

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

**Mr John Illingworth
Mrs Jennifer Illingworth
Mr Liam Conway**

V

National Union of Teachers

Date of Decision

12 February 2014

DECISION

Upon application by Mr and Mrs Illingworth and Mr Conway ("the claimants") under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

I refuse to make the declaration sought by the claimants that on or around 25 June 2012 the National Union of Teachers breached paragraph 3(5) of Appendix III of its rules by the complaints against Mr and Mrs Illingworth and Mr Conway not having been forwarded to them within 10 school days of their submission to the Regional Secretary.

REASONS

1. The claimants are members of the National Union of Teachers ("the NUT or "the Union"). By an application received at the Certification Office on 6 June 2013, the claimants alleged a number of breaches of the rules of the Union.
2. Following correspondence with the claimants, one complaint was confirmed by them in the following terms:

"On or around 25th June 2012 the NUT breached Appendix III 3(5) of its rules because the complaints against Mr and Mrs Illingworth and Mr Conway submitted to the Regional Secretary dated 15th May 2012 and 2nd June 2012 were not forwarded to them within 10 school days of their submission to him."
3. I investigated the alleged breaches in correspondence and a hearing took place on 15 January 2014.
4. At the hearing on 15 January 2014, Mr Illingworth represented the applicants. Mr Conway presented a written witness statement and was called to give oral evidence on

behalf of the claimants. The Union was represented by Mr Clive Romain, Senior Solicitor employed by the NUT. Oral evidence for the Union was given by Mr Ian Stevenson, Regional Secretary of the Yorkshire & Midland Region of the NUT, in accordance with his written witness statement. There was also in evidence a 271 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing, together with the rules of the Union. Both the claimants and the Union provided skeleton arguments.

Findings of Fact

5. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
6. The background to this complaint is a dispute within the membership of the Union in the Nottingham area regarding the financial affairs of its Nottinghamshire Division. This dispute has proved intractable and has still not been resolved to the satisfaction of all concerned, notwithstanding internal enquiries by the Head Office of the Union, external accountants and an attempt at ACAS conciliation.
7. The Union is organised in regions. This case concerns the Yorkshire & Midland region which is based in Doncaster. The Regional Secretary is Mr Ian Stevenson. Within the region there are Local Associations, which may combine to form Divisions. The Central Nottingham Association and the South Nottingham Association have combined to form the Nottinghamshire Division. There is also a Nottingham City Association. Mr Romain has described the Union as being established as a federation of its Constituent Associations which are given a large degree of autonomy.
8. The joint secretaries of the Nottinghamshire Division are Mr Ivan Wels and Mr Liam Conway. The Treasurer of the Nottinghamshire Division is Ms Louise Regan. Mr Wels and Ms Regan are partners who live together. Mr and Mrs Tollervey are retired members who are or were the lay auditors of the Nottinghamshire Division. Mrs Illingworth is currently the treasurer of the Nottingham City Association, although she is to relinquish that office in early 2014. Her husband, Mr John Illingworth, was the President of the Union between 2001-2002 and served on its National Executive. He ceased holding any office in the Union in July 2012, having most recently been the Assistant Secretary and Health & Safety Officer of the Nottingham City Association. The Nottinghamshire Division and the Nottingham City Association share the same office accommodation in Nottingham, at which both Mrs Illingworth and Ms Regan worked.
9. From 2012 Mr and Mrs Illingworth and Mr Conway have had concerns about the conduct of the financial affairs of the Nottinghamshire Division by its Treasurer, Ms Regan, in particular but also about Mr and Mrs Tollervey. In turn, they felt that they were being unfairly harassed by Mr and Mrs Illingworth and Mr Conway.
10. In a document dated 15 May 2012, Mr and Mrs Tollervey made complaints of unprofessional conduct and bullying against not only Mr and Mrs Illingworth and Mr Conway, but also the son of Mr and Mrs Illingworth, Robert Illingworth. In a similar document dated 2 June 2012, Ms Regan and Mr Wels made complaints of unprofessional conduct and bullying against Mr and Mrs Illingworth and Mr Conway. I

shall hereafter refer to the respective parties in these disputes as the complainants and the respondents.

