

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

**IN THE MATTER OF COMPLAINTS AGAINST
UNISON - The Public Service Union**

**APPLICANTS: MR A D'AGORNE
MS T BROOKS
MR A HEATH**

**Date of Decisions:
2001**

18 July

DECISIONS

- 1.1 Under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) ("the 1992 Act") 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 me for a declaration to that effect.
- 1.2 Section 108B of the Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declaration asked for. Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing.
- 1.3 Where I make a declaration under section 108B I am required, unless I consider to do so would be inappropriate, to make an enforcement order on the union. My enforcement order is required to impose on the union one or both of the following requirements -

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

1.4 On 20 October 2000, I received an application from Mr D’Agorne, Ms Brooks and Mr Heath, members of UNISON - The Public Service Union (“UNISON”/“the union”), Sheffield Branch, complaining that disciplinary action taken against them by UNISON was not in accordance with union rule. In their letter, the applicants appointed Mr C Gee as their representative.

1.5 In correspondence with my Office, Mr Gee set out a number of allegations of breach of union rule. Allegations relating to the change of personnel on the Disciplinary Committee; the absence of Tina Brooks from the continuation of the Disciplinary Hearings; the failure to interview Tina Brooks or Andy D’Agorne prior to the Hearing by the Disciplinary Committee on 26 May 2000; the authorisation of the disciplinary investigation by the National President; and the failure to make the report on the disciplinary investigation available to both sides were accepted by me as complaints under section 108A (1) of the 1992 Act that UNISON had breached its rules relating to matters mentioned in section 108A (2) (b), namely: -

“(b) disciplinary proceedings by the union (including expulsion)”

1.6 I investigated the complaints in correspondence and, on 21 June 2001, held a formal

Hearing of argument on the complaints. The union was represented by Mr J Swift of Counsel. Mr J Cafferty and Ms L O'Reilly attended in support of the union. The applicants were represented by Mr C Gee. Mr D'Agorne and Ms Brooks attended in support of their complaints. Mr Heath did not attend.

- 1.7 In setting out their arguments, the clarity of the submissions provided by both the applicants' and union's representatives was exemplary, for which I remain most grateful.

Decisions

- 1.8 After careful consideration of the documents, evidence and arguments put to me, the union's rule book and the relevant legislation and for the reasons set out below, I refuse to make the declarations sought in respect of the alleged breaches of union rule.

Requirements of the Legislation and the Relevant Union Rule

- 1.9 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred in this decision and the union rules at issue and others which have a bearing on this application. The relevant statutory requirements are as follows:

“108A.-(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)
- (b) *disciplinary proceedings by the union (including expulsion);*
- (c)
- (d)

1.10 In referring to UNISON's rules, throughout these decisions I have referred to the UNISON rule book, as amended at the 2000 Conference.

1.11 The relevant union rules relating to the union's disciplinary procedure are found under Rule I and Schedule D of the UNISON rule book.

1.12 Under the Rule heading "*Disciplinary action*", Rule I 5.1.2 provides:

"the National Executive Council may appoint any of its number, or the General Secretary, to investigate whether the charges are justified."

1.13 Rule I 5.2 provides:

"It shall be open to the General Secretary to delegate all or part of the investigation to such persons or persons as she/he thinks fit."

1.14 Rule I 5.3 provides:

“In any case, the body on whose behalf an investigation is undertaken shall consider the result of such investigation before deciding whether or not a charge should be brought.”

1.15 Rule I 6 provides that:

“Disciplinary charges may be brought against a member by the member’s Branch Service Group Executive or by the National Executive Council or the General Secretary acting on its behalf.”

1.16 Under the rule book heading *“Schedule D: disciplinary procedures”*, paragraph 1 provides that:

“No later than 21 days before the disciplinary hearing the member shall be sent a written notice of the charge..... At the same time the member shall be sent copies of any written material and correspondence to be considered in relation to the charge, together with the report of any investigation, and shall be told the date, time and place at which the charge against her or him is to be heard.”

1.17 Rule Schedule D paragraph 4 provides that:

“The Committee hearing the charge will ensure that the charged member’s rights are protected in that the provisions of Rule I and Schedule D1 (have) been scrupulously applied.”

