

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS
MADE UNDER SECTIONS 55 AND 80 OF THE TRADE UNION
AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**IN THE MATTER OF COMPLAINTS AGAINST THE
PRISON OFFICERS ASSOCIATION**

Date of Decisions:

9 August 1996

DECISION

- 1.1. Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“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 trade union has failed to comply with one or more of the provisions of Chapter IV Part I of the 1992 Act concerning the need for, and the conduct of, elections to certain positions. Similarly under section 80 of that Act, if a member claims that a trade union has held a ballot, or proposes to hold a ballot, on a political fund resolution otherwise than in accordance with political fund ballot rules approved by the Certification Officer he may apply to me for a declaration to that effect.

- 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 14 December 1995 I received an application from a member of ‘the Prison Officers’ Association (“POA” or “the union”) concerning the conduct of the election for the post of POA National Chairman. This application alleged that in the voting at Her Majesty’s Prisons Maze and Belfast there had been six breaches in respect of the requirements of sections 50, 51, 51A and 52 of the 1992 Act. I shall call these applications the election complaints and number them as Complaints 1-6.
- 1.4. In subsequent correspondence the complainant clarified a number of issues and also alleged that the union, again in respect of voting at prisons in Northern Ireland, had breached two further requirements of the 1992 Act, in this instance in respect of the provisions of section 77 concerning the 1995 POA political fund ballot. I shall call these two complaints the political fund ballot complaints and number them as Complaints 7 & 8 with my reference CO/1913/14 at the rear of this decision (paras 3.1 ff).

Jurisdiction

- 1.5. Before the hearing (see para 1.19 below) the union raised with me the question of whether I had jurisdiction to hear complaints in respect of matters relating to Northern Ireland. I satisfied myself that I did have such a jurisdiction. The union is one whose name is entered on the list of trade unions maintained by me. The union’s head office is in Great Britain

and it carries out the majority of its activities in Great Britain which is also where its executive meets.

1.6. As far as the election complaints are concerned section 60(2) of the 1992 Act provides that a member of the union in Northern Ireland is an “overseas member” within the meaning of section 60. Section 60(3) of the Act provides that if a union has chosen to give overseas members entitlement to vote in the election of its officers then the provisions of section 51 (requirements as voting) apply. If section 51 applies then so does section 55 which covers my powers to investigate and rule on a complaint about elections. It is apparent that members in Northern Ireland were given entitlement to vote in the election of Chairman and I am satisfied that the union was under an obligation to observe the requirements of section 51 with regard to the election in respect of members in Northern Ireland as well as in respect of the rest of its membership.

1.7 In respect of the complaints relating to the ballot on the Political Fund, section 301 (2)(b) of the Act provides that Chapter VI of Part 1 of the Act (application of funds for political objects), with certain exceptions that do not apply in this instance, extends to Northern Ireland in respect of trade unions having their head office outside Northern Ireland. There is no provision in Chapter VI of the 1992 Act to exclude “overseas members “from a ballot to approve a political resolution, where none has been in place before, and this is reflected in the ballot rules as approved by me. These rules also provide for any complaint that the ballot rules have been breached to be dealt with by me. I am satisfied therefore that I have the jurisdiction to hear and determine the eight complaints.

Declarations

1.8. For the reasons which follow

I declare that the Prison Officers Association in respect of the election of its National Chairman in 1995 breached the requirements of Chapter IV of Part 1 of the 1992 Act by:

- not allowing members at HMPs Maze and Belfast to vote without interference or constraint - contrary to section 51 (3) (a) ;
- not providing members at HMPs Maze and Belfast so far as is reasonably practicable with a convenient opportunity to vote by post - contrary to section 51(4) (b) ;
- not informing members that the union would supply a copy of the scrutineers report on request - contrary to section 52 (5) ;
- not determining the result of the national ballot for Chairman solely by the number of votes directly cast - contrary to section 51(6).

As a consequence the National Chairman does not hold office by reason of an election satisfying the requirements of Part 1 Chapter IV of the Trade Union and Labour Relations (Consolidation) Act 1992.

I further declare that in respect of the ballot establishing a political fund in 1995 the Prison Officers Association breached the balloting rules approved by me under the 1992 Act by:

- not allowing members to vote without interference or constraint;
- not providing members, so far as is reasonably practicable with a convenient opportunity to vote by post.

1.9. Also for the reasons that follow I decline to make a declaration on the other two complaints about the National Chairmans election. I find that the union did notify members of the contents of the scrutineers report; consequently section 52(4) was not breached. I also find that the union did not prevent the scrutineers from carrying out their statutory functions; so section 51A(6)(c) was not breached.

Remedies

1.10 On 17 July I informed the General Secretary of the union of these findings. This was to enable the union to consider what remedial action it proposed to take so that in accordance with section 55(4) of the Act I could record those steps in this decision. The union's response which I regard as wholly positive and helpful is recorded at paras 4.1 ff below.

Background to the Applications

1.11 The election complaints related to the election for the post of POA National Chairman which had been held between 3 July and 10 August 1995. There were two candidates one of whom was the complainant who at the time held the position of Vice President of the union. The result which was published in October showed that the complainant had lost by 78 votes.

1.12 The scrutineer appointed by the union to oversee the election was Unity Security Balloting Services (USBS). They were also appointed to act as the independent person under section 51A of the 1992 Act. The result of the election certified by the scrutineer on 17 August 1995 included the following statement:

“... 1. There are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the election. (My emphasis)

2 The arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of votes included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur subject to the comments below.

3 However USBS noted that the returns from members in some institutions were significantly higher than in previous ballots, and there was an unusual pattern of voting. However it has not been possible to produce any clear evidence to suggest there has been any breach of any statutory requirement or that any malpractice has taken place. (my emphasis)

4. USBS has been able to carry out its functions as scrutineer without such interference as would make it reasonable for any person to call its independence in relation to the Association into question.

5. No independent person was appointed under section 51A of the Trade Union and Labour Relations Act 1992.

6. The register of members was not inspected during the ballot period and USBS received no request from a candidate or member to do so.”

I shall refer to this document as the USBS “certificate”.

1.13. Appended to the certificate was a much longer “report” by USBS to the union also dated 17 August expressing “concerns” about the conduct of the ballot. These concerns centred around an unusual pattern of completion of ballot papers at HMP Maze and HMP Belfast as well as an unusual pattern of voting. The exact words expressing these concerns were:

“When receiving ballot papers back from members, it was noticed that in two branches in particular, HMP Belfast and HMP The Maze, there was an unusual pattern of completion of the ballot papers.

In addition the turnout in those two branches was significantly higher than in previous ballots, in HMP Belfast increasing from 4% for the election of Vice Chair earlier this year to 41%, and in HMP The Maze the increase was from 0% to 72%.

The arrangements for the distribution and return of ballot papers were exactly the same as in all previous postal ballots, and there have not previously been any unusual features of this sort in the turnout or return of papers.

The statutory requirements require the Association to conduct a postal ballot of all members for this position, and for members to be allowed to vote in secret and without interference.

