

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

Mr D O'Hanlon

v

National Union of Teachers (No 3)

Date of Decisions

18 May 2011

DECISIONS

Upon application by Mr O'Hanlon ("the claimant") under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. I make the declaration sought by the claimant that the National Union of Teachers ("the Union") breached paragraph 3(3) of Appendix III of its rules on or around 7 June 2010 by not convening a Disciplinary Committee to consider the complaint that he had submitted to the Regional Secretary.
2. I refuse to make the declaration sought by the claimant that the Union breached paragraph 3(1) of Appendix III of its rules on or around 7 June 2010 by not appointing its Regional Secretary for its North West Region to act as Secretary to the Disciplinary Committee.
3. I make the declaration sought by the claimant that the Union breached paragraph 3(3) of Appendix III of its rules on or around 7 June 2010 by not attempting to resolve the claimant's complaint through the conciliation procedures set out in rule 53 of its rules.
4. I refuse to make the declaration sought by the claimant that the Union breached paragraph 3(3) of Appendix III of its rules on or around 7 June 2010 by not notifying the claimant of the time limits applicable to his complaint.
5. I make the declaration sought by the claimant that the Union breached paragraph 3(5) of Appendix III of its rules on or around 7 June 2010 by not forwarding any information about the claimant's complaint to the individuals against whom the complaint was made.

REASONS

1. Mr O'Hanlon is a member of the National Union of Teachers ("the Union" or "the NUT"). By an application received at the Certification Office on 1 November 2010, Mr O'Hanlon alleged a number of breaches of the rules of the Union in relation to its disciplinary procedures following a complaint he had submitted to the Regional Secretary of the North West Region of the Union on 7 June 2010.
2. Following correspondence with the claimant the complaints were confirmed by him in the following terms:

Complaint 1

On or around 7 June 2010 the union breached Appendix III 3(3) of its rules because the Regional Secretary did not cause a Disciplinary Committee to be convened to consider Mr O'Hanlon's complaint at the earliest opportunity, or at all.

Complaint 2

On or around 7 June 2010 the union breached Appendix III 3(1) of its rules because the Regional Secretary did not act as secretary to the Disciplinary Committee dealing with the complaint which Mr O'Hanlon submitted to the union under union rule Appendix III 3, instead she acted as a substitute for the Committee, outside the rules of the union.

Complaint 3

On or around 7 June 2010 the union breached Appendix III 3(3) of its rules because the Regional Secretary did not first attempt to resolve Mr O'Hanlon's complaint by conciliation adopting the procedure set out in Rule 53.

Complaint 4

On or around 7 June 2010 the union breached Appendix III 3(3) of its rules because the Regional Secretary did not notify Mr O'Hanlon of any time limits in relation to the complaint made.

Complaint 5

On or around 7 June 2010 the union breached Appendix III 3(5) of its rules because the charges or reference or evidence or any other material in respect of the complaint Mr O'Hanlon raised were not forwarded to the members against whom the complaint was made within 10 school days of its submission, or at all.

3. The running order of the complaints which I accepted from Mr O'Hanlon was slightly different to the order set out above. Complaint 1 above was originally listed as Complaint 2 and Complaint 2 as Complaint 1. I have re-ordered the numbering for the purposes of this decision in order to follow the logical progression of the submissions and my conclusions.
4. I investigated the alleged breaches in correspondence. A hearing took place on 4 May 2011. At the hearing, the claimant was represented by Mr Tom Harney, a friend. Mr O'Hanlon produced a written witness statement. He was called as a witness and cross-examined. The Union was represented by Mr Clive Romain, Senior Solicitor employed by the NUT. The Union submitted a written witness statement from Ms Avis Gilmore, Regional Secretary, North West Region of the NUT. She was also called as a witness and cross-examined. Mr Harney and Mr Romain each provided skeleton arguments. There was in evidence a 264 page bundle of documents consisting of letters and other documentation supplied by the parties which included the 2010 rules of the Union.