11. Both the above documents were delivered to the office of the Regional Secretary, Mr Stevenson, as one bundle from Mr Wels on Thursday 7 June 2012. They were first seen by Mr Stevenson on Friday 8 June.
12. Mr Stevenson treated these documents as written complaints that had been made under paragraph 3(1) of Appendix III to the rules of the Union. He understood that by virtue of paragraph 3(3), his first duty was to attempt to resolve the matter by conciliation. Mr Stevenson has experience of attempting to resolve similar complaints by conciliation and gave evidence that there is no set formula to be used in all conciliations. He stated that conciliation is an art, not a science, and requires judgement to be exercised in how the process is undertaken. Further, Mr Stevenson was aware of the background to the complaints and that feelings were running high. He considered that the relationship between the parties in dispute would probably only get worse if matters were to proceed to a formal determination by a disciplinary committee. In Mr Stevenson's words, "the more formal the complaint, the harder it is to get the parties to focus on common ground". Against this background, Mr Stevenson made a number of approaches to each of the four complainants over the next 14 days, seeking to obtain their consent for him to try and resolve the matter through conciliation. Despite Mr Stevenson's repeated attempts, the complainants did not want him to initiate the conciliation procedure.
13. Whilst engaged in this process, Mr Stevenson considered that the ten day time limit for him to supply the respondents with the written complaints and accompanying evidence was suspended in accordance with paragraph 3(3) of Appendix III to the rules. This provides that the period of suspension is to be "any period during which the Regional Secretary considers the procedure set out in Rule 53 [the conciliation procedure] to be in operation".
14. By Friday 22 June 2012, Mr Stevenson had concluded that there was little prospect of persuading the complainants to try conciliation and that the conciliation procedure was therefore no longer in operation. Accordingly, he considered that he then had ten days to provide the respondents with the complaints and accompanying evidence. Mr Stevenson gave evidence that he did not do this immediately as he considered that there was still a small chance, in the region of 10%, that the complainants might still agree to conciliation. He considered that this would be much the better way forward as it might, at best, result in the complaints being withdrawn.
15. By Friday 6 July 2012, the complainants had not changed their minds about conciliation and so Mr Stevenson arranged for the complaints to be sent to the respondents. Also on 6 July, he spoke on the telephone with Mr Conway and Mr Robert Illingworth to tell them that the complaints were coming. Mr Robert Illingworth said that his parents were out of the country. Mr Stevenson then emailed the complaints to each of the respondents. In that email he explained how he had attempted conciliation but that he considered that his attempts had ended by 22 June. He went on to advise that if the respondents requested conciliation he would again suspend the timescales whilst a further attempt at conciliation under rule 53 is made. Mr Stevenson sent the same documents to each of the respondents by post on Monday 9 July.

16. On 16 July 2012, Mr Illingworth sent an email to Mr Stevenson in which he acknowledged receipt of the two complaints on 6 July but asserted that there had been a breach of paragraph 3(5) of Appendix III of the rules as the charges had not been forwarded to the respondents within ten school days of their submission to him by the complainants. Mr Conway sent a similar email to Mr Stevenson on 17 July. Mr Stevenson responded to Mr Illingworth on 17 July and to Mr Conway on 18 July. In both emails, Mr Stevenson reasserted that the time limit in paragraph 3(5) had been suspended by virtue of his attempts to achieve a conciliated settlement as he was required to do by paragraph 3(3).
17. The respondents had ten days to submit their observations on the complaints from the date of notification. The disciplinary panel agreed to an extension of this period in July and again in August, so that the respondents' observations were not required until 14 September.
18. On 17 September 2012, there was a Pre-Hearing Assessment by the disciplinary committee. The committee considered that the complaints fell within the range that may be considered by a National Disciplinary Panel but expressed a very strong view that the matters contained within the complaints should be resolved through the Union's conciliation procedures. Subsequently, the respondents stated their readiness to take part in a conciliation process but the complainants were unwilling to do so.
19. The hearing of the disciplinary panel took place over two days on 8 and 9 October 2012. The panel reconvened on 15 October to consider its decision. It found that there was insufficient evidence of bullying and harassment for that claim to be made out but it was in no doubt that the complainants had been extremely distressed by the actions and activities of the respondents. The complaints against John and Robert Illingworth were not upheld. The complaints against Mr Conway were partially upheld, the panel taking the view that he should have behaved in a more reasonable and less confrontational manner. As for Mrs Illingworth, the panel believed there had been a breach of the Union's Code of Professional Conduct but did not consider that any sanction would be appropriate. Overall, the panel concluded that sanctions against individuals were not the correct course of action. The panel went on to make recommendations to the Union on the lessons that could be learned from the events in question.
20. In the meantime, the claimants had commenced this complaint to me by a registration of complaint form dated 4 June 2013.

