

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 82(2) OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

MR R PARKHILL

V

UNITE THE UNION

Date of Decision

18 November 2010

DECISION

Upon application by Mr Parkhill ("the claimant") under section 82 (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

I dismiss the claimant's application that Unite the Union ("the Union") acted in breach of rule 23.10 of its rules by allegedly not informing him of his right to opt-out of the political fund of the Union when he joined on 24 July 2008 and 26 March 2010, thereby allegedly making payment to the political fund a condition of admission to the Union.

REASONS

1. Mr Parkhill is a member of Unite the Union ("Unite" or "the Union"). By a Registration of Complaint Form received at the Certification Office on 30 April 2010, he complained of various breaches of Union rules and a breach of the 1992 Act, which he maintained were within my jurisdiction by virtue of section 82(2) of that Act. Following correspondence with the claimant four complaints were identified. Mr Parkhill later withdrew three of these complaints. The remaining complaint was confirmed by Mr Parkhill in the following terms:-

"That on or around 24 July 2008 and then again on or around 26 March 2010, both dates Mr Parkhill joined the union, the union breached union rule 23.10 by not informing him of his right to opt-out from contributing to the political fund, therefore making payment to the political fund a condition for entry into the union".

2. I investigated the alleged breach in correspondence. A hearing took place on 3 November 2010. At the hearing, the claimant represented himself and called no witnesses. Mr Parkhill chose not to give evidence himself. The Union was represented by Mr Edwards of counsel. The Union called no witnesses. There was in evidence a 216 page bundle of documents consisting of letters and other documentation supplied by the parties for use at the hearing. Both Mr Parkhill and

the Union provided skeleton arguments. The Union also provided a chronology and two authorities.

Findings of Fact

3. Having considered the documentary evidence and the submissions of the parties, I find the facts to be as follows:
4. Mr Parkhill served in the RAF for some 20 years and is now employed as an aircraft fitter by BAe at Warton Aerodrome near Preston, Lancashire. He had not been a member of any trade union before joining Unite in 2008. On or about 24 July 2008 Mr Parkhill completed an application form and was shortly thereafter accepted as a member of the Union. He was given a membership number and allocated to the Preston branch of the Union, of which Mr Derek Easton was Branch Secretary. Mr Parkhill opted to pay by direct debit but his mandate to the bank was cancelled on 12 September 2008, in circumstances that he cannot explain. In the month for which the direct debit operated, the Union received 58p from him by way of political fund contributions. Mr Parkhill did not seek to claim exemption from payment into the political fund.
5. Mr Parkhill was unaware that his direct debit had been cancelled and continued to consider himself as a paid up member of the Union. Likewise, the Union did not alert him that he had fallen in arrears with his subscriptions. In or about January 2010 Mr Parkhill was elected as a shop steward at his place of work and, as a result, his contribution position came to light. Some time later he was told that the best thing for him to do was to re-apply for membership.
6. On or about 3 March 2010 Mr Parkhill attended a meeting of shop stewards at which there was a discussion of how members might opt-out of making contributions to the political fund. Mr Parkhill was not satisfied with the views that were expressed and so looked into the position further on his own initiative.
7. On Friday 26 March 2010 Mr Parkhill re-applied for membership of the Union. He did so online and again chose to pay by direct debit. This direct debit was processed by the Union on Monday 29 March. Mr Parkhill was given a different membership number and was allocated to a different branch, the Preston United Craft Branch, of which the Branch Secretary was Mr Keith Wignell. It is common ground that Mr Parkhill was continuously a member of the Union since he first joined on 24 July 2008.
8. On Monday 29 March 2010 Mr Parkhill wrote to the Certification Office stating his view that the Union had acted in breach of its rule 23.17 by failing to secure that all new members had received a copy of the rule which relates to opting out of the political fund. He stated that neither the paper application form nor the online application process for joining the Union made any mention of the political fund or of the fact that, as part of the subscription fee, a new member would be contributing to the political fund. Following correspondence with my office, Mr Parkhill submitted a Registration of Complaint Form dated 13 April. Because of postal difficulties, this was received at my office on 30 April 2010. In that form, Mr Parkhill made three complaints of breach of rule and one complaint of breach of statute.

9. On 5 April 2010, Mr Parkhill and a number of colleagues sent exemption forms to the Union, seeking to opt out of the political fund. The forms were sent to Mr Frank Gornall whom they believed, wrongly, to be their Branch Secretary. Although Mr Gornall recalls receiving some exemption forms, he does not recall from whom they were received. He forwarded such forms as he did receive to another person but they were not received by that person.
10. Following correspondence with my office, Mr Parkhill withdrew his complaint of breach of statute and added a further breach of rule complaint. These four complaints were put to the Union on 17 June 2010.
11. The Union's response to these complaints is dated 22 July 2010 and raised a jurisdictional issue. After the Union's response was put to Mr Parkhill, he withdrew three of his complaints.
12. On 23 July 2010 the Union amended Mr Parkhill's status on its records to indicate that he was exempt from contributing to the political fund. On 2 August 2010 the Union reimbursed Mr Parkhill with £3.02, being the whole of his political fund contributions; namely, 58p in 2008 and £2.44 in 2010 (61p for each of April, May, June and July).