Whilst the register of members is as accurate as possible, the vast majority of members choose to use their work address to receive ballot material. This means that virtually all the envelopes are delivered to members at each institution on the same day, and have to be distributed by the Prison administration. Branch officers are advised not to participate in the arrangements to avoid any possible complaint of interference.

This has frequently led to problems as the Prison administration may fail either to make adequate arrangements for the distribution, or to make any arrangements at all. The distribution of envelopes to members can be a major exercise and is subject to other events happening in the prison, staffing arrangements, relationships between management and the POA locally etc.”

1.14. The “report” went on to note that unlike on previous occasions returns were received from members at all institutions. It then said:

“The returns from HMP Belfast and The Maze are unusual, but there is no clear evidence to support any suggestion that there has been any malpractice or breach of any statutory requirement. However the numbers involved are substantial and could make a material difference to the result of the ballot.

USBS wishes to make clear its concerns to the National Executive, and would advise the National Executive to carefully consider whether it should take any further action prior to the announcement of the results.”

1.15. It put forward three options for the union’s NEC to consider which I paraphrase as:

- (i) Declare the result and publish the scrutineer’s report.
- (ii) Hold its own enquiry “to ensure that the voting that took place did so in accordance with the statutory requirements, and subsequently decide whether to declare the result...” The scrutineer’s report would still have to be published.
- (iii) Seek the views of the candidates on whether they would be prepared to accept the results as they stand, and proceed accordingly.

1.16 Following receipt of the documents the POA delayed issuing the result of the election and asked USBS to conduct an enquiry at the Maze and Belfast prisons into the questions raised in the USBS report. However the USBS enquiry did not go ahead because of opposition from the Northern Ireland Area Committee of the union. The union’s executive committee subsequently decided to declare the ballot result on 6 October 1995 following

a visit to Northern Ireland by two of its senior members to make “enquiries” into the “concerns”. The USBS election certificate was published by the union.

1.17. The USBS report expanding on its “concerns” was not published to the general membership of the union but the complainant in his capacity as a member of the union’s executive was privy to it. He was also aware of the considerable contact between the union and the scrutineers and of a letter dated 20 September from the Governor of the Maze to the scrutineers which contained a reference to both the Political Fund ballot (held between 7 August and 14 September 1995) and the Chairmans ballot. That letter concluded “I, as in previous other ballots conducted at the Maze, visited the polling booth on a daily basis throughout the election and I certainly saw nothing which would cause concern”, (my emphasis)

1.18. It was against this background that the complaints were lodged with me. Subsequent enquiries gave rise to a considerable amount of documentation. I secured from USBS written answers to some specific questions, and arranged for them to answer questions from me and the parties on the first morning of the formal hearing. USBS also, at my request, let me have the completed ballot papers covering the Maze and Belfast and certain other institutions in Northern Ireland. I allowed the parties a separate opportunity to examine all of these ballot papers before the start of the second day of the formal hearing, after they had seen and heard the detailed concerns of USBS.

1.19 At the hearing which was held on 29 and 30 May 1996, the complainant was not legally represented but was accompanied by a colleague. The union was represented by David Thomas of Lees Lloyd Whitley, solicitors.

1.20 I am grateful for the time and trouble taken by Unity Security Balloting Services in preparing and giving evidence which was invaluable to me in reaching my decisions. USBS was represented by A Hows (Director) and Ms A Hock, General Manager.

The Requirements Of The Legislation

1.21. The relevant statutory requirements in respect of the election complaints are as follows:

Section 50 deals with the requirements for entitlement to vote in an election. The relevant parts of that section state:

“50(1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.

(6) 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.”

Section 51 deals with the distribution of ballot papers and the process of voting. The relevant parts state:

“51(1) The method of voting must be by the marking of a voting paper by the person 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.*
- (4) *So far as is reasonably practicable, every person who is entitled to vote at the election must -*
 - (a) *have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates, and*
 - (b) *be given a convenient opportunity to vote by post...*

Section 51A deals with the requirements for counting of votes etc. by the independent person. Sub section (6) of this section and especially (6)(c) is particularly relevant to this case and states:

- “(6) *The trade union....*
 - (c) *shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.*”

Section 52 deals with the scrutineer’s report. The relevant parts of this section (52(1) and (2), 52(4) and 52(5)) state:

- “(1) *The scrutineer’s report on the election shall state -*
 - (a) *the number of voting papers distributed for the purposes of the election;*
 - (b) *the number of voting papers returned to the scrutineer;*
 - (c) *the number of valid votes cast in the election for each candidate; and*
 - (d) *the number of spoiled or otherwise invalid voting papers returned;*

(e) *the name of the person (or of each of the persons) appointed under section 51A or, if no person was so appointed, that fact.*

(2) *The report shall also state whether the scrutineer is satisfied -*

(a) *that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the election;*

(b) *that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the votes included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur; and*

(c) *that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union in question;*

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.....”

(4) *The trade union shall within the period of three months after it has received the scrutineer’s report either -*

(a) *send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or*

(b) *take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.*

(5) *Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.....”*

Political Fund Complaints

1.22. A ballot to establish a political fund must be carried out according to the provisions of Chapter VI of the 1992 Act. These require it (section 74(1)) to be conducted under rules approved by the Certification Officer. The Certification Officer cannot approve such rules unless they satisfy certain specific provisions. These detailed provisions are in all relevant respects identical to those governing elections. In particular section 77 states:

- “(3) Every person who is entitled to vote in the ballot must -*
- (a) be allowed to vote without interference from or constraint imposed by, the union or any of its members, officials or employees...*
 - (4) So far as is reasonably practicable every person who is entitled to vote in the ballot must...*
- (b) be given a convenient opportunity to vote by post.”*

These provisions are mirrored by the union’s political fund ballot rules approved by me.

1.23. That then is the background, legislative requirements and my decision on the two applications. I turn now to set out the arguments put by the parties and reasons for my decisions on the two separate sets of complaints.

THE ELECTION COMPLAINTS

ELECTION COMPLAINT (Voting without interference or constraint)

The Complainant’s Case

2.1. The complainant alleged that during the 1995 election of the POA National Chairman members at HM Prisons Maze and Belfast collected their ballot papers from local union

officials, signed for them, then having voted at a polling booth, posted the completed ballot papers in a mail sack provided by representatives of the union.

2.2 It was alleged that this procedure, effectively a workplace ballot rather than a secret postal ballot, was contrary to long standing POA instructions and constituted a breach of the requirements of section 51(3)(a) of the 1992 Act. This section of the Act imposes a duty on the union to ensure that a person must be allowed to vote without interference from or constraint imposed by the union, its officials or employees.

2.3 In support of his allegation the complainant produced three pieces of evidence. First, a letter from the scrutineer to the union general secretary dated 12 September 1995. The letter stated that, in respect of the two prisons:

“..... All the envelopes were given to the [POA] representatives, who then set up a “station” for members to collect their ballot envelope, and members were encouraged to vote when they collected their voting paper. Envelopes were kept in alphabetical order, and members asked to sign for receipt of their envelope. It has been suggested that the ballot papers were also returned to the representatives prior to posting to USBS.”