1.18 Rule Schedule D paragraph 5 provides that:

“In the event that the provisions of Rule I and Schedule D.1 have not been properly applied the charge will be referred back to the body which brought the disciplinary charge”

1.19 Rule Schedule D paragraph 6 provides that:

“At the hearing, the member shall be asked whether she/he admits or denies the charge. If she/he admits it, the Committee hearing the charge shall then consider whether and to what extent they should exercise any of the disciplinary powers conferred by Rule.”

1.20 Rule Schedule D paragraph 7 provides that:

“If she/he denies the charge, the representative of the Branch, Regional Committee, Service Group Committee, National Executive Council or General Secretary as appropriate (who is called “Union Representative” in this Schedule) shall state the case against the member in the presence of the member and any representative of the member, and may call witnesses. She/he will produce any documents which she/he claims support the charge”

1.21 Rule Schedule D paragraph 20 provides that:

“The Committee hearing the charge shall then consider in private whether the charge is proved to their satisfaction, or not, on the evidence presented before them. All members of the Committee taking part in the discussion must have been present throughout the entirety of the hearing. No new matter can be raised against the member concerned. If any point of uncertainty arises, the Committee may recall both parties to clear the point. In such a case, both parties shall return notwithstanding that only one is concerned with the point giving rise to doubt.”

THE COMPLAINTS

The Complaints were that UNISON had breached its rules in respect of five matters. These were:

- i) that the change of personnel on the Disciplinary Committee breached union rule Schedule D, paragraph 20;
- ii) that the absence of Tina Brooks from the continuation of the Disciplinary Hearings (held from 30 October 2000) breached union rule Schedule D paragraphs 6 & 7;
- iii) that the failure to interview Tina Brooks or Andy D’Agorne prior to the Hearing by the Disciplinary Committee on 26 May 2000 breached union Rules I 5.1.2, I 5.3, I 6;
- iv) that as the National President instigated and authorised the disciplinary investigation, the Disciplinary Committee breached union rule Schedule D

paragraph 4 by failing to ensure the provisions of union Rule I 5.1.2 had been applied; and

v) that the failure to make the report on the disciplinary investigation (received by the NEC), available to both sides breached union Rule I 5.3 which resulted in the Disciplinary Committee being unable to comply with the provisions of union rule Schedule D paragraph 4.

Background

- 2.1 On 16 September 1997, the Chair of UNISON's National Executive Council's ("NEC"), Development and Organisation Committee authorised a disciplinary investigation into various matters concerning the Sheffield Branch of the union. In ratifying the decision on 8 October 1997, the NEC delegated the investigation to the Regional Secretary, who, on 15 April 1999 completed initial inquiries. On 17 April 1999, the NEC noted that the initial inquiries had been completed and accepted the recommendation that there was a prima facie case, leading to further investigations by the union.
- 2.2 At this stage, neither Ms Brooks or Mr D'Agorne had been interviewed by the union in relation to the investigation. The union wrote to both Ms Brooks and Mr D'Agorne on 22 April 1999, inviting them to attend interviews in respect of the investigation. On 27 May 1999, the union Investigating Officer wrote to offer an interview date of 11 June 1999. Ms Brooks attended, Mr D'Agorne, who had changed address, did not.
- 2.3 On 29 July 1999, the General Secretary confirmed that the disciplinary investigation was continuing. On 6 October 1999, the NEC agreed that specific charges should be

prepared. In April 2000, notification of disciplinary hearing dates was issued in accordance with Schedule D, paragraph 1. Hearings were held on 25 and 26 May 2000, subsequently continuing on 17 and 18 July 2000. All four days dealt with procedural points only.

2.4 In a letter of 14 July 2000, Ms Jones (Secretary to the Disciplinary Panel) had made reference to a report into the investigation which had been received by the NEC on 17 April 1999. This matter was raised with the Disciplinary Panel on 18 July 2000, which adjourned the hearings to allow time for it to be established whether any such report existed. The hearings were rescheduled for week commencing 30 October 2000, set to be heard over a period of five days. On 6 October 2000, those subject to the Disciplinary Hearings were advised by letter that the report to which Ms Jones had made reference was an oral report only and that no written report existed.

2.5 For the July hearings, Ms Connolly, a member of the Disciplinary Committee at the May hearings was replaced by Ms Stacey. At the October hearings, Ms Stacey was replaced by Ms McCrumm.