Findings of Fact

5. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
6. Mr O'Hanlon has been a science teacher in secondary schools in Liverpool and Knowsley for about 32 years. He has been on the Committee of the Liverpool Division of the Union for about 18 years, a Health & Safety representative at his school for about 20 years and has served as a teacher governor at his school for three terms. He remains in each of these positions.
7. The Union is made up of Local Associations which come together to form Divisions. Liverpool is unusual in that it is both a Local Association and a Division, having some 2,500 members. It is also unusual as a Division in that it has its own office. Ms Julie Lyon-Taylor is the Secretary of the Liverpool Division, a full time position. Ms Pat Forsyth is its Treasurer, a part-time (one day a week) position. Ms Sue Jones is an officer of the Liverpool Division, who, as a retired teacher, works a few days a week in the office. Ms Debbie Moran is the technical secretary providing administration and clerical support.
8. In October 2007, the Liverpool Division of the Union incurred an unusually high level of taxi expenses which was said to be on account of an employment tribunal in which it was engaged. The monthly invoice from the taxi company was in excess of £200.
9. In May 2008 Mr O'Hanlon saw the monthly invoice from the taxi company and wrote to Ms Forsyth asking to see the individual receipts which made up the sum on the invoice. Ms Forsyth declined to provide the individual receipts.
10. On 16 July 2009 Mr O'Hanlon wrote again to Ms Forsyth asking if the taxi receipts could be made available. Ms Forsyth replied on 17th July, effectively refusing this request.
11. On 22 July 2009 Mr O'Hanlon made a complaint to me (**O'Hanlon v National Union of Teachers (No 2) D/9/10**). He complained that he had been denied access to certain accounting records of the Union, contrary to section 30 of the 1992 Act. This complaint was listed for hearing by me on 4 March 2010 but was settled on the morning of the hearing. It was formally dismissed by me on withdrawal. The agreed settlement provided, amongst other things, as follows: *"Without prejudice to the position of both parties the NUT will make available to Mr O'Hanlon for inspection the taxi receipts for October 2007"*.
12. Mr O'Hanlon arranged to inspect the 30 or 40 taxi receipts in question on the afternoon of 28 May 2010. There is considerable dispute about what took place at this inspection but this is not a dispute upon which I am required to adjudicate in the present complaint. In summary, Mr O'Hanlon says he arrived at the Union's Liverpool Division office at about 3.45pm and was seated with the relevant file by about 3.55pm. He maintains that he was at first mistakenly directed to the taxi receipts for November 2007 but eventually found the plastic folder containing the

receipts for October. He states that Ms Forsyth was present throughout this time and disrupted his ability to examine the receipts with the care he wished. Between about 4pm and 4.10pm Mr O'Hanlon left the room to speak with Ms Moran. He states that he was able to examine the receipts in peace from about 4.10pm to 4.15pm but then Ms Lyon-Taylor behaved in such a way that any further careful examination of them by him was impossible and he left the office at about 4.20pm. Mr O'Hanlon states that he had not by then examined the receipts as thoroughly as he wished. Ms Lyon-Taylor provided her version of events in a letter dated 7 June 2010 and Miss Forsyth provided a statement for the purposes of these proceedings. They both deny that they disrupted Mr O'Hanlon's examination of the receipts as alleged or at all and maintain that his behaviour that day was "*completely irrational, shouting, jumping up and down, waving his arms about and producing a camera to film himself*". They maintain that Mr O'Hanlon left the office at about 4.40pm.

13. On 7 June 2010 Mr O'Hanlon wrote to his Regional Secretary, Ms Gilmore, complaining that Ms Lyon-Taylor and Ms Forsyth had prevented him from inspecting the receipts for October 2007. His letter stated that he wished the matter to be resolved under the Union's disciplinary rules and that their behaviour may bring the Union into disrepute. Mr O'Hanlon enclosed with his letter a detailed five page statement giving his account of the events of 28 May and a copy of his letter of 7 June to Ms Lyon-Taylor. In this letter he stated that she had frustrated progress by preventing him from inspecting taxi receipts and that he will arrange another time to inspect them.
14. Ms Gilmore responded to Mr O'Hanlon by a letter dated 17 June 2010. Her reply was based on the information contained in Mr O'Hanlon's letter of 7 June and its enclosures together with that contained in a letter from Ms Lyon-Taylor to Mr O'Hanlon of 7 June in which she set out her version of events. Ms Gilmore did not speak to any of those present at the Liverpool office on 28 May to obtain an oral explanation of the events in question. Her letter notes that, notwithstanding the events of 28 May 2010, Ms Lyon-Taylor's letter invited Mr O'Hanlon to make a further appointment to view more of the receipts if he wished. At the hearing before me, Ms Gilmore gave evidence that her understanding at that time was that not only had Mr O'Hanlon stated that he would be arranging another inspection but that Ms Lyon-Taylor had stated that she had invited him to do so. Accordingly, Ms Gilmore gave evidence that, in her opinion, the underlying problem was effectively resolved. Against that background, Ms Gilmore set out her understanding of the events in dispute and recommended that Mr O'Hanlon made a further appointment to view the receipts. She commented that this seemed an obvious and sensible way to resolve his complaint and that she did not think it would be helpful to anyone if she was required to make further enquiries into and findings about what took place on 28 May. Ms Gilmore made no reference to the disciplinary procedure in this letter.
15. By a letter to Ms Gilmore dated 18 June 2010, Mr O'Hanlon confirmed that his letter of 7 June was an application for the Union's disciplinary process to be invoked. He also asked to be provided with the most recent disciplinary process/rules that Ms Gilmore was applying. Ms Gilmore replied by a letter dated 7 July stating that the current year rules are always applied.