The Relevant Statutory Provisions

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

108A Right to apply to Certification Officer

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7)

(2) The matters are -

- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Secretary of State.

108B Declarations and orders

- (2) If he accepts an application under section 108A the Certification Officer –
- (i) shall make such enquiries as he thinks fit,
 - (ii) shall give the applicant and the union an opportunity to be heard,
 - (iii) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (iv) may make or refuse the declaration asked for, and
 - (v) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

The Relevant Rules of the Union

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

CONCILIATION

Rule 53

53. In the event of a dispute between two or more members of the Union relating to any matters connected with their professional or Union activities, it shall, at the request of one of the members, be dealt with under the following arrangements:

- (a) A member of the Union who is in dispute with another member or members shall notify the Wales/Regional Secretary for his/her area of the existence of the dispute and request conciliation.
- (b) Upon receiving a request for conciliation the Wales/Regional Secretary shall commence the conciliation procedure. S/he shall notify the other member or members in dispute of the request for conciliation.
- (c) The Wales/Regional Secretary in consultation with the Executive member or members for the Electoral District or Districts in which the parties to the dispute are members, shall nominate not more than three members of the Union of not less than ten years standing and acceptable to the parties to hear them with a view to conciliation.
- (d) The members nominated to hear the dispute shall invite the parties to meet them in order to endeavour to resolve the dispute.
- (e) That a meeting be arranged as soon as possible and not later than 30 school days from the receipt by the Wales/Regional Secretary of the request for conciliation.
- (f) That the conciliators send their report to the Wales/Regional Secretary within 10 school days of the conclusion of the conciliation meeting.
- (g) Should a dispute of a non-legal nature not be resolved under these conciliation arrangements it will be open to any of the parties to exercise such other rights as they may have under the rules i.e. Appendix IA of the rules of the Union relating to Professional Conduct and Appendix III relating to Union Discipline.

Appendix III- UNION DISCIPLINE

3 PROCEDURE

- (1) A complaint or submission calling for a matter to be considered by a Disciplinary Committee shall be made in writing, specifying the charge or issue within the jurisdiction

of the Disciplinary Committee with supporting evidence, to the Regional/Wales Secretary for the Region to which the member complained against belongs. The Regional Secretary for that Region or the Wales Secretary in Wales shall act as secretary to the Committee in the case.

(2) In the case of a complaint formulated by the Officers of the Union that there is a prima facie case of a member or members of the Union acting contrary to instructions of the Union or in breach of Rule 8, the Officers shall suspend that member or members from membership of the Union and shall cause the matter to be submitted for consideration by a Disciplinary Committee in accordance with these Rules. The General Secretary shall notify the local Associations of the members concerned of their suspension and shall nominate an Official of the Union other than the Union Solicitor to prepare and present a case on behalf of the Officers to the Disciplinary Committee.

(3) The Regional or Wales Secretary shall cause a Disciplinary Committee to be convened to consider the case at the earliest opportunity save that upon a complaint being made by one member against another, the Regional or Wales Secretary shall first attempt to resolve the matter by conciliation adopting the procedure set out in Rule 53. Time in accordance with the limits for which provision is made by these rules shall not run during any period during which the Regional Secretary or Wales Secretary considers the procedure set out in Rule 53 to be in operation. The Regional Secretary or Wales Secretary shall notify the parties when such time limits begin to run again following unsuccessful efforts at conciliation under Rule 53.