The USBS letter went on to say that:

“if (union) representatives are encouraging members to vote in a certain way when collecting their ballot paper, and even more so if they are encouraged to vote there and then and give the ballot paper back to the representative, there must be a serious argument that if a complaint was made (to the Certification Officer) from a member who objected to such pressure to vote, it would be successful.”

Secondly, the letter from the Governor of the Maze prison dated 20 September 1995 which as quoted above (see para 1.17) contained the statement “I, as in previous other

ballots conducted at Maze, visited the polling booth on a daily basis throughout the election and I certainly saw nothing which would cause concern.”

Thirdly, a letter from a union official at the Belfast prison which said in respect of the Chairman’s election “Our Branch Chairman personally went round the establishment delivering the ballots and getting signatures for the same”.

- 2.4. In the complainant’s opinion all this amounted to interference and constraint on members in the election by the union and constituted a clear breach of the requirements of section 51(3)(a) of the 1992 Act.

The Union’s Response

- 2.5. The union denied that it had interfered or put constraint on its members in the election ballot at the Maze and Belfast prisons. At both prisons the Governor or the prison’s administration office asked the union to distribute the ballot papers. This was normal practice as the volume of mail for prison officers on the occasion of elections was far greater than normal and in one prison there were no pigeon holes to put it and in the other they were too small. The union’s officers would check the sealed envelopes against the pay rolls or tally lists provided by the prison’s administration. Where papers were received for people who were no longer members or no longer at that particular prison the union officers would send these papers either to the new location if they knew it or to the union’s headquarters in Northern Ireland (Castell House). Members who collected their papers from the union office or polling booth could vote (in secret) there and then and place them in a sack, they could take the paper away to vote and post it themselves

or they could destroy the paper. At Belfast prison the Governor encouraged the union to take papers to staff at their workstations, and the union official sought signatures “to cover my back in case the Governor asked what had happened to ballot mail”. A signature was not required, merely requested, and ballot papers would be issued without a signature. In both prisons ballot papers were locked up overnight, the mail sacks treated as normal post from the prison and at the end of the ballot unused papers were returned to Castell House. [Later evidence from the union claimed that some were also sent in bulk to the independent scrutineer. But I was unable to substantiate this.]

2.6. In summary the unions case was that some POA members used the polling booth as a convenient way of registering their vote but members did not have to use this facility; it was up to the member to decide. In asking members to sign for their ballot papers union officials were merely demonstrating to management that they had carried out the task of delivering post internally, a task which had been delegated to them by the Governor. Furthermore the provision of a post sack in the polling booth was merely a convenient facility provided for members to post their vote and assisted in the efficient distribution of mail within the prisons.

2.7. A previous decision by the Certification Officer *Paul v NALGO* [1987] IRLR 43 was relied upon by the union in support of its argument. In that decision the Certification Officer confirmed that “interference or constraint is intended to exclude such conduct as would intimidate or put a member in fear of voting, or amount to physical interference”. In the union’s opinion the procedure they had followed at the prisons did

not amount to physical interference or constraint and consequently the statutory provisions had not been breached by the union.

Reasons For My Decision

2.8. The essential facts about how the ballot was conducted in HMPs Maze and Belfast are not in dispute.. I was given helpful and clear evidence on this by the union's senior officers in the two establishments. The vast majority of POA members are very concerned that their home addresses do not fall into the wrong hands. These concerns are easily understood - particularly in Northern Ireland. Ballot papers were sent by the scrutineers to named individuals at their workplace address and neither the complainant nor the scrutineer complained to me about that.

2.9. Once the ballot papers arrived at the prisons they found their way to the Governor's office who passed the papers to the local POA executive committee members for distribution. From this point on the ballot papers were under the control of union officials. Access to those ballot papers was controlled by those officials. They went to substantial lengths to make sure that union members knew how to collect their ballot papers or in the case of HMP Belfast, personally to deliver them. In both prisons union officials sorted through the ballot papers sent out by the scrutineer, redirecting some (to those who were sick or I'll). At HMP Belfast those which they thought were for members who had retired ceased to be members or resigned were sent to Castell House, the regional headquarters of the POA in Northern Ireland.

- 2.10 What I have to decide is whether what happened in these two prisons constitutes the interference or constraint banned by section 51(3)(a) of the Act.
- 2.11. It is difficult to envisage that Parliament intended that in a secret postal ballot, ballot papers could lawfully come back under the control of the union after despatch by the scrutineer and before delivery to the member. There are no pointers in the Act suggesting the ballot papers can come back into the union's control and some important ones suggesting they can't. For example, section 51A requires a trade union to ensure that the storage and distribution of voting papers for the purpose of the election are undertaken by one or more independent persons appointed by the union and those independent persons (in this case the scrutineer) are to be responsible for the distribution of the voting papers. The union did not have permission from the scrutineer's to adopt this method. It immediately compromises the security of the ballot.
- 2.12. It is an inevitable consequence of using work addresses as those to which postal ballot papers are to be sent, that delivery will depend solely upon the internal delivery arrangements for mail made by the employer. These are wholly outside the control of the union. In some cases, as in the case of HMP Belfast and HMP Maze, it is quite clear that the internal mail delivery service was not able to cope with distribution of ballot papers in respect of POA elections. In HMP Belfast I heard that there were no pigeon holes and no other form of delivery. In HMP Maze the pigeon holes were too small. In both these cases the prison authorities turned to the executive committee of the local POA to organise the distribution. In a practical sense I can see why union officials were happy to assist in this process. But it was unwise.

- 2.13. Not only did the ballot papers fall into the control of POA officials, but those officials then went on to determine firstly whether the ballot papers were for people who were members of the union by checking against the prisons pay records (to see that they were making union dues), secondly by redirecting some of the ballot papers to where they believed people had moved on and thirdly in (the case of HMP Belfast), returning any unused ballot papers to the union's headquarters in Belfast and not to the scrutineer.
- 2.14. At the hearing I asked the union for these papers in respect of the election. They have been provided to me and total a number of 273 from HMP Belfast. I was also told that ballot papers from HMP Maze were returned to Castell. A search at Castell House has been unable to find these papers.
- 2.15. The purpose behind the arrangements for postal balloting is to remove the risk of interference or constraint being imposed by the union and to allow members a free opportunity to vote "by post". In this election the ballot papers were only available to members during certain hours. The chain put in place by the scrutineer was interfered with by sifting the ballot papers and removing those the union thought were no longer entitled to vote. They chose not to return the wrongly directed or unused ballot papers to the scrutineer.
- 2.16. My predecessor held in **Paul -v- The National and Local Government Officers Association [19R71 IRLR 43]** that the phrase "without interference or constraint imposed by" related to intimidation or other physical interference with the voter. I myself have followed this approach in subsequent cases.