16. On 4 July 2010 Mr O'Hanlon again wrote to Ms Gilmore. He repeated his complaint and, on this occasion, referring expressly to Appendix III of the rules of the Union, which is headed "Union Discipline".
17. Ms Gilmore responded to Mr O'Hanlon by a letter dated 11 August 2010, having returned from holiday and having taken advice from Mr Romain. She stated that nothing had happened to cause her to alter the views she had expressed in her letter of 28 May and that she understood Mr O'Hanlon had had further opportunities to view the financial records. She also stated "*It is unfortunate that relations between yourself and Julie Lyon-Taylor and Pat Forsyth are so poor but I do not understand what it is you expect me to do*". She stated that she hoped that everyone, as adults, would put the needs of the Union and its members ahead of what are clearly difficult personal relationships.
18. On 30 August 2010 Mr O'Hanlon wrote to the President of the Union complaining about a failure by his "local union" to process his complaint and asked for the President's intervention to check that the agreed procedure under Appendix III was being applied. Mr O'Hanlon did not receive a substantive response to this letter.
19. Also on 30 August 2010 Mr O'Hanlon wrote again to Ms Gilmore. He stated that his expectation remained that his complaint be considered using the rules of the NUT under Appendix III.
20. Ms Gilmore replied to Mr O'Hanlon by a letter dated 15 September 2010. She stated that she did not consider that his complaint was within the remit of the National Disciplinary Panel. Ms Gilmore concluded by stating that she did not believe that further correspondence with Mr O'Hanlon on this matter would be of benefit to either him or the NUT.
21. Mr O'Hanlon commenced this action before me by a letter dated 7 November 2010.
22. On 15 and 18 November 2010 Mr O'Hanlon formally asked for conciliation in this matter under rule 53 of the Rules of the Union.

The Relevant Statutory Provisions

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

Section 108A Right to apply to Certification Officer

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

(2) *The matters are -*

- (a) ...
- (c) *disciplinary proceedings by the union (including expulsion)*
- (d) – (e)

The Relevant Rules

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

Appendix III – UNION DISCIPLINE

The following procedure in dealing with cases of discipline of members of the Union has been adopted by the Executive and approved by Conference.

SECTION ONE – NATIONAL DISCIPLINARY PANEL AND NATIONAL APPEALS COMMITTEE

1 JURISDICTION

The rules and procedures set out in this Appendix shall apply in the following cases of discipline of members, with the exception of cases under Rules 37(c) and 56(c) and those referred to the Data Protection Committee, that is to say:

- (a) a complaint made by the Officers of the Union of breach of Union Rule 8;*
- (b) a complaint made by a local Association, a single Association Division or the Officers of the Union that a member has refused to comply with a lawful instruction of the Union;*
- (c) a complaint that a member has been guilty of conduct detrimental to the interests of the Union;*
- (d) an application for re-admission to membership by a person previously expelled by a decision of a Disciplinary Committee other than the Professional Conduct (Criminal Convictions) Committee;*
- (e) a case arising under Rule 37(e) (cases arising from a decision of the TUC Disputes Committee).*
- (f) professional conduct cases under Rule 56(b).*

It is expressly provided that the following may not be the subject of disciplinary action:

- (i) opinions expressed by members on matters of Union policy and management;*
- (ii) statements or actions of members in the course of Union elections or in the context of the conduct of the democratic processes of the Union unless such statements or actions may be seen to bring the Union into disrepute generally;*
- (iii) statements or actions of members in the course of representation of members' interests otherwise than upon a complaint endorsed by a local association that the statements or actions of the member complained against have brought the Union into disrepute generally.*

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) ...