The Relevant Statutory Provisions

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

Section 82 Rules as to political fund

- (1) The trade union's rules must provide –
 - (a) that payments in the furtherance of the political objects to which this Chapter applies shall be made out of a separate fund (the "political fund" of the union);
 - (b) that a member of the union who gives notice in accordance with section 84 that he objects to contributing to the political fund shall be exempt from any obligation to contribute to it;
 - (c) that a member shall not by reason of being so exempt -
 - (i) be excluded from any benefits of the union, or
 - (ii) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in relation to the control or management of the political fund); and
 - (d) that contribution to the political fund shall not be made a condition for admission to the union.
- (2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.

Section 84 Notice of objection to contributing to political fund

- (1) A member of a trade union may give notice in the following form, or in a form to the like effect, that he objects to contribute to the political fund:-

| |
|--|
| Name of Trade Union |
| POLITICAL FUND (EXEMPTION NOTICE) |
| I give notice that I object to contributing to the Political Fund of the Union, and am in consequence exempt, in manner provided by Chapter VI of part I of the Trade Union and Labour Relations (Consolidation) Act 1992, from contributing to that fund. |
| A. B. |
| Address |
| Day of19..... |

- (2) On the adoption of a political resolution, notice shall be given to members of the union acquainting them -
- (a) that each member has a right to be exempted from contributing to the union's political fund, and
 - (b) that a form of exemption notice can be obtained by or on behalf of a member either by application at or by post from –
 - (i) the head office or any branch office of the union, or
 - (ii) the office of the Certification Officer.
- (3) The notice to members shall be given in accordance with rules of the union approved for the purpose by the Certification Officer, who shall have regard in each case to the existing practice and character of the union.
- (4) On giving an exemption notice in accordance with this section, a member shall be exempt from contributing to the union's political fund –
- (a) where the notice is given within one month of the giving of the notice to members under subsection (2) following the passing of a political resolution on a ballot held at a time when no such resolution is in force, as from the date on which the exemption notice is given;
 - (b) in any other case, as from the 1st January the next year after the exemption notice is given.
- (5) An exemption notice continues to have effect until it is withdrawn.

The Relevant Union Rules

14. The National Rules of the Union which are relevant to this application are as follows:-

RULE 3 MEMBERSHIP

3.3 Any eligible person may apply for membership by completing the appropriate application form agreeing to be bound by the rules of the Union and submitting it to the Union office or by electronic means as may be provided for via the Union's website. An applicant shall become a member when his/her application has been

approved and he/she has been entered into the register of members. Such approval process may require receipt by the Union of the contribution applicable under these rules.

RULE 23 POLITICAL FUND

23.4 Any member of the Union may at any time give notice on the form of exemption notice specified in Clause (5) or by a written request in a form to the like effect, that he/she objects to contribute to the political fund. A form of exemption notice may be obtained by, or on behalf of, any member, either by application at, or by post from, the head office or any Branch office of the Union, or from the Certification Office for Trade Unions and Employers’ Associations, Brandon House, 180 Borough High Street,

23.5 The form of exemption notice shall be as follows:-

| |
|---|
| Unite the Union |
| <p style="text-align: center;">POLITICAL FUND EXEMPTION NOTICE</p> <p>I hereby give notice that I object to contributing to the political fund of the Union and am in consequence exempt, in the manner provided by Chapter VI of the Trade Union and Labour Relations (Consolidation) Act 1992, from contributing to that fund.</p> <p>Signature.....</p> <p>Name.....</p> <p>Address</p> <p>.....</p> <p>Name of Branch.....</p> <p>Membership No.....</p> <p>Date</p> |

23.6 Any member may obtain exemption by sending such notice to the secretary of the Branch to which the member belongs and, on receiving it, the secretary shall send an acknowledgement of its receipt to the member at the address in the notice, and shall inform the General Secretary of the name and address of that member.

23.7 On giving such notice, a member shall be exempt, so long as his/her notice is not withdrawn, from contributing to the political fund of the Union as from either: (a) the first day of January next after notice by the member is given, or, (b) in the case of a notice given within one month after the notice given to members under Clause (3) or after the date on which a new member admitted to the Union is supplied with a copy of these rules under Clause (17), as from the date on which the member’s notice is given.