2.17. In this case I have heard no evidence from an individual member of intimidation or other physical interference or constraint. However the complaint here is that the system adopted by the union inherently interferes or imposes the constraint. I am satisfied that this election was compromised because ballot papers before and after completion fell into the hands of officers of the union. This involved physical interference with the balloting process as well as imposing a constraint on voters by taking control over access to the ballot papers away from the scrutineer.

2.18. For the purposes of the relevant parts of the Act the officials in Northern Ireland count as the Union. I have no doubt that their actions were not authorised but this does not help the union. In these circumstances I find that in respect of HMP Belfast and HMP Maze there was interference with and constraint imposed by the union. It was not possible to vote except in accordance with the procedure adopted by the local officials. This was constraint exercised through officials and was manifested by their having control over not only who received the ballot papers and what happened to the ballot papers which were unused but by controlling access to the papers generally. In view of the findings I make later in respect of complaint 5 such interference gave rise to the possibility of malpractice in respect of the election by creating the opportunity for others to have access to blank ballot papers which they would not and should not otherwise have had access to.

ELECTION COMPLAINT 2 (A convenient opportunity to vote by post)

The Complainant's Case

2.19. The complainant alleged that at HMP Maze representatives of the union required, encouraged or permitted voting members to return their completed ballot papers to union officials when the statutory requirement is for members “to be given a convenient opportunity to vote by post”. The complainant maintained that the union was thus in breach of section 51(4)(b) of the 1992 Act.

2.20. In his evidence the complainant pointed out that, as in complaint 1, the POA by setting up a polling booth, encouraging or requiring members to sign for their voting paper and return their voting paper to union officials demonstrated that the ballot had not provided members with “a convenient opportunity to vote by post”.

2.21. The complainant provided minutes of the POA executive committee of 5 October 1995 which quoted the Northern Ireland area chairman of the union as saying in respect of the Maze and Belfast prisons, that they were workplace ballots. This evidence was supported in a letter from the scrutineer to the POA general secretary in respect of the “concerns” about the ballot. The letter having set out the requirement to send ballot papers by post and to give a convenient opportunity to vote by post went on to say:

“..... It must at least be questionable whether having to collect the voting paper from the POA representative, and having to sign for it fulfils those requirements. I was given to understand that if the Governor did not permit extra time off, access for a member to collect his/her ballot paper was severely limited. In those circumstances, whilst the member has been sent a voting paper by post, a complaint could well be successfully made that the Governor and/or POA representative intercepted its delivery and, in effect, prevented the member from being given a convenient opportunity to vote by post.”

2.22 The complainant also pointed out that by distributing the mail in this way members who were absent from work for any reason may not have had the opportunity to vote in the Chairman's election.

2.23. In the complainant's eyes all this constituted a breach of section 51(4) of the 1992 Act.

The Union's Response

2.24 The union maintained that all it was required to do was to give members a chance to vote by post, if those members chose to return their vote in some way other than dropping it in a post box they were entitled to do so. On this basis its members at the Maze and Belfast had been given a convenient opportunity to vote by post as required by the legislation.

2.25. POA members invariably asked for mail to be delivered to their work address for security reasons. On delivery at the workplace members had the choice of posting their vote in a public pillar box, taking it to the prison administration office for posting or using the sack at the polling booth set up by the local union officials. The polling booth and the nearby posting sack provided by union officials was simply to aid the process of voting and not to hinder it. In its opinion this process did not impede or dissuade members from voting by post in the election and there was therefore no case to answer.

Reasons For My Decision

2.26 Again the essential facts on this are not in dispute. In this particular instance it seems to me that the issue turns upon whether the providing a sack into which members were free, but not obliged, to place their completed ballot papers, which were subsequently transported to the administrative officer of the prison for postage out, infringed the unions duty to provide “a convenient opportunity to vote by post”.

2.27 This is the most difficult complaint that I have to decide in this particular matter. It is difficult because the factual circumstances surrounding the complaint are particular to the type of institution in which the members of the union work and the geography. The first thing I must decide is what is meant by the provisions of section 51 (4)(b). That requirement is that:-

“So far as is reasonably practicable, every person who is entitled to vote at the election must....

(b) be given a convenient opportunity to vote by post.”

2.28 The union invited me to find that the meaning of this phrase was no more than that the members must be given the chance to return the ballot papers by post. What in effect they were saying was that provided a convenient opportunity to vote is given the member need not use it. Provided a prepaid envelope is provided, it is open to member to use any alternative form of returning the paper (including a ballot box) which the union provides or the member otherwise chooses to adopt.

2.29 I must look at the whole scheme of the legislation to see if this can be right because such an interpretation would mean that elections need not be fully postal. In my view the

intention behind the balloting provisions was to make such ballots fully postal not just to provide the option of voting by post. It was clearly intended to take the control over the balloting papers out of the hands of union officials. It was to make sure members receive a vote and to minimise the risk of interference. In my judgement the purpose of the provisions of section 51(4)(b) was not to give the union member merely an opportunity if he so chooses to vote by post but to require him to do so. The “convenient opportunity” in my judgement relates to the time to be given to him to vote by post. It is not about just ensuring that if he wants to he can choose to vote by post or opt for another method of returning his ballot paper.

2.30 It follows from what I have said that the union’s first defence to this complaint must fail. It fails because I have found that to vote by post requires the return of the envelopes through the postal system. The second question I must therefore consider is whether the provision of the bag infringed this principle.

2.31 In my judgement I should not look at this without considering the particular circumstances prevailing in the Maze and at HMP Belfast. I must also consider how the provision is to operate in other places where members of a trade union choose to use their work address, as their postal address for balloting purposes. A worker might in such circumstances return his or her voting paper by placing it in an “out tray”. The internal systems of the employer should then ensure that envelope is picked up and is transported to the post room and thence into the postal system. The process between the worker placing the ballot paper in the in tray and its actual delivery into the postal system is not post within the meaning of the 1992 Act, (defined by section 298 of that Act). In

a similar way the placing of the completed ballot paper into a bag in a prison which is then delivered out into the postal service is not “post”.

2.32. But is there a difference between what happened in these prisons and a worker giving a completed envelope to a friend who undertakes to post it on the way home from work with the other office mail. I do not think Parliament could have intended a union to be in breach of the arrangements in respect of section 51(4) merely because members choose to use the services of a friend or an internal despatch service provided by their employer. However, I think a proper distinction can and should, be drawn between use of an internal delivery service and one provided by union officials for the convenience of their members. In one case the system of delivery and despatch is intrinsically part of the arrangements whereby the employer ensures that such material would be delivered to and sent from the worker. The other is controlled by the union.

2.33. Completed ballot papers came into the possession of union officials. This can only have added to the opportunity for malpractice. On this complaint I do not have to decide whether or not there was actual malpractice, merely determine whether the facilities offered by the union in fact infringed the provisions of section 51.

2.34. I have carefully considered what I think was the intention behind the legislative process and am prepared to accept that where an employer provides a delivery service to and from employees internally within a building that would not normally infringe the provisions of section 51(4) because a service is provided by the employer and not by the trade union and the risk of interference with ballot papers once within the internal

process is marginal. The service is provided alongside other facilities for the delivery and despatch of post. A member who chooses to put his ballot paper into an internal delivery service is relying on the employer, not the union, to deliver it for him.