2.6 During the period December 1997 to December 1999, the NEC was provided with regular updates of progress/developments in the investigative process. At each meeting at which an update was provided, the NEC endorsed the actions that had been, and were being, taken.

Complaint one:

that the change of personnel on the Disciplinary Committee breached union rule Schedule D, paragraph 20.

The Applicants' Case

2.7 In correspondence with my Office, Mr Gee maintained that the action taken in changing the personnel on the Disciplinary Committee in respect of the disciplinary action taken against the three applicants was contrary to UNISON rule Schedule D paragraph 20 (see paragraph 1.21 above). Mr Gee proffered the view that the rule should be read and considered as an entity in conjunction with Schedule D paragraphs 4 and 5 (see paragraphs 1.17 and 1.18 above).

2.8 Mr Gee rejected the union's contention that the Disciplinary hearing did not start until the reading of the charges against the accused. Mr Gee stated that Schedule D paragraph 20 was clear in its intent that the Disciplinary Committee had to consist of the same members throughout the process of the hearing. He argued that this was essential to enable the Committee to refer back to any queries in respect of procedural points which might arise from previous hearing dates, in this case, May and July 2000. He concluded by maintaining that by changing the composition of the Disciplinary Committee, UNISON had breached Schedule D paragraph 20 and that the disciplinary procedure had been compromised.

The Union's Response

2.9 For the union, Mr Swift stated that there was no dispute about the change of members of the Disciplinary Committee. He argued, however, that as the hearings in May and July 2000 dealt with procedural points only and not with any matter of substance, the changes

which had taken place in respect of the composition of the Committee had not jeopardised, or compromised, the equity of those subject to the hearings.

2.10 Mr Swift maintained that the purpose of Schedule D paragraph 20 was to provide a framework for a disciplinary hearing to be conducted. In order for that framework to be effective, the rules needed to be interpreted in a common sense way. He continued that in line with Employment Tribunals, the composition of the panel was subject to change at hearings which discussed procedural points, but that membership of the panel remained constant once the presentation of substantive issues commenced.

2.11 By following such action, the union had not breached Schedule D paragraph 20, Mr Swift concluded, because the presentation of matters of substance had commenced in accordance with paragraph 6 of Schedule D, and from that point in time, the union's Disciplinary Committee had been, and would remain, constant for the duration of the disciplinary process. In considering Mr Gee's reference to paragraphs 4 and 5 of Schedule D, Mr Swift stated that as the provisions of both were ongoing they should be applied at the time need arose. The Disciplinary Committee in situ since 30 October 2000, was capable of dealing with any such need and would, therefore, be complying with UNISON rule.

Reasons for my Decision

2.12 Neither party has disputed the facts relating to this complaint, and in response to my question, Mr Gee confirmed that prior to 27 May 1999, the applicants had not, at any stage, queried the format of the investigation. In essence, the substance of the complaint

is whether, as argued by the union, the disciplinary hearing commenced on 30 October 2000, when the charges were read out and from which date the composition of the Disciplinary Committee has remained constant, or whether, as argued by the applicants, the hearing commenced on 25 May 2000, after which the composition of the Disciplinary Committee changed.

2.13 It is clear to me that the members of the Committee considering the charges and ultimately making the decision arising from the disciplinary hearing have heard all the evidence of substance relevant to the hearing which commenced on 30 October 2000. It is also clear that that Committee has not, and will not, be changed for any remaining processes in the disciplinary procedure relevant to that hearing.

2.14 It is my view that paragraph 20 of Schedule D of UNISON's rule book places the emphasis on the substance of the charges being considered by an unchanging Disciplinary Committee. That is, the purpose of the rule is to enable the body required to make decisions so to do, having heard all the evidence on the substantive issues. I am satisfied that in this case, the Disciplinary Committee in place on, and since, 30 October 2000, heard all the evidence for it to make such decisions and that the principle of union rule and natural justice have been upheld. I refuse to make the declaration sought and dismiss the complaint.

Complaint two:

that the absence of Tina Brooks from the continuation of the Disciplinary Hearings (held from 30 October 2000) breached union rule Schedule D paragraphs 6 & 7.