23.10 Contribution to the political fund of the Union shall not be made a condition for admission to the Union.

23.11 If any member alleges that he/she is aggrieved by a breach of any provision of this rule for the political fund, being a rule made pursuant to section 82 of the Act, he/she may complain to the Certification Officer, and the Certification Officer, after making such enquiries as he/she thinks fit and after giving the complainant and any representative of the Union an opportunity of being heard, may, if he/she considers that such a breach has been committed, make such order for remedying the breach as

he/she thinks just in the circumstances. Any such order of the Certification Officer may, subject to the right of appeal provided by section 95 of the Act, be enforced in the manner provided for in section 82(4) of the Act.

23.14 The Executive Council shall, so far as possible, secure that each member of the Union receives a copy of this rule.

23.17 A copy of this rule shall also be supplied by the secretary of each Branch to every new member on his/her admission to the Union.

Summary of submissions

15. Mr Parkhill made submissions at the hearing which were different to those in his Registration of Complaint Form, subsequent correspondence and his skeleton argument. He had argued hitherto that his branch secretary had breached rule 23.17 of the rules of the Union by not having supplied him with a copy of the political fund rule (namely, rule 23) on his admission to the Union. He had submitted that being given this rule was necessary for him to make an informed decision on whether to contribute to the political fund or opt out, as well as for him to know how to opt out. Mr Parkhill had argued that, since he had received no such notifications, the inclusion of the political fund element in his monthly subscription was made a condition of entry. Mr Edwards, for the Union, had prepared a detailed skeleton argument in rebuttal of this complaint which had been served on Mr Parkhill in advance of the hearing.
16. At the hearing, Mr Parkhill did not rely on his earlier submissions. Instead, he argued that he could not in practice claim exemption from paying into the political fund until he had been accepted as a member but that, in order to become a member, he had to pay a subscription which included a political fund element. He submitted that this caused the Union to act in breach of rule 23.10 as, in practice, he had to make a political fund contribution to join the Union. He argued that, in effect, 'contribution to the political fund of the Union was made a condition of admission to the Union'. Mr Parkhill accepted that the Union did not make contribution to the political fund a condition of membership of the Union but argued that it was a condition of admission. He contrasted the membership forms of Unite with those of UNISON, the POA and the Musicians Union. He argued that, unlike the other three unions, Unite did not give applicants an option not to contribute when completing their membership forms. In his submission, the opt-out system operated by Unite is one which places an onus on the applicant not only to find out about exemptions but also to then follow a process which involves obtaining an exemption form from and returning it to the person's branch secretary. Mr Parkhill submitted that in order to do this you had to be a member of the Union, have been given a membership number to insert on the form and be allocated to a branch secretary and, in order to be a member of the Union, you had to pay your first subscription which included a political fund contribution.
17. Mr Edwards, for the Union, commented that the submissions made by Mr Parkhill at the hearing were totally new and, in effect, a different complaint to the one that he had made earlier and which Mr Edwards said had shown to be without substance in his skeleton argument. Mr Edwards observed that Mr Parkhill's new argument was

based upon what he asserted happened in practice and that, if the union had been given proper notice of those arguments, it could have adduced evidence in rebuttal. As it stood, however, Mr Edwards pointed out that all applicants to the Union had to agree to be bound by the rules of the Union and that the rules of the Union became the terms of the contract of membership. Mr Edwards commented that, in these circumstances, all members must have either actual or constructive knowledge of the rules, including the rule relating to the political fund, rule 23. He argued that anyone interested in knowing about exemption from the political fund could readily find the appropriate procedure in rule 23. He further noted that any such person would find that rule 23(10) expressly provides that contribution to the political fund cannot be made a condition for admission to the Union. Mr Edwards submitted that, with this knowledge, any applicant could quickly calculate the amount of subscription less political fund element from information on the Union's website and elsewhere and pay an appropriate amount by way of initial subscription. He stated that where payment was by cash, cheque or credit card, the appropriate amount could be tendered and where payment was by direct debit, the appropriate amount could be notified to the bank. Alternatively, the exemption would take effect before the first payment became due. Mr Edwards further argued that Mr Parkhill was applying an overly technical meaning to the word "admission" in rule 23.10 and that, taken in context within Chapter VI of the 1992 Act, the mischief that is targeted is any requirement of contributing to the political fund being a condition of membership of the Union. He noted that Mr Parkhill conceded that contributing to the political fund was not a condition of membership and submitted that on a plain reading of the rules, it was not a condition for admission to the Union.

Conclusions

18. Mr Parkhill's complaint is as follows:-

"That on or around 24 July 2008 and then again on or around 26 March 2010, both dates Mr Parkhill joined the union, the union breached union rule 23.10 by not informing him of his right to opt-out from contributing to the political fund, therefore making payment to the political fund a condition for entry into the union".

19. Rule 23.10 of the rules of the Union provides as follows:

"Contribution to the political fund of the Union shall not be made a condition for admission to the Union".

