

**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**

APPLICANT: MR S HILL

Date of Decisions:

18 July 2001

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 8 September 2000, and 20 November 2000, I received applications from Mr S Hill, a former member of UNISON - The Public Service Union (“UNISON”, “the union”), complaining that disciplinary action taken against him by UNISON was not in accordance with union rule and that the union had also breached its rules in relation to its Affiliated Political Fund. At the time of the alleged breaches, Mr Hill had been a member of the union.

1.5 In correspondence with my Office, Mr Hill set out a number of allegations of breach of union rule. Allegations relating to the composition of personnel on the union Appeals Panel; the provision of written material in respect of a disciplinary hearing; elections for the Affiliated Political Fund Committee; and the management of the Affiliated Political Fund 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) and (d), namely: -

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

(d) the constitution or proceedings of any executive committee or of any decision-making meeting.”

1.6 I investigated the complaints in correspondence and, on 27 June 2001, held a formal Hearing of argument on the complaints. The union was represented by Mr A White (Counsel). Mr S Cavalier (Solicitor, Thompsons), Mr C Remington (Head, Constitutional Matters, UNISON), and Mr K Birch (Head, Affiliated Political Fund, UNISON) attended in support of the union. Witness statements were submitted from Mr Remington, Mr Birch and Mr Epstein (who was the barrister who presented the union's case against Mr Hill at the Disciplinary sub-committee and Appeals Panel). The applicant represented himself.

Decisions

1.7 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 first four complaints and I cannot determine the fifth complaint as it was made out of time and therefore is not within my jurisdiction.

Requirements of the Legislation and the Relevant Union Rule

1.8 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 alleged to have been breached and other union rules 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).

108A (2) The matters are -

- (a)*;
- (b) disciplinary proceedings by the union (including expulsion);*
- (c)*;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting.*

108A (6) An application must be made -

- (a) Within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).*

108A (7) Those days are -

- (a) the day on which the procedure is concluded, and*
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.”*

1.9 In referring to UNISON’s Rules, throughout these decisions I have referred to the UNISON Rule book, as amended at the 2000 Conference.

1.10 The relevant union rules relating to the union's disciplinary procedure and political fund are found in Rule I, Rule J, and Schedule D of the UNISON Rule book.

1.11 Under the Rule heading "*Disciplinary action*", Rule I 10.1 provides:

"The Union Appeals Committee shall consist of three members drawn from an Appeals Panel."

1.12 Rule I 10.2 provides:

"Each Service Group Executive shall be entitled to nominate two members of the Service Group Executive to the Appeals Panel."

1.13 Rule J 8.2 provides:

"The administration of each section of the Political Fund shall be the responsibility of the National Executive Council which shall delegate this responsibility to the exclusive control of two separate Committees which shall, in the case of the General Political Fund, consist of members of the National Executive Council who in accordance with these rules are contributors to the General Political Fund and, in the case of the Affiliated Political Fund, consist of 12 members of the National Executive Council elected by members of the National Executive Council who in accordance with these Rules are contributors to the Affiliated Political Fund and one representative from each Region (save for Northern

Ireland) elected by members in Branches in that Region who in accordance with these rules are contributors to the Affiliated Political Fund, such Committee to be called the National Affiliated Political Committee, all members of which must be contributors to the Affiliated Political Fund and paid up individual members of the Labour Party.”

1.14 Rule J 8.9 provides:

“.....any member of the Union shall be entitled to elect whether to be able to contribute to the General Political Fund Section or the Affiliated Political Fund Section or to both, and shall, if this election involves any change in the contribution to the political fund made by the member, make known her/his choice on a form approved for this purpose by the National Executive Council.”