The Applicant's Case

- 3.1 Mr Gee stated that in announcing an adjournment at the hearing held on 18 July 2000, the Disciplinary Committee made an arbitrary decision in selecting a new date of 30 October 2000 for the continuation of the hearing. No approach was made to the defendant and no discussion was sought by the Disciplinary Committee to ascertain availability. As Ms Brooks was due to be on holiday until 31 October 2000, she had objected to the new hearing date, confirming details of her commitments and availability on 25 July 2000.
- 3.2 Mr Gee stated that the Disciplinary Committee did not take Ms Brooks' commitments fully into account and that as a result, she was unable to attend the continuation of the disciplinary hearing until the afternoon of 31 October 2000.
- 3.3 Although it was accepted that, on 30 October 2000, the hearing continued to deal with procedural points, Ms Brooks considered it was important for her to be present at such time to ensure that the principles enshrined in paragraph 4 of Schedule D were upheld. Mr Gee accepted that no direct oral mention of Ms Brooks was made during 30 October 2000, or during the morning of 31 October 2000, but that she was in fact listed in the context of the opening statement as the defendants were collectively subject to the hearing.
- 3.4 Mr Gee maintained that Ms Brooks' request for the hearing not to reconvene from 30 October 2000, was reasonable. The decision of the Disciplinary Committee to proceed

on 30 October 2000, had prevented Ms Brooks' full-time attendance at the hearing.

- 3.5 In conclusion, Mr Gee contended that paragraphs 6 and 7 of Schedule D of UNISON's rules, clearly indicated that for any disciplinary hearings involving charges against a union member, such proceedings were required to take place in the presence of the member concerned. In failing to ensure Ms Brooks' ability to attend, the union had breached those paragraphs.

The Union's Response

- 3.6 In correspondence, the union confirmed that on 18 July 2000, the Disciplinary Committee had selected 30 October 2000 to recommence the disciplinary hearing and that Ms Brooks had written to the Secretary to the Committee on 25 July 2000. Also during July 2000, the union provided Ms Brooks with a copy of the union side's opening statement to be presented when the hearing recommenced on 30 October 2000.

- 3.7 On 8 August 2000, and 22 September 2000, the union wrote to Ms Brooks to outline the procedure for the hearing on 30 October 2000. The union stated that the charges applying to her would not be read out in her absence, nor would any part of the opening statement relating to such charges. In effect, the hearing in relation to Ms Brooks would not commence until she was present.

- 3.8 Mr Swift stated that although from 30 October 2000, it was a consolidated hearing (at which he presented the union's case), the individuals concerned were charged in relation

to their own actions. The Disciplinary Committee, therefore, considered each case on an individual basis.

3.9 Mr Swift agreed that Ms Brooks' name appeared on the paperwork in respect of the disciplinary hearing. He contended, however, that this did not include any matter of substance, or any evidence, to be presented at the hearing. The charge had not been read out until 31 October 2000, when Ms Brooks had been present.

3.10 Until Ms Brooks' arrival at the recommenced hearing, her representative at the time (Mr Wright), had been present. It had been open to Mr Wright to brief Ms Brooks and raise points on her behalf had he considered it necessary. Her ability to participate in the hearing, even though in absentia had, therefore, been preserved.

3.11 In conclusion, Mr Swift stated that the union had abided by the principles of paragraphs 6 and 7 of Schedule D. As a result, no charges had been read, and no evidence had been given in respect of Ms Brooks' until she was able to attend the continuation of the disciplinary hearing in October 2000. This she had been able to do from the afternoon of 31 October 2000. Consequently, her position had not been prejudiced and there was, in fact, no evidence to suggest a breach of union rule.

Reasons for my Decision

3.12 It is clear to me that the applicant was present at the time the charges and the evidence

against her were read out. It is also clear that although the disciplinary hearings recommenced on 30 October 2000, Ms Brooks' case was not brought into play until her arrival at the hearing on 31 October 2000. In my view, the hearing of Ms Brooks' case could correctly be said to have begun on 31 October 2000.

3.13 Therefore, I do not consider that her absence from the hearing on 30 October 2000 (during which time no material evidence or matter of substance was put forward by the union, and during which time Ms Brooks' representative was present), or the fact that Ms Brooks' name appeared on page 2 of the union's opening statement (which had been sent to Ms Brooks in July 2000), constitutes a breach of union rules. I refuse to make the declaration sought and dismiss the complaint.