20. Chapter VI of the 1992 Act establishes a statutory framework outside of which trade unions cannot apply their funds for certain defined political objects. The scheme is that members may claim exemption from contributing to the political fund. It does not require members to opt-in before being required to make such a contribution. It also does not require that members be notified of their right to claim exemptions, other than immediately after a statutory ballot on the establishment or continuation of a political fund.

21. In order to assist unions in creating political fund rules which are compliant with the 1992 Act, the Certification Office publishes guidance which includes Model Political Fund Rules. The Political Fund Rules of Unite are to be found in rule 23 of its rules and largely follow the Model Rules as set out in the published guidance.

22. Section 82(1) of the 1992 Act provides that a trade union which wishes to apply its funds for any of the defined political objects must have rules which provide for the circumstances set out in sub-sections (1)(a) to (d). Sub-section (1)(d) is in identical terms to rule 23(10) of the rules of the Union. It requires that the rules of a trade union shall provide that "*contributions to the political fund shall not be made a condition of admission to the Union*". Section 82(2) provides that a member who is aggrieved by a breach of any rule made in pursuance of section 82 may complain to the Certification Officer.
23. Mr Parkhill's complaint is of a breach of rule, not of a breach of statute. I must therefore determine his complaint in accordance with the principles appropriate for a breach of rules. The statutory provisions provide context but are not decisive in this matter. The words that I am called upon to construe are those in rule 23.10. These provide '*Contribution to the political fund of the Union shall not be made a condition for admission to the Union*'. In particular, I must construe the expression '*shall not be made a condition for admission to the Union*'. Mr Parkhill urges me to construe these words by reference to his experience that he was automatically included as a contributor to the political fund upon joining the Union without any opportunity to claim exemption from the outset. In effect, he argued that contribution to the political fund was a de facto condition of membership, given the lack of information and/or opportunity to opt-out in the application forms. On the other hand, Mr Edwards submitted that I should ask myself whether, as a matter of law, contribution to the political fund was a condition for admission to the Union. Given the clear wording of rule 23.10 and its genesis, I find that rule 23.10 prohibits the Union from refusing admission to a person who does not make, or agree to make, contributions to the political fund of the Union. In my judgement, this rule does not address the practical issue of how a person might seek exemption from contributing to the political fund. This is dealt with elsewhere in rule 23, principally in rules 23.4, 23.5, 23.6, 23.7, 23.8 and 23.17.
24. I now consider the facts of Mr Parkhill's case. He joined the Union on 24 July 2008 by a paper based application and arguably again, on 26 March 2010, by an online application. On both occasions he agreed to be bound by the rules of the Union. Those rules are available online or otherwise from a number of Union sources. Mr Parkhill was accordingly bound by those rules from the date he became a member, whether or not he had read them. As found above, those rules provide that the Union may not deny membership to anyone on the grounds that he or she does not make or agree to make a contribution to the political fund of the Union. Mr Parkhill did not formally object to making a contribution to the political fund of the Union at the time of either of his applications and so rule 23.10 was not engaged on the facts of this case. I have asked myself hypothetically what would have happened had he so objected. Whilst strictly of no relevance to the determination of this case, I find, in the absence of evidence to the contrary, that the Union would have acted in accordance with its rules and not refused him admission.
25. The arguments addressed to me by Mr Parkhill concerned the practicability of claiming exemption as part of the application process. I accept that the application process of Unite does not facilitate the claiming of exemption at the time of application. Nevertheless, I find that, as a matter of construction of the rules of the Union, it was possible for Mr Parkhill to have claimed exemption at the time of his

application. Certainly, by the time of his application on 26 March 2010 he was aware of rule 23 and of his right to claim exemption. He did not do so. On the facts of this case, the position of an applicant who was in effect refusing to make a contribution to the political fund was not tested. In my judgement, the Union did not make contribution to the political fund of the Union a condition of Mr Parkhill's admission to the Union.

26. With regard to the arguments raised in Mr Parkhill's skeleton argument and not pursued at the hearing, I find that the notification provisions in rule 23 which require new members to be supplied with a copy of rule 23 do not impact on the requirement in rule 23.10 that admission to the Union shall not be made conditional on the applicant making or agreeing to make contributions to the political fund of the Union. By the time that these notification provisions apply, the person has already been admitted to the Union. In relation to this line of argument, which was seemingly abandoned by Mr Parkhill at the hearing, I accept the cogent submissions of Mr Edwards in his skeleton argument.
27. For the above reasons, I dismiss Mr Parkhill's application that the Union acted in breach of rule 23.10 of its rules by allegedly not informing him of his right to opt-out of the political fund of the Union when he joined on 24 July 2008 and 26 March 2010, thereby allegedly making payment to the political fund a condition of admission to the Union.



David Cockburn
The Certification Officer