(4) Complaints will not be considered unless made within six months of the circumstances giving rise to the complaint unless the Disciplinary Committee finds exceptional reasons for doing so.

(5) Copies of the charge or reference together with the accompanying evidence and the names of any proposed witness, together with the nature of their testimony shall be forwarded to the member against whom the complaint is made within 10 school days of its submission to the Regional or Wales Secretary together with copies of the supporting evidence.

Consideration and Conclusions

The Complaint

23. The claimants' complaint is as follows:

"On or around 25th June 2012 the NUT breached Appendix III 3(5) of its rules because the complaints against Mr and Mrs Illingworth and Mr Conway submitted to the Regional Secretary dated 15th May 2012 and 2nd June 2012 were not forwarded to them within 10 school days of their submission to him."

24. Paragraph 3(5) of Appendix III to the rules of the Union provides as follows:

(3)(5) "Copies of the charge or reference together with the accompanying evidence and the names of any proposed witness, together with the nature of their testimony shall be forwarded to the member against whom the complaint is made within 10 school days of its submission to the Regional or Wales Secretary together with copies of the supporting evidence".

Summary of Submissions

25. Mr Illingworth, for the claimants, submitted that paragraph 3(5) to Appendix III of the rules is clear and should be applied as a freestanding rule. He argued that the

respondents had clearly not been notified of the complaints and accompanying evidence within ten days of their receipt by the Regional Secretary and that accordingly there had been a breach of paragraph 3(5) of Appendix III. Mr Illingworth drew support for this submission from the case of **O'Hanlon v. NUT (D/13-17/ 2011-12)** in which I considered the same provision within the rules of the NUT and stated "*I find that this was a freestanding obligation of the Union, not dependant on any other stage in the disciplinary process having been followed.*" In Mr Illingworth's submission, paragraph 3(5) is to be read independently of rule 3(3). He argued that this was the clear intention of those who framed the rules as any other construction would enable a Regional Secretary to manipulate the timetable of the disciplinary process for potentially improper purposes. Mr Illingworth argued that if the Regional Secretary suspended the disciplinary timetable, paragraph 3(3) imposed on him an implied duty to inform both parties, having regard to the requirement in paragraph 3(3) that he must notify both parties when any such suspension is ended and time limits begin to run again. He further argued that it was a matter of basic legal principle that a person must know the charges against him or her as soon as possible.

26. Mr Romain for the Union, submitted that paragraph 3(3) of Appendix III of the Rules required Mr Stevenson, as the Regional Secretary, to first attempt to resolve the matter by conciliation and that Mr Stevenson had complied with this obligation. Mr Romain argued that when a Regional Secretary is attempting conciliation, he or she is entitled to suspend the operation of any time limits in the disciplinary procedure and that Mr Stevenson exercised this discretion by suspending the start of the ten school day period in paragraph 3(5) until 22 June 2012. He argued that how the Regional Secretary went about procuring the consent of the parties to conciliation was a matter for him or her. Mr Romain accepted that the Regional Secretary had a discretion to inform both parties what he was doing but that the rules impose no duty on him to do so. In Mr Romain's submission, paragraph 3(5) is not a freestanding provision to be read in isolation, as the time limits provided by paragraph 3(5) are to be read subject to paragraph 3(3). He further argued that the obligation of the Regional Secretary in paragraph 3(3) to inform both parties when a period during which time has been suspended comes to an end applies only if the Regional Secretary has in fact told both parties that time has been suspended. Mr Romain commented that, in any event, the respondents had suffered no prejudice as a result of the time limit in paragraph 3(5) having been suspended for just two weeks.

Conclusions

27. The facts of this complaint are mainly not in dispute. The issue is one of the correct construction of paragraph 3 of Appendix III of the rules. In approaching this issue I observe the importance that is paid to conciliation in both the rules and practices of the Union. The whole of rule 53 is dedicated to conciliation. Paragraph 3(3) of Appendix III imposes a requirement on the Regional Secretary to first attempt conciliation in cases where a member is bringing a disciplinary complaint against another member. The approach of the disciplinary committee at its Pre-Hearing Assessment was also to attempt a resolution through conciliation. Accordingly, in the event of any ambiguity in the rules relating to the resolution of disputes between members, I consider that the construction which furthers the possibility of their resolution by conciliation is more likely to have been that intended by those who devised and approved the rules.