2.35. However, where the facility is offered by the union, irrespective of how sensible or helpful it may seem to be, it can give rise to the risk of the election process being compromised. This would run against the whole scheme of the legislation and I do not think it can have been intended. In this regard also then I find against the union.

ELECTION COMPLAINT 3 (Union failed to send a copy of the scrutineer's report to members)

The Complainant's Case

2.36. The complainant alleged that the union had failed to send members the full version of the scrutineer's report or to notify the contents of the report to members. Only the "certificate" (see paragraph 1.12) was sent to or reported to members. The other part of the scrutineer's report, ie the "USBS report" also dated 17 August 1995 (para 1.13) was not sent to members. The complainant maintained that it must be obvious, at least to the average member, that the scrutineer's report comprised both the "certificate" and the "USBS report" and both parts comprised the scrutineer's report and should have been disclosed to members.

2.37. The complainant provided me with a copy of POA Circular 121/95 dated 6 October 1995 addressed to all branches with which only the USBS "certificate" was attached. The

longer USBS report of 17 August in which the scrutineer detailed its “concerns” about the conduct of the ballot, did not accompany the result.

2.38. As a consequence of this omission the complainant maintained that the union had breached the provisions of section 52(4) of the 1992 Act by failing to provide members with a copy of the scrutineer’s report.

The Union’s Response

2.39. The union considered that it had published the scrutineer’s report and consequently there was no case to answer. It had published the scrutineer’s “certificate” which included mention of the unusual pattern of voting at some institutions. In the union’s opinion this document satisfied the requirements of section 52 of the 1992 Act (which sets out the content of a scrutineer’s report).

2.40. The USBS report which accompanied the results was not part of the scrutineer’s report in the union’s’ opinion. It had been in close touch with USBS during the time the scrutineer’s report was awaiting publication and the executive committee’s decision to issue the result was based on USBS advice that the “certificate” was the scrutineer’s statutory report of the result.

Reasons For My Decision

2.41. The duty on the trade union under section 52(4) is to either:-

- (a) send a copy of the scrutineer’s report to every member of the union to whom it is reasonably practicable to send such copies; or

(b) take all such other steps for notifying the contents of the report to members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all members need to be brought to their attention.

2.42. The first matter I must decide under this complaint is what was the scrutineer's report for the purposes of section 52 in this particular election. This is a question of fact.

2.43. Section 52(1), (2), (2A) and (2B) (see para 1.21 above) set out what the scrutineer's report is to cover. The dispute between the complainant and the union in this case, relates solely to the question as to whether the "certificate" issued by the scrutineer and dated 14 August is the scrutineer's report for the purposes of section 52 or whether the "report" sent to the union at the same time, under the same cover and dated the same, forms part of the report of the scrutineer under section 52. If I find the report is both documents, there is no dispute that the union will have failed to meet its statutory duty of publishing the scrutineer's report because it has not published the "report" which accompanied the "certificate".

2.44. In evidence before me the scrutineer stated that the scrutineer's report for the purposes of section 52 of the Act was only the "certificate". It contained all that the statute required to be in such a report and that it had never been intended that the report under section 52 included the accompanying "report" which was said to be like a covering letter. The union submitted that the "certificate" contained all the information that section 52 required and that it had even approached the scrutineer to check the position

before publishing the “certificate”. The scrutineer had confirmed that the section 52 report was only the “certificate”. The applicant complained that despite the “certificate” stating that:

“USBS noted that the returns from members in some institutions was significantly higher than in previous ballots, and that there was an unusual pattern of voting by members. However it has not been possible to produce any clear evidence to suggest that there has been any breach of any statutory requirement or that any malpractice has taken place.”

it did not include the particulars of this. These were in the so-called “report” of 17 August 1995. As subsection (2) required the scrutineer to give particulars of his reasons for being unhappy the report accompanying the certificate should be construed as part of the report under section 52.

2.45. I have great sympathy for the applicant who rightly is confused by the scrutineer making two reports to the union, one called a certificate and the other a report, and by the contention that the certificate is the report for the purposes of section 52 and the so called report being, as the scrutineer said in evidence, in the nature of a covering letter. But I have to determine whether the report which accompanied the certificate is in fact part of the certificate and I heard from the scrutineer that it was not. However, whatever I might feel to be its shortcomings as a report under section 52 and however misnamed the certificate, it is not open to me to determine what should have been the report. The “certificate” did after all on its face contain all that was required by section 52. The scrutineer said in uncontested evidence before me that the report it issued under section 52 was the certificate and did not include the report. There are no grounds on which I

could find the certificate to have been a sham. I therefore conclude that the certificate was the report for the purposes of section 52.

2.46. As the union did publish a copy of the “certificate” which was the report in accordance with section 52(4) I find that the complaint fails.

ELECTION COMPLAINT 4 (No statement by union that it would supply members with a copy of the scrutineer’s report etc)

The Complainant’s Case

2.47. This complaint referred to the contents of POA Circular 121/95 (see paragraph 2.37 above) which gave the result of the election. In announcing the results in the circular the union had failed to make the statement to members as, required by statute to the effect that a copy of the scrutineer’s report would be supplied, on request, either free of charge or on payment of such reasonable fee as may be specified in the notification.

2.48. It was alleged that the union’s failure to make this statement accompanying the results was a breach of the provisions of section 52(5) of the 1992 Act.

The Union’s Response

2.49. The union conceded that it had not published the statutory statement with the results of the election stating that it would, “on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification”.

2.50. In the union's opinion this omission had not affected the result of the election and the omission was purely procedural.

Reasons For My Decision

2.51. At the beginning of the hearing the union conceded that no such notification appeared at the bottom of its published copy of the scrutineer's report and that it admitted the complaint. I am satisfied that was a correct admission and that the relevant details were not enclosed.

2.52. The breach of this requirement is in my view a breach of a technical requirement imposed by section 52(4) and does not go to the root of the conduct of the election of chairman. I have no reason to believe it was other than an oversight.

ELECTION COMPLAINT 5 (Result of ballot was not determined solely by counting the number of votes cast etc)

The Complainant's Case

2.53. The complaint was in two parts, it was alleged that contrary to the provisions of section 50(1) of the 1992 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. The complainant maintained that at two establishments more than one ballot paper may have been completed by certain individuals and that these invalid ballot papers were included in the count that determined the result.