(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 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.

(6) Members against whom a charge or complaint is laid will be requested to submit observations to the Regional or Wales Secretary within 10 school days of the notification of the complaint. These observations will then be forwarded to the member who has made the complaint.

(7) Any request for more information concerning the complaint or the observations shall be made within 10 school days of their receipt and the member to whom the request is directed to be required to submit the information within 10 school days of its being requested to the Regional or Wales Secretary.

(8) The Chair of the Disciplinary Committee in consultation with the Secretary shall have discretion to extend time limits in exceptional cases on application by any of the parties. A failure on the part of the complainant to comply with the time limits may result in the complaint being dismissed by the Committee without further hearing. Any such failure on the part of the person complained against may result in the case being considered on the evidence available as the Committee decides.

(9) On application by either of the parties or on its own initiative, a Disciplinary Committee may consider the charge and observations with any supporting evidence by way of a pre-hearing assessment. The Disciplinary Committee shall have discretion, which by a decision of a least two thirds of the members of the Committee otherwise than at a hearing convened for the purpose, as to whether such a pre-hearing assessment should be conducted at a hearing attended by the complainant or upon the complainant's written submissions, provided always that the exercise of such discretion shall afford the complainant a reasonable opportunity to present his or her case as to why the complaint should be heard in full. If at the pre-hearing assessment, it appears that the complaint has no reasonable prospect of success or is vexatious or frivolous, the Disciplinary Committee may dismiss the complaint.

(10) Subject to paragraph 8 above, the Regional or Wales Secretary shall convene the meeting of the Disciplinary Committee to consider the case within 40 school days of the formal making of the complaint or submission and 10 school days' notice of the date of the meeting to be given to the parties. The procedure at the hearing shall be at the discretion of the Committee except that:

(i) Each party shall be entitled to attend the hearing by the Committee accompanied by a friend who shall be a member of the Union with the right to call and examine witnesses;

(ii) No persons other than the parties, their friends, and their witnesses when required shall be present at the hearing.

(11) – (12)

5 APPEALS

(1) *In any other case other than one arising under Rule 56(b) there shall be a right of appeal afforded to the member or members complained against in respect of the decision of the Disciplinary Committee both as to findings and penalty. In a case arising under Rule 56(b) that right of appeal shall be made available to either party. A decision of the national Disciplinary Committee under Paragraph (9) of section 3 of this Appendix (pre-hearing assessment) shall not be considered to be a finding for the purposes of this rule and shall not be appealable.*

(2) *Any appeal against a decision of the Disciplinary Committee shall be made in writing to the General Secretary within fifteen school days of the full written decision setting out the findings and reasons of the Disciplinary Committee being communicated to the member or members complained against, specifying the grounds of the appeal.*

(3) *Upon receipt of an appeal the General Secretary shall convene the National Appeals Committee to hear the case. An appeal shall be by way of re-hearing and the procedure shall be as for a hearing by a Disciplinary Committee. The Quorum for a meeting of the National Appeals Committee shall be six.*

(4) *The decision of the National Appeals Panel shall be final.*

RULE 53

CONCILIATION

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) – (g)

Consideration and Conclusions

25. Mr Romain, for the Union, submitted in his skeleton argument (but not at the hearing) that my jurisdiction under section 108A of the 1992 Act in respect of rules relating to disciplinary proceedings should be restricted to those situations in which a union has disciplined, or is proposing to discipline, a member and should only exceptionally be extended to situations in which a member seeks to subject another member to the Union's disciplinary process. I reject that submission. I find that there is no basis for it in the words of section 108A(1) and (2). The statutory provisions entitle a person to apply to me if he or she claims that there has been a breach of the rules of the union relating, amongst other things, to "*disciplinary proceedings by the union (including expulsion)*". These words focus attention on the nature of the rules allegedly breached. The identity of the originator of the

disciplinary proceedings is not a relevant consideration. On the facts of this case, the rules allegedly breached are within Appendix III of the rules of the NUT. Appendix III deals exclusively with discipline. Accordingly, I find that Mr O'Hanlon's claims are within my jurisdiction under section 108A(1) and (2) of the 1992 Act.