1.15 Under the Rule 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.”

THE COMPLAINTS

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

(i) a member of the Panel hearing the Appeal ceased to be a member of the Service Group Executive and also, therefore, of the Appeals Panel thereby breaching union Rule I 10.1;

(ii) the Service Group has nominated more than its prescribed two members to the Appeal Panel, thereby breaching union Rule I 10.2;

(iii) non-contributors to the Affiliated Political Fund section have been allowed to determine matters properly restricted to contributing members, thereby breaching union Rule J 8.2;

(iv) that by electing four non-manual workers to the Regional Affiliated Political Fund Committee, the Northern Regional Committee has breached union Rule J 8.2;

(v) that union Rule "Schedule D disciplinary procedures" paragraph 1 has been breached in that further written material in relation to the charge was added after the hearing commenced in breach of the stated twenty-one (21) day notice period; that the Union failed to provide a report (from Mr Anthony White) twenty-one (21) days prior to the hearing; that the Union failed to provide Mr White's report in full; and that the Union failed to provide two investigation reports from Chris Lennie.

and that these actions were contrary to UNISON Rule.

Background

(in respect of complaints one, two and five which all relate to disciplinary matters as provided for under section 108 (2) (b) of the Act)

- 2.1 On 15 September 1998, Mr D Picking (UNISON's then Constitution Officer) issued a letter requesting further nominations to the union's appeals panel, increasing the number of such nominees to five per Service Group Executive, against the previous requirement of two.
- 2.2 Mr Hill's disciplinary hearing commenced on 11 March 1998 and concluded 12 March 1999 resulting in Mr Hill's expulsion from the union. Mr Hill's appeal hearing against the disciplinary action taken against him by the union commenced on 26 January 2000 and concluded on 12 December 2000.
- 2.3 The composition of the union Appeals Committee is governed under the provision of union Rules I 10.1. and I 10.2 (see paragraphs 1.11 and 1.12 above). In May 2000, a member of the union's Appeals Committee hearing Mr Hill's appeal was de-selected from the relevant Service Group Executive. In June 2000, a different member of that Appeals Committee hearing Mr Hill's appeal was elected to the National Executive Council.

Complaint one:

a member of the Panel hearing the Appeal ceased to be a member of the Service Group Executive and also, therefore, of the Appeals Panel thereby breaching union Rule I 10.1.

The Applicants' Case

- 2.4 In correspondence with my Office, Mr Hill stated that a member of the Appeals Committee hearing his appeal in respect of an NEC decision against him had been elected to the NEC (thereby ceasing to be a member of the relevant Service Group Executive and not eligible for election to the union’s Appeals Panel), but had remained a member of the union Appeals Committee hearing his appeal. This, Mr Hill stated, had compromised the overall fairness of the Appeals procedure.
- 2.5 He maintained that the intention of union disciplinary procedures as detailed under section I of the union rule book, was to ensure a separation of the original disciplinary process from any subsequent appeal process to secure the independence of the appeal. The presence of an NEC member on the Appeals Committee hearing an appeal against an NEC decision did not provide such a separation.
- 2.6 Mr Hill argued that the 1998 decision of the NEC in respect of the composition of sub committees did not cover all eventualities. It related to disciplinary sub-committees and could not, therefore, be taken as a general interpretation of union rule. He maintained that the interpretation used by the NEC amounted, in fact, to a misinterpretation, and consequently a breach of union Rule I 10.1.

The Union’s Response

- 2.7 In correspondence, the union had referred to NEC powers provided for under union Rules. In particular; D 2.8.1 “*to provide for any case in which the Rules are silent*”, and D 2.8.3 “*to interpret the Rules in event of doubt, conflict or dispute.*”