- 2.54. Evidence to support this contention came from the views expressed by USBS in correspondence and in oral evidence and from an examination of the completed ballot papers.
- 2.55. USBS in their certificate had noted a significant increase in turnout and “an unusual pattern of voting by members”. In their longer report they had referred to “an unusual pattern of completion of the ballot papers” with the numbers being “substantial” and able to “make a material difference to the result of the ballot”. In their written response to questions from the Certification Office USBS had explained that they allocate “a range of serial numbers for members in each establishment. When ballot papers are received, they are scanned on computers. It was noticed that 20 papers were rejected at the scanning process because the ‘x’ had been placed outside the box. On examination there was some similarity in the pens used to complete the ballot papers, and the style of the ‘x’. Ballot papers from the same branch which had been processed were then extracted and the similarity in completion was consistent throughout the returns from that branch.” In oral evidence USBS had said that “the 20 rejected ones were from two branches - the Maze and Belfast” “the form and size of many of the crosses were strikingly similar” and involved “a distinctive blue ink”.
- 2.56. The complainants own examination of the voting papers for the Maze and Belfast (see para 1.15) reinforced these views of USBS. Among the 20 “rejected” papers were two groups distinctly different from each other but remarkably similar internally. There were 5 crosses where the left hand segment was closed with a gentle loop and 13 with the line from top left to bottom right being much longer than the other and crossing it at a similar

angle. All were for the successful candidate. The other papers from the Maze contained many matching those two groups and a smaller number with what could be best described as a crossed tick. The papers from Belfast demonstrated the same three styles and the ticked crosses were in the same ink as on those from the Maze. In the view of the complainant the chances of such patterns emerging in the votes for one person were probably less than the chances of that person winning the National Lottery.

2.57. As further evidence that the opportunity to vote was not accorded equally to all members the complainant pointed to the poor state of the unions membership records in Northern Ireland where the “check off” still operates and the union is dependent on the employer notifying it of changes due to transfer, long term absence, retirement or resignation. In his position as an executive committee member at the time of the election, the complainant became aware that the union was conducting an audit of membership numbers in Northern Ireland. He was told by officials that the audit was necessary because membership records were inaccurate. The margin of error at the Maze was probably as high as 15%, a significant amount given that there was about 900 members in that branch.

2.58 The complainant produced evidence of an internal POA membership audit produced about the end of August 1995 which in his opinion showed that the membership record was inaccurate and out of date. He pointed to various inconsistencies and inaccuracies which in his opinion proved that not all members, particularly in the Maze and Belfast prisons, would have been able to vote in the election. The complainant

considered, in the light of the chaos of the union's membership list, that not all members had been given entitlement to vote in the election contrary to the statutory provisions.

2.59. In the complainants view all this added up to a clear breach of sections 50(1) and 51(6) of the 1992 Act.

The Union's Response

2.60. The union disputed that entitlement to vote in the election was not accorded equally to all members and maintained that the election result was determined solely by counting the number of votes directly cast for each candidate.

2.61. The statutory provisions on which the complainant based his complaints were complex. The provisions of section 50(1) on which the complainant relied in respect of entitlement to vote is essentially about which members of a union are, or are not, entitled to vote in an election. It is concerned for example with what is practicable in respect of voting particularly when some members may have recently left employment or become in arrears of their union subscriptions.

2.62 The allegations that some individuals may have voted more than once and had affected the election result was based on supposition. The union had examined the completed voting papers provided by the scrutineer particularly the 20 votes from the Maze prison where the x on the voting paper had been placed outside the box which had given rise to the suspicion. 14 were written in black ink and 6 in blue. The union made various other comparisons with voting papers including an examination of voting papers from other

prisons in Northern Ireland. Little could be deduced from this examination in the union's view. There were a limited number of ways an x could be formed, inevitably many would look alike particularly as prison issue pens would often have been used by members.

2.63 The charges brought against the union by the complainant were grave; but such charges could not be based on the suppositions made by the complainant. However the evidence produced by the complainant was not compelling; a judgement could not be formed on the basis of what had been put forward by the complainant. Indeed the scrutineer had come to the conclusion that the evidence in regard to the pattern of crosses on the voting papers fell short of a reasonable suspicion that there had been improper voting.

2.64. The complainant had argued that the election should have been rerun in view of the suspicions about the voting patterns, however in the union's opinion once the scrutineer had issued its certificate giving the result of the election it seemed that the union was obliged to issue the result as required by section 52(4) of the 1992 Act. This view regarding publication was supported by a decision of the High Court (*Douglas v Graphical Paper and Media Union* [1995] IRLR 426).

2.65. In its view the union did not consider a case had been made in respect of the alleged breaches of sections 50(1) and 51(6) of the 1992 Act for the reasons given. The complaints should therefore be rejected.

Reasons For My Decision

2.66. This complaint is simple and straightforward in its substance - many of the ballot papers sent to HMPs Maze and Belfast were completed and returned by a few individuals to whom the papers were not addressed. In other words the ballot was rigged. The form of the complaint is though complex involving the interaction between two sections of the Act. Section 50(1) which says entitlement to vote shall be accorded equally to all members of the union and 51(6) which says the result shall be determined solely by the counting of the number of votes directly cast for each candidate. The complaint was formulated in this way because nowhere does the Act expressly state that no one may vote (a) more than once or, (b) on behalf of someone else or, (c) on a paper not addressed to them.

2.67. The first issue for me is the factual one; were any ballot papers completed and returned by a few individuals to whom they were not addressed? The union does not believe there is sufficient evidence to substantiate this serious charge. I disagree. Very experienced scrutineers were suspicious about the way a significant number of papers had been completed. I examined the papers myself - after the union and the complainant had done so and after hearing the scrutineers views but before hearing the complainants analysis and had come to the same conclusion as the complainant.

2.68. The three sets of characteristics he identified corresponded exactly with three sets (one of which I split further) I had identified. I gave up looking when I reached over 70 suspicious papers (the winners margin was 78 votes). Subsequently I looked at all of the papers for Northern Ireland and concluded that the number of dubious papers all

of which were for one candidate were more than double the margin between the successful and unsuccessful candidate.

2.69. Other evidence pointing to possible malpractice is the high turnout compared with previous national ballots at the two institutions, the enormous proportion of votes for one candidate, the colour of the ink used and the small number of signatures on the payroll list (64) compared with the number of votes cast (738) in HMP Maze. I accept that there could be perfectly innocent explanations of these features and I have given them little weight. Nor have I addressed the issue of the accuracy of the membership list.

2.70. However there was ample scope for a small number of people to fill in and return a number of ballot papers which did not reach the hands of those to whom they were addressed and I conclude that, on the overwhelming balance of probabilities, that is what happened and on a scale to influence the outcome of the election. I make no finding on where or by whom such a malpractice was carried out nor did I see any evidence suggesting that either of the candidates knew at the time that this was going on.

2.71. How does this finding of fact fit with the legal basis of the complaint? I accept the unions argument that section 50(1) is about entitlement to vote not about opportunity and that the union did afford entitlement to vote equally to all members. However when section 51(6) says that the election shall be determined solely on the number of votes directly cast it can only be talking of votes validly cast. Any other interpretation would mean that a rigged election would be a lawful one. As entitlement to vote was provided equally one vote per member, anyone voting more than once would not be voting validly and

therefore their votes should not have been counted. In that way the rigged election fell foul of the Act in the way expressed in the complaint and I therefore find against the union.