26. It is not unusual for unions to have rules which enable members to seek to subject other members to the union's disciplinary process. However, such rules have from time to time proved problematic when they have been used for frivolous, mischievous or even political purposes. For this reason, it is common for unions to reserve to themselves some power to filter out complaints of such a nature to avoid the expenditure of members' money and the inevitable waste of time in progressing them to a hearing and possible appeal. One way of filtering such complaints is for the executive committee, or similar body, to be given a broad discretion as to whether any particular disciplinary proceedings should be commenced at all. Such a permissive rule gives the executive committee a discretion to commence disciplinary proceedings on the initiative of a complaint from another member but denies members the right to commence disciplinary action against other members. An alternative approach is to build into the disciplinary rules themselves appropriate filters against abuse.
27. It is in this context that Mr Romain argued that each of Mr O'Hanlon's complaints should be dismissed on the grounds that Appendix III of the rules of the Union was not engaged on the facts of this case. He effectively submitted that Ms Gilmore, as the Regional Secretary, acted as a filter in deciding that Mr O'Hanlon's complaints against Ms Lyon-Taylor and Ms Forsyth fell outside the jurisdiction of the National Disciplinary Panel. He argued that, in doing so, she acted within the rules and that accordingly her failure to initiate the procedure set out in paragraph 3 of Appendix III was not in breach of the rules. In Mr Romain's submission, a Regional Secretary has the power under Appendix III to determine if a complaint qualifies for consideration by a disciplinary panel by deciding whether the complaint satisfies any of paragraphs 1(a) to 1(f) of Appendix III. Mr Romain argued that, on the facts of this case, Ms Gilmore acted within the rules in determining that there had not been conduct detrimental to the interests of the Union, within the meaning of paragraph 1(c). He maintained that Ms Gilmore was a very experienced official and well able to reach such a decision. He further argued that it was reasonable for her to be able to do so in order to prevent a dispute being treated disproportionately when the real cause of the problem, Mr O'Hanlon's wish to examine the taxi receipts, was effectively resolved. In Mr Romain's submission the real issue appeared to be difficult personal relationships.
28. Mr Harney, for Mr O'Hanlon, submitted that the rules gave Ms Gilmore no such powers, even though the role of the Regional Secretary was referred to extensively in paragraph 3 of Appendix III. He further argued that no such power could properly be implied. In Mr Harney's submission, Ms Gilmore had plainly breached the rules by not initiating the disciplinary procedure in paragraph 3 of Appendix III.
29. In my judgement, the rules of the Union are firstly to be given their ordinary natural meaning but they must ultimately be construed in context. In **Jacques v AUEW (1986) ICR 683** 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. Applying the ordinary natural meaning of the words of Appendix III of the rules of the Union, I find no scope for giving Ms Gilmore, as a Regional Secretary, the powers that Mr Romain would wish me to ascribe to Regional Secretaries. Further, I find no basis upon which I should give the words of Appendix III a strained interpretation so as to accord with the meaning for which Mr Romain contends. I find that Appendix III contains within itself a filtering system to prevent the abuse of member on member complaints. This system has three levels. First, the second part of paragraph 1 of Appendix III provides for three categories of conduct which are excluded from any sort of disciplinary action. Secondly, paragraph 3(3) provides for a compulsory effort to conciliate, which may hopefully resolve disputes based on misunderstanding. Thirdly, paragraph 3(9) provides for a pre-hearing assessment by which a complaint may be dismissed if it appears that it has no reasonable prospect of success or is vexatious or frivolous. The pre-hearing assessment may even be conducted without a hearing and it is expressly provided in paragraph 5(1) that there is no right of appeal from such a decision. I find therefore that the rules themselves contain a mechanism against abuse and there is no implied rule which gives Ms Gilmore, as a Regional Secretary, the power to form a judgement on whether a complaint is within the jurisdiction of the National Disciplinary Panel under paragraph 1 of Appendix III of the rules of the Union.
31. Nevertheless, I am conscious that there may well be cases which are patently outside any of the categories listed in paragraphs 1(a) to 1(f) of Appendix III. The example discussed at the hearing was a complaint by one member against another based on the colour of the accused's hair. In such a case, no judgement is required to determine that the complaint is outside the jurisdiction of the Disciplinary Panel, as the contrary is simply not arguable. However, that is an absurd example to test the proposition. More realistically, there will be arguments to be balanced when deciding upon jurisdiction. In such cases the wording of paragraph 1 of Appendix III requires an examination of the complaint that has been made. In examining the complaint at this stage, it must be assumed that the facts upon which the complaint is based are true. It will only be complaints in which there is patently no jurisdiction, even on the facts advanced by the complainant, that the Union should consider preempting the paragraph 3 procedure. Even then, in the event of continued disagreement by the complainant, the Union may wish to process the complaint, probably to a pre-hearing assessment done on the papers. What is clearly inappropriate is that a Regional Secretary should decide whether there was conduct detrimental to the interests of the Union, in a situation in which there are competing arguments on that issue.
32. On the facts of this case, Ms Gilmore should have considered Mr O'Hanlon's complaints on the assumption that the facts he alleged were true. He alleged that he was conducting an examination of accounting records in accordance with an agreement with the Union that he may do so, which agreement was made in the course of settling legal proceedings. He alleged that he was prevented from doing so with the care that he would have wished by the conduct of Ms Lyon-Taylor and