28. I accept Mr Illingworth's submission that the words of paragraph 3(5) of Appendix III appear clear on their face. The complaints and accompanying documents shall be forwarded to the member against whom the complaint is made within ten school days of its submission to the Regional Secretary. However, paragraph 3(3) provides as follows:

"(3) The Regional or Wales Secretary shall cause a Disciplinary Committee to be convened to consider the case at the earliest opportunity save that upon a complaint being made by one member against another, the Regional or Wales Secretary shall first attempt to resolve the matter by conciliation adopting the procedure set out in Rule 53. Time in accordance with the limits for which provision is made by these rules shall not run during any period during which the Regional Secretary or Wales Secretary considers the procedure set out in Rule 53 to be in operation. The Regional Secretary or Wales Secretary shall notify the parties when such time limits begin to run again following unsuccessful efforts at conciliation under Rule 53."

This provision requires the Regional Secretary to first attempt to resolve the matter by conciliation and provides expressly that time in accordance with the limits for which provision is made by the rules shall not run during any period during which the Regional Secretary considers the conciliation procedure in rule 53 is in operation. I find, both as a matter of language and common sense, that this suspension of time limits applies to the ten school day time limit in paragraph 3(5). In this regard I accept the evidence of Mr Stevenson that a strict requirement to pass over complaints which may be expressed intemperately within ten days of receipt may well inhibit the conciliation process which is given such prominence within the rules of the Union. In my judgement, paragraph 3(5) is not an entirely freestanding provision and must be read subject to paragraph 3(3). My reference in the O'Hanlon case to paragraph 3(5) being freestanding may have misled Mr Illingworth but it is apparent from the facts of that case that the Regional Secretary did not attempt conciliation and paragraph 3(3) was not engaged by her at any time. The relationship of paragraph 3(3) and 3(5) was not considered.

29. When subjecting the rules of a trade union to close scrutiny, it is not unusual to find passages within the rules, or even entire rules, which are difficult to reconcile. The approach to be adopted in such circumstances has been discussed in a number of legal authorities. One of the most quoted of these authorities is **Jacques v AUEW (1986) ICR 683** in which Warner J stated:

"The rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed."

30. In this matter, I observe that the first obligation of the Regional Secretary under paragraph 3(3) of Appendix III is to attempt to resolve the matter by conciliation "adopting the procedure set out in Rule 53". Although the precise relationship between paragraph 3(3) and rule 53 is not entirely clear, I find that the attempts by a Regional Secretary to procure the consent of the parties to conciliation is a part of the procedure contemplated in the relationship between paragraph 3(3) and rule 53. Once a party has requested conciliation, the remainder of the rule 53 procedure is more easily followed. As to Mr Illingworth's argument based on the final sentence of paragraph 3(3) of Appendix III of the Rules, I find that the obligation to notify a party

that time has begin to run again only applies if a party has been notified that a time limit has been suspended in the first place. Finally, I deal with Mr Illingworth's argument that unless a Regional Secretary is under a strict obligation to provide the Respondents with the written complaint and accompanying evidence within ten school days of receipt, he or she may manipulate the disciplinary process for improper purposes. Whilst this issue is not necessary for my decision, it is clear that the Regional Secretary does not have an unfettered discretion to determine when the conciliation procedure is no longer in operation. Any such discretion must be exercised reasonably and a decision reached for an improper purpose is unlikely to be reasonable. On the facts of this case, the suspension of time for two weeks to attempt an amicable resolution of such an intractable and heated dispute was not unreasonable.

31. Further, I reject as being misconceived the claimants' submission that there is a fundamental legal principle that requires the written complaint and accompanying evidence to be provided to the respondents immediately upon receipt by the Regional Secretary.
32. For the above reasons I refuse to make the declaration sought by the claimants that the Union breached paragraphs 3(5) of Appendix III of its rules.



David Cockburn
The Certification Officer