ELECTION COMPLAINT 6 (Scrutineer prevented from carrying out her functions properly)

The Complainant's Case

2.72 The complainant alleged that in respect of the National Chairman's election the union had failed to comply with reasonable requests of the scrutineer (USBS)(who was also the independent person) for the purpose of or in connection with, carrying out its functions.

2.73. In the course of its duties the scrutineer had noticed certain irregularities in respect of voting at the Maze and Belfast prisons which gave rise to concern. Although the scrutineer had issued the result of the ballot, the complainant took the view that its duties did not finish there and that it was obliged to investigate its "concerns". Indeed at that time the union considered that the scrutineer should hold an investigation. The complainant was present at executive committee meetings where the matter was discussed which had led the scrutineer being asked to conduct an enquiry into their concerns. The union had issued a circular on 7 September 1995 to all its branches informing members of the enquiry and that publication of the ballot result would be delayed until the enquiry was completed.

- 2.74. However the USBS enquiry did not go ahead because the POA Northern Ireland Area Committee refused to meet the scrutineer or to discuss the arrangements for distribution of ballot material during the election. The complainant pointed out that the Area Committee was a constitutional decision making committee of the union.
- 2.75. Because the Northern Ireland Area Committee did not wish to cooperate the POA general secretary and a national officer of the union instead went on a “fact finding mission” to Northern Ireland to look into the “concerns” expressed by USBS about the election.
- 2.76 The complainant took the view that the union had impeded the proposed enquiry by the scrutineer into its “concerns” about the conduct of the ballot. As a result the complainant maintained that the union had been in breach of section 51A(6)(c) of the 1992 Act.

The Union’s Response

- 2.77. The union did not agree that it had prevented the scrutineer from carrying out her statutory duties.
- 2.78 The union believed that the “certificate” issued by USBS constituted the statutory scrutineer’s report. The detailed “USBS report” and recommendations which accompanied it was not part of the statutory scrutineer’s report. In the union’s view the enquiry proposed by USBS in its report was a separate issue to be followed up and was not part of the scrutineer’s statutory functions in respect of the election.

2.79 If that view was accepted the union could not be obstructing USBS in the course of its statutory functions. Indeed this view seemed to be supported by USBS in its report. The scrutineer had given the union a number of options for dealing with its “concerns” about the election. One of these options was for the POA executive committee to declare the result; and this is what it did. This decision took into account the statutory requirement for the union to publish the scrutineer’s report once it had been issued as required by section 52(4) of the 1992 Act.

2.80. The union agreed that the POA Northern Ireland Area Committee for whose actions it was responsible had at least not been enthusiastic about a proposed enquiry by USBS into the alleged irregularities. However in view of the executive committee’s decision to publish the election result (having instead conducted its own internal enquiry at Northern Ireland by the general secretary and a national officer of the union), the union could not be obstructing the scrutineer in the execution of her duties. The scrutineer’s statutory functions had finished once it had issued its “certificate”. There was therefore no case to answer.

Reasons For My Decision

2.81. The first thing I must decide in respect of this complaint is precisely what the functions of the scrutineer were in this particular election. In this election this scrutineer was appointed not only to act as the scrutineer under section 49 of the Act but also to act as the independent person under section 51A of that Act. The functions of the scrutineer for all elections are set out in section 49(1) of the Act and are stated to be :-

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

2.82. The functions of the scrutineer that the statute made mandatory in this election are set out in both sections 49(3) and 51A of the Act. The functions of the scrutineer as the independent person under section 51A related to the storage and distributing of voting papers for the purposes of the election and the counting of votes cast in the election. Those purely as scrutineer (under section 49) required the scrutineer, and I paraphrase, to:-

- (a) be the person to whom voting papers are returned;
 - (aa) inspect the register of names and addresses or examine a copy of the register, whenever it appeared to him appropriate to do so;
- (b) take such steps as appeared to him to be appropriate for the purpose of enabling him to make his report under section 52;
- (c) make his report to the trade union as soon as is reasonably practicable after the last date for the return of the voting papers;
- (d) retain custody of all the voting papers returned for the purpose of the election and a copy of the register for the period required by the statute.

- 2.83. The only mandatory function which extended beyond the giving of the report about the election to the union related to the retention of voting papers and register for the period required by section 49(3)(d).
- 2.84. Once the report was made nothing in section 49 or 51A required the scrutineer to take any further action in respect of the fairness of the ballot. As the allegations against the union of refusing to co-operate with the scrutineer's enquiries all fall after the date of the report and as the allegations do not relate to the scrutineer's retention of the voting papers and register I must consider whether the scrutineer was given any additional functions under section 49(1) (b).
- 2.85. The evidence before me of both the scrutineer and the trade union, was that no additional functions had been given to the scrutineer in this particular case. The applicant could point to no evidence to the contrary. I am therefore satisfied that no additional functions had been specified under section 49.
- 2.86 The evidence of the scrutineer was also that the report under section 52 of the Act was sent to the union on 14 August 1995 I accept this. Even though the report and covering material which were sent to the union suggested that an investigation was appropriate, by this time all the statutory functions of the scrutineer, but for the retention and storage of the ballot paper and register, were complete.
- 2.87. All the evidence of non-compliance with requests from the scrutineer relate to the non-co-operation by union officials in Northern Ireland after 14 August 1995. In view

of this it seems to me that the complaint of failing to comply with reasonable requests of the scrutineer for the purposes of or in connection with the carrying out of the scrutineer's functions, must fail.

The Political Fund Ballot Complaints

- 3.1. These complaints against the Prison Officers Association related to the ballot held between 7 August and 14 September on a resolution that the union should adopt political objects and establish a political fund. 67% of members voted in favour.

- 3.2. The background to the complaint, the legal requirements to be satisfied and my declarations are set out in the opening paragraphs of D/4-9/96 paras 1.1 to 1.22 as the evidence and arguments essentially arose out of the investigation and determination of the election complaints. I set out below the additional evidence and reasons for my decision.

COMPLAINTS 7 AND 8 (Interference and constraint and lack of convenient opportunity to vote by post)

The Complainant's Case

- 3.3. The complainant relied on the evidence of the letter of 20 September from the Governor of the Maze prison (see 1.17) to show that the ballot on the political fund had been conducted in an essentially similar way to that used in the Chairman's election. He alleged that members of the Maze prison were required to collect their ballot papers from local union officials, sign for them, and having voted at a polling booth post the completed voting paper in a mail sack provided by representatives of the union. After the

ballot papers were placed in the mail sack the complainant maintained that delivery of the sack to the prison mail room would have been done by local POA committee members.

- 3.4. In view of this the complainant maintained that the union was in breach of the ballot rules reflecting, section 77 (3) (a) in that it interfered in the ballot by requiring the members to sign for ballot papers and vote in a polling booth provided by the union. He also alleged that the rules reflecting section 77(4) (b) had been breached as members did not have a convenient opportunity to vote by post in that the facilities provided by the union intervened in the postal system.