Complaint three:

that the failure to interview Tina Brooks or Andy D'Agorne prior to the Hearing by the Disciplinary Committee on 26 May 2000 breached union Rules I 5.1.2, I 5.3, I 6.

The Applicants' Case

4.1 In correspondence with my Office, Mr Gee stated that UNISON's NEC had, on 17 April 1999, decided to lay charges against Ms Brooks and Mr D'Agorne, as confirmed to them by letter on 22 April 1999. Mr Gee argued that it was reasonable to expect that the applicants should have been given an opportunity to put their views prior to that NEC decision, whereas Ms Brooks and Mr D'Agorne had only been contacted subsequent to the decision taken by the NEC. Mr Gee contended that under union Rule I 5.1.2 the

NEC had authority to delegate to “*any of its number, or the General Secretary*” to investigate charges in respect of disciplinary action, but it did not have authority to undertake such action itself.

4.2 In conclusion, Mr Gee furthered his argument by referring to union Rule I 5.2 and contended that taken into consideration with union Rule I 5.1.2 it was clear that the intention of rule was to keep an elected officer at National level directly involved in the disciplinary procedure. By deciding to lay charges and then appointing a Regional Officer to undertake an investigation prior to any interview with Ms Brooks and Mr D’Agorne, the NEC had not abided by the provision of union Rule I 5.3.

4.3 In response to my question, Mr Gee agreed that the General Secretary had powers to delegate a disciplinary investigation to anyone (such as a Regional Secretary), but, he argued, the NEC did not. The NEC he maintained, only had authority to delegate to one of its number, or the General Secretary.

The Union’s Response

4.4 In correspondence with my Office, the union stated that no UNISON rule proscribed the form any investigation into alleged disciplinary offences should take. In particular, the decision on whether to interview those under investigation was a discretionary one to be exercised by the investigating officer(s.) There was no expressed, or implied, right for there to be an interview during the investigative process.

4.5 Pursuing this line of argument, Mr Swift stated that at any disciplinary hearing arising

from a disciplinary investigation, those subject to such action had the right to say anything they wished. On that basis, the case of any individual facing disciplinary action was not prejudiced. There was, therefore, no reason to seek to interpret UNISON rules on the basis that an interview was a prerequisite of the investigative process of disciplinary action.

4.6 Mr Swift pointed out that the NEC decision to *prepare* charges was not taken until 6 October 1999. This decision was subsequent to the report of the investigating officer, by which time, both Ms Brooks and Mr D'Agorne had been invited to attend interviews to discuss the allegations made against them (see paragraph 2.2 above).

4.7 In commenting on Mr Gee's assertion that the NEC had not abided by union Rule I 5.1.2, Mr Swift contended that the NEC as a body had retained control of the investigative process from its outset, had received regular updates and had, therefore, complied with union Rules I 5.1.2 (under which it had discretion to appoint, or not) and I 5.3 (under which it subsequently decided that charges should be prepared).

4.8 In conclusion, Mr Swift returned to the argument that no actual rule existed under which an individual, subject to an investigation in respect of alleged disciplinary offences, was required to be interviewed. No rule had therefore been breached.

Reasons for my Decision

4.9 On this complaint I do not have to decide under whose authority the disciplinary investigation was carried out. That matter will be dealt with in the next complaint (complaint four). The key issue is that there is no explicit reference to interviews in the union rules, and, therefore, no explicit requirement in the union rule book for those

undertaking a disciplinary investigation into alleged offences to interview those against whom charges may subsequently be laid. Where interviews of the alleged offenders are concerned, I can envisage circumstances in which such interviews would be an important part of an investigation. Equally, there could be circumstances where interviews were inappropriate. For this reason, I believe it would be wrong to imply into rule that such a requirement existed in every case. I see no reason in these circumstances to find that the union acted in breach of rule by not conducting an interview in this case. I therefore refuse to make the declaration sought and dismiss the complaint.

Complaint four:

that as the National President instigated and authorised the disciplinary investigation, the Disciplinary Committee breached union rule Schedule D paragraph 4 by failing to ensure the provisions of union Rule I 5.1.2 had been applied.

