in place. I am told that the new system will enable

check-off subscriptions to be allocated to individuals and that the union has moved from a quarterly to a monthly cycle for subscription collection, arrears and commission. I have taken account of this in reaching my decision on the adequacy of the union's register. However it follows from my decision that the union should also consider its termination of membership rules, particularly rule 15(c) which gives discretion to the NEC. As I noted in the decision I was not shown, nor did I hear, any evidence that this discretion was systematically used. The effect of this is that members could be many months, if not years, in arrears of contributions, have no wish to be in the union, and yet, still be considered a member and receive entitlement to vote in union elections. This clearly cannot be correct and a satisfactory compliance rule along with a more speedy system of at least suspending membership when contributions have not been paid should be considered.

A handwritten signature in black ink, appearing to read 'E G Whybrow', with a stylized flourish at the end.

E G WHYBREW
Certification Officer