The Union's Response

- 3.5. The union again gave clear evidence about how the voting papers for HMPs Maze and Belfast were distributed and returned. The system was essentially the same as with the Chairman's election except that at HMP Belfast union officials did not take papers to individual members work stations; the members had to collect them.
- 3.6. Members had been asked to sign for the ballot papers in case prison management asked for proof that internal delivery had taken place. The provision of a polling booth was merely a matter of convenience for members wishing to vote. They did not have to use the booth, members could if they wished post their ballot paper in the prison administration office or in a pillar box if they wished. Likewise the provision of a mail sack for posting completed ballot papers was simply a convenience and an extension of the internal prison procedures for dealing with mail.

3.7. For the reasons given above the union contended that these arrangements did not involve interference or constraint within the meaning of the Act nor within the interpretation used in previous decisions by the Certification Officer. Similarly they held (see paras 2.24 to 2.25) that they had given a convenient opportunity to vote by post.

Reasons For My Decision

3.8. There is no dispute about the facts relating to how this ballot was conducted in HMPs Maze and Belfast. The local union officials were responsible for seeing that members got voting papers, provided facilities for the completion of the papers and for their despatch to the scrutineers. In this case there is no allegation or evidence of rigging of the vote.

Indeed the scrutineers told me that “there was no obvious similarity in the manner of completing the ballot papers and the returns were closer to the norm for this type of ballot”.

3.9. In my view any systematic involvement of union officials in the distribution of voting papers is contrary to the intentions of the 1992 Act and in this case were inconsistent with section 77 (3) (a). Similarly the provision of a ballot box or posting sack in the control of the union is inconsistent with the requirement to provide a convenient opportunity to vote by post (section 77(4)(b)). My fuller reasons for taking these views are set out in paragraphs 2.8 to 2.18 and 2.26 to 2.35, and the consequential declarations in paras 1.8.

Remedies

- 4.1. Once I had reached my conclusions on the eight complaints I told the union of them. The union's response was to decide that it wished to hold fresh ballots in respect of its political fund and of its National Chairman. It also decided, in view of the defects in the balloting system, that it wished to hold fresh elections in respect of two Vice Chairmans posts and of its Finance Officer. One of these posts (a Vice Chairman) was the subject of a separate complaint which I had put on ice. The others in so far as they were within time could have been the subject of separate complaints to me or the court. In respect of its political fund the union has transferred all the funds to its general fund and will seek fresh approval for the rules under which a new political fund ballot will be held.
- 4.2. In respect of its various elections the union is to seek a court order in favour of fresh ballots. It is doing this as it is of the view that in the absence of an express provision in its rules and in the light of comments made by the court in *Douglas v GPMU* [1995] IRLR 426, it has no power to cancel the declared results of these elections. In the case of the Chairmans election and that of the Vice Chairman about whom there is a complaint on which I could rule, I am not certain they need an order of the court. My declaration should provide sufficient authority for the union to decide to hold a new ballot. However the union seeks certainty. It also needs a decision on whether any new ballot would be a fresh election, or a rerun of the defective one. That is an issue on which, in the absence of a relevant complaint and of hearing argument I cannot decide. Similarly it is holding fresh elections in respect of ballots on which I have received no complaint. In the circumstances I can fully understand why the union is seeking court orders on the strength of my findings about their balloting procedures.

4.3 In addition to the above steps the union is carrying out an exercise to ensure that it has properly authorised addresses for use in future ballots of its members. It is also issuing new ballot guidelines on the following lines.

“Ballot papers are sent directly to members on an individual basis. Where the ballot papers are addressed to members at an establishment:

- *it is for management to distribute the ballot papers as internal mail;*
- *it is for the individual members to post the completed ballot papers;*
- *the Branch should play no part in distributing or collecting ballot papers.*

Branch officials should:

- *hold a branch meeting to discuss the election;*
- *encourage members to vote;*
- *urge management to distribute ballot papers promptly;*
- *tell the scrutineer and Cronin House if management do not distribute ballot papers promptly.*

Branch officials must not distribute ballot papers unless:

- *the particular official’s normal duties involve distribution of internal mail; and*
- *management instruct him/her to do so.*

Branch officials must not:

- *pressurise members to vote for any particular candidate ;*
- *vote on behalf of anyone else;*
- *set up a polling booth or polling station;*
- *collect completed ballot papers;*
- *provide a facility for posting completed ballot papers.”*

4.4 In the light of the above I am satisfied that the union has taken, or proposes to take, all the steps necessary to remedy the failures I have declared. It has also adopted a comprehensive package of measures, which if followed through should ensure that failings of the same or a similar kind do not occur in future.

E G WHYBREW
9 August 1996

Observations

Section 55(5) of the 1992 Act allows the Certification Officer to make written observations on any matter arising from, or connected with, proceedings in relation to elections. I do so now as there are a few issues which need to be highlighted in regard to this case but which do not properly form part of my decision.

The Scrutineer's Report

In every election complaint that comes to me I am implicitly required to judge whether the scrutineer was right to issue a report giving the election a clean bill of health. Often I may find in favour of a complainant because I have information not available at the time the report was issued. This case however was different. At the time USBS issued the scrutineer's report they had evidence of possible malpractice. This evidence was not in their view conclusive but strong enough for them to refer to it in their report and for them to suggest an enquiry before the result was declared. When they spelled out the evidence to me in writing and at the hearing I found it pretty conclusive, and so I suspect by that time did they. If the evidence was this strong why did they issue their report to the effect that the ballot met the statutory requirements?

USBS explained to me that the procedure they followed was in accordance with the decision in *Douglas v GPMU* where it was held that the decisions on the ballot cannot be abrogated to USBS but must be properly considered by the union. I can see why USBS followed this line but I do not see the *Douglas* case as an exact parallel nor one which should be followed where the scrutineer has significant reservations before they issue their report. In *Douglas* the union put the question of an enquiry to USBS after their report had been issued and after the result had been declared and the union proceeded to act on the USBS enquiry report without giving it

proper consideration. In the present case the scrutineer had doubts about the validity of the ballot and had strong evidence to support those doubts. In my judgement they should not have issued their report until those doubts had been resolved. If the doubts proved well founded they should have fulfilled the duty given them in section 52(2) of the Act to say in their report if and why they are not satisfied that the election satisfies legislative requirements.

Addresses and Distribution of Ballot Papers at the Workplace

The union's response to my decision has been extremely positive and demonstrates a clear commitment to keep within the law. Its proposed measures, in respect of obtaining properly authorised addresses and of the distribution of ballot papers sent to the workplace, need the cooperation of Prison Governors. That is essentially a matter for the union to sort out with the management of the prisons. I will say only this. Everyone understands the concern of prison officers to ensure that their home addresses do not fall into the wrong hands and hence their wish to have union ballot papers etc sent to them at their workplace. The union is required by law to hold secret postal ballots for a number of purposes, including the election of its senior officers. Those ballots can only be lawful if the union (a) has written authority from any member balloted at the workplace to use his or her workplace address (b) plays no role in the distribution and/or collection of ballot papers. The second of these requirements in particular means that unless the union can secure the cooperation of local management many members of the Prison Officers Association are effectively disenfranchised.