The Applicants' Case

- 5.1 Mr Gee stated that there was no dispute with the facts relevant to this case (as set out in paragraphs 2.1 to 2.6 above).
- 5.2 He argued, however, that there was no provision in union rule for the Chair of the NEC's Development and Organisation Committee, in consultation with the then President of the union, to instigate a disciplinary investigation against the three applicants. The NEC had ratified that decision on 8 October 1997, and at that point had appointed a Regional Secretary to undertake the investigation.

5.3 In furthering his argument, Mr Gee cited the points he had made in relation to complaint three (see paragraphs 4.1 to 4.3 above), and concluded by arguing that the action taken by the union clearly undermined the letter of Rule I 5.1.2 and, as a result, paragraph 4 of Schedule D had been breached in not protecting the rights of the union members concerned.

The Union's Response

5.4 Mr Swift referred to the fact that under union Rules D 2.1 (“.....*full power and authority to act.....*”), and D 2.7 (“.....*the right to appoint.....the power to delegate....*”), the NEC, of which the President was part, had the right to exercise power itself, pursuant to the rules of the union. In response to my question, Mr Swift agreed that any power of the General Secretary could also be exercised by the NEC.

5.5 Mr Swift maintained that the points he had made in respect of complaint three, (in paragraph 4.7 above) - that the NEC had discretion to appoint, and had retained control of the investigation - remained salient to this complaint. Although the NEC had acted through a third party, it had done so within rule. The NEC had not therefore breached any union rule.

Reasons for my Decision

5.6 The complaint essentially questions the authority of the disciplinary investigation and seeks a literal interpretation of the relevant rules. Such an approach would forego a common sense interpretation of union rule and would go against the general thrust of the rule book per se.

5.7 I am satisfied that under union rule the NEC (of which the President of the union is a member), has the authority to exercise powers. I am further satisfied that in respect of the disciplinary investigative process it has the power to delegate if it should so decide. It did delegate certain functions in this case, but also retained overall control of the investigation. It received regular reports of progress within that process and ratified/sanctioned actions that were required to be taken. I find nothing contrary to rule in this. I therefore refuse to make the declaration sought and dismiss the complaint.

Complaint five:

that the failure to make the report on the disciplinary investigation (received by the NEC), available to both sides breached union Rule I 5.3 which resulted in the Disciplinary Committee being unable to comply with the provisions of union rule Schedule D paragraph 4.

The Applicants' Case

6.1 In correspondence with my Office, Mr Gee stated that the NEC had received a report prior to 17 April 1999, which had a direct impact on the decision to lay disciplinary charges (paragraph 2.4 above is relevant to this complaint), and of which the three applicants had not had sight. It was subsequently determined that the report in question had been an oral report.

6.2 Mr Gee contended that the three applicants had been disadvantaged because no information was provided in respect of who had presented the report, what the content of that report was and what written information the report had been based on.

6.3 Mr Gee argued that, as a result, the NEC would not have been in a position to abide by the provisions of Rule I 5.3, that its decision to continue the investigative process was not within union rule and that the Disciplinary Committee had therefore not abided by paragraph 4 of Schedule D.

The Union's Response

6.4 For the union, Mr Swift stated that both sides had known of, and had received, the written reports made during the disciplinary process. No other reports existed.

6.5 The oral report had been on the basis of "work in progress" to which paragraph 1 of Schedule D did not apply.

6.6 Mr Swift further stated that discussion on the consideration given, or not, to that report were not relevant to the complaint as made. Paragraph 1 of Schedule D of the union rules was specific in that it referred to written (my emphasis) material. Both sides had been accorded the correct information in respect of such material. There was, therefore, no breach of union rule.

Reasons for my Decision

6.7 It is clear to me from the evidence that during the investigative process, there were three written reports, all of which were available to the parties concerned. It is my view that as these reports were made available, paragraph 1 of schedule D has been complied with.

6.8 The reference by the applicants to union Rule I 5.3 is ill-founded in this case. Under that

rule, the decision on whether to proceed to formal charges is yet to be made. The NEC did not make that decision until 6 October 1999. In making that decision, I am satisfied that the provisions of both Rule I 5.3 and paragraph 1 of Schedule D have been complied with. I therefore refuse to make the declaration sought and dismiss the complaint.

E G WHYBREW
Certification Officer