Ms Forsyth. This allegation may or may not be true. It is not for me to decide. However, on its face, the allegation is clearly one of conduct which is capable of being described as conduct detrimental to the interests of the Union. Accordingly, Ms Gilmore had no conceivable authority for not processing Mr O'Hanlon's complaint in accordance with paragraph 3 of Appendix III. It may be that Mr O'Hanlon's case is based on a misunderstanding or misconceived and would not have survived conciliation or a pre-hearing assessment but that is immaterial to the case before me. In my judgement, Mr O'Hanlon's complaint should have been processed by Ms Gilmore in accordance with paragraph 3 of Appendix III.

33. I now turn to the individual breaches alleged by Mr O'Hanlon. It was correctly conceded by the Union that there would be certain breaches of paragraph 3 of Appendix III of the Rules if I found that Ms Gilmore was wrong not to have processed Mr O'Hanlon's complaints.

Complaint One

34. Mr O'Hanlon's first complaint is as follows:

"On or around 7 June 2010 the union breached Appendix III 3(3) of its rules because the Regional Secretary did not cause a Disciplinary Committee to be convened to consider Mr O'Hanlon's complaint at the earliest opportunity, or at all."

35. Paragraph 3(3) of Appendix III of the rules of the Union provides as follows:

"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 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."

36. For the reasons given above, I find that Ms Gilmore, the Regional Secretary in question, was wrong not to process Mr O'Hanlon's complaint against Ms Lyon-Taylor and Ms Forsyth. In my judgement Ms Gilmore breached paragraph 3(3) of Appendix 3 by not causing a disciplinary committee to be convened to consider Mr O'Hanlon's complaint.

Complaint Two

37. Mr O'Hanlon's second complaint is as follows:

"On or around 7 June 2010 the union breached Appendix III 3(1) of its rules because the Regional Secretary did not act as secretary to the Disciplinary Committee dealing with the complaint which Mr O'Hanlon submitted to the union under union rule Appendix III 3, instead she acted as a substitute for the Committee, outside the rules of the union."

38. Paragraph 3(1) of Appendix III of the rules of the Union provides as follows:

"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."

39. Mr Romain accepted that Ms Gilmore did not act as secretary to the Disciplinary Committee, but argued that there was no breach of this rule as no Disciplinary Committee had been convened of which she could be the secretary.
40. I accept Mr Romain's submission. I find that in order for there to be a breach of paragraph 3(1), as alleged, a Disciplinary Committee must first have been convened. As a Disciplinary Committee had not been convened, I find that there was no breach of paragraph 3(1), as alleged.
41. For the above reasons I refuse to make the declaration sought by the Claimant that the Union breached paragraph 3(1) of Appendix III of its rules on or around 7 June 2010 by not appointing its Regional Secretary for its North West Region to act as Secretary to the Disciplinary Committee.

Complaint Three

42. Mr O'Hanlon's third complaint is as follows:

"On or around 7 June 2010 the union breached Appendix III 3(3) of its rules because the Regional Secretary did not first attempt to resolve Mr O'Hanlon's complaint by conciliation adopting the procedure set out in Rule 53."

43. I have found above that Mr O'Hanlon submitted a complaint which was prima facie within the jurisdiction of the Disciplinary Panel. I further find that in such circumstances the Regional Secretary is under an obligation to attempt to resolve the matter by formal conciliation, using the procedure set out in rule 53. I find that this obligation arises irrespective of whether the Regional Secretary complies with his or her duty to cause a Disciplinary Committee to be convened. On the facts of this case, it was common ground that Ms Gilmore did not attempt to resolve Mr O'Hanlon's complaints by formal conciliation. I further find that obligation to attempt to resolve the matter by informal resolution under paragraph 3(3) is not dependant on a request by the person making the complaint and arises by the fact that a complaint arguably within the terms of paragraph 1 of Appendix III has been made.
44. For the above reasons, I make the declaration sought by the Claimant that the Union breached paragraph 3(3) of Appendix III of its rules on or around 7 June 2010 by not attempting to resolve the claimant's complaint through the conciliation procedures set out in rule 53 of its rules.

Complaint Four

45. Mr O'Hanlon's fourth complaint is as follows:

"On or around 7 June 2010 the union breached Appendix III 3(3) of its rules because the Regional Secretary did not notify Mr O'Hanlon of any time limits in relation to the complaint made."

46. In my judgement, the obligation of a Regional Secretary to notify the parties of the amended time limits, following unsuccessful efforts of conciliation, only arises if conciliation has been attempted and if the conciliation is unsuccessful. As neither of these events occurred, there was no obligation on the Union to notify the parties of any amended time limits. Indeed, there were no amended time limits to notify. Accordingly, there was no obligation of which the Union could have been in breach.
47. For the above reasons I refuse to make the declaration sought by the Claimant that the Union breached paragraph 3(3) of Appendix III of its rules on or around 7 June 2010 by not notifying the claimant of the time limits applicable to his complaint.

Complaint Five

48. Mr O'Hanlon's fifth complaint is as follows:

"On or around 7 June 2010 the union breached Appendix III 3(5) of its rules because the charges or reference or evidence or any other material in respect of the complaint Mr O'Hanlon raised were not forwarded to the members against whom the complaint was made within 10 school days of its submission, or at all."

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

"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."

50. It was common ground that Ms Gilmore had not forwarded copies of Mr O'Hanlon's complaint and his supporting evidence to the members against whom the complaint was made within 10 days of its submissions, or at all. I find that this was a freestanding obligation on the Union, not dependant on any other stage in the disciplinary process having been followed. I therefore find that the obligations in paragraph 3(5) arose notwithstanding the Regional Secretary's decision not to cause a Disciplinary Committee to be convened and in the absence of any attempt by her to resolve the matter by formal conciliation.
51. For the above reasons, I make the declaration sought by the Claimant that the Union breached paragraph 3(5) of Appendix III of its rules on or around 7 June 2010 by not forwarding any information about the claimant's complaint to the individuals against whom the complaint was made.

Enforcement Order and Observations

52. Where I make a declaration I am required by section 108B(3) of the 1992 Act to also make an enforcement order unless I consider that to do so would be inappropriate. Mr O'Hanlon does not request an enforcement order. As Mr Harney commented at the hearing, much water has now gone under the bridge since the events of 28 May 2010. In all the circumstances of this case, I consider that it would be inappropriate that I make an enforcement order. However, I record the willingness of the parties to make suitable arrangements, even at this late stage, for

the inspection of the taxi receipts in question by Mr O'Hanlon. I further record Mr O'Hanlon's acceptance that a consequence of him not requesting an enforcement order is that his complaint against Ms Lyon-Taylor and Ms Forsyth is now extinguished. I comment that, although I have found the Union to be in breach of its rules by reason of the conduct of Ms Gilmore, I find that she acted in good faith with the intention of obtaining a common sense solution to a problem which involved a breakdown of personal relationships. It is to be hoped that all parties will be able to put this matter behind them in the interests of the Union and the members which they all seek to serve.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath the name.

David Cockburn
The Certification Officer