- 2.8 By way of further background, Mr White, for the union, referred to a union inquiry in 1998. In response to that inquiry, the National Executive Council (NEC), citing union Rule D 2.7.3, determined that “*membership of the NEC was a prerequisite for appointment to a disciplinary sub committee, but not for continuation in membership of it*” and further that “*if that..... inquiry was not completed before the term of office of any member of the sub committee concluded, the sub committee should continue and complete its work.*” This had since been the union’s benchmark and had become its custom and practice in its approach to the composition of ‘sub committees’ per se.
- 2.9 Mr White argued that the decision of the NEC taken in 1998, in respect of the inquiry sub committee, illustrated the intention to ensure that the status of such a sub committee did not affect its continuity. That since the application of that decision the base had broadened was not denied. The decision had set a precedent at the time and, given that at that time the union was relatively newly formed, had provided the basis for subsequent union custom and practice.
- 2.10 Such custom and practice, Mr White argued, had not jeopardised the provision of the union rules, which were straightforward, relevant to Mr Hill’s complaint. (Union Rules I 10.1 and I 10.2 - see paragraphs 1.11 and 1.12 above.)
- 2.11 In respect of its provisions, Mr White continued, union Rule I 10.2 entitled each Service Group Executive to nominate two members to the Appeals Panel. The rule was silent on any subsequent change to the status of a member so nominated. Union Rule I 10.1 required the union Appeals Committee to consist of three members from an Appeals Panel.

- 2.12 Mr White maintained that although there may be a perceived ambiguity in the provision of the rule against the actual circumstance in Mr Hill's case, the NEC's 1998 rule interpretation for an analogous situation had, nonetheless, provided a clear indication of the NEC's intention to maintain a fair and common sense interpretation where a rule did not provide for a specific circumstance.
- 2.13 Mr White continued by pointing out that as the term of office for the majority of members of a Group's Executive was subject to biennial election, any interpretation of rule other than that taken by the NEC in 1998, would ultimately have meant that any union disciplinary/appeal hearings would run the risk of being only partly completed at the time re-election to the Group Executive was required. If such an interpretation was applied, any such process would run the risk of never reaching its end.
- 2.14 In conclusion, Mr White stated that the provision of union Rule D3.5.8 "*Those members of the National Executive Council who are elected representatives of a Service Group shall be additional members of their Group Executive*", anticipated the possibility that an individual could be a member of the NEC and a Service Group and would therefore be eligible for nomination to the Appeals Panel. The union had not breached rule I 10.1.

Reasons for my Decision

- 2.15 Mr Hill's complaint was that UNISON had breached union Rule I 10.1. The provision of that rule is specific in that the union Appeals Committee should be drawn from a union Appeals Panel. That was effected. It is clear that the status of at least one member of the Appeals Committee changed when elected to the NEC. This Mr Hill contended

amounted to a breach of rule. I do not agree.

- 2.16 There is provision within union rule for a union member to be elected to the NEC, and to also be a member of a Group Executive and, thereby, available for nomination to an Appeals Panel as provided for under union Rule I 10.2. Further, I accept the importance of maintaining continuity in any disciplinary/appeal process. With this in mind, I cannot see how rule I 10.2 could be breached by the election of a member of the Appeals Committee to the NEC. This, I consider, outweighs any counter argument. It for this reason that I refuse to make the declaration sought and dismiss the complaint.

Complaint two:

the Service Group had nominated more than its prescribed two members to the Appeal Panel, thereby breaching union Rule I 10.2.

The Applicants' Case

- 3.1 In correspondence with my Office, Mr Hill stated that the wording of union Rule I 10.2 was "explicit and precise" in that each Service Group Executive was required to nominate two members, no more, no less, to the Appeals Panel. Mr Hill maintained that that was what the ordinary union member understood by the rule and that any other interpretation was incorrect.
- 3.2 By way of background to the rule, Mr Hill stated that he had been involved in its formulation, the intent of which was to be clear, and that the nominees were expected (but not required in the wording of the rule), to be the senior members of the Service Group

Executive.

- 3.3 Mr Hill contended that the rule had been applied in that way until September 1998 when Mr Picking (the then Constitutional Officer of the union), had written to the Service Group Executives requesting extra nominations for the Appeals Panel.
- 3.4 Mr Hill further contended that at the time Mr Picking's letter had been issued, there was no reference to any NEC interpretation of rule to sanction the request made in the letter. He therefore believed that the individual Officer had interpreted the rule on behalf of the NEC.
- 3.5 Mr Hill considered this to be not only contrary to the spirit and letter of the rule, but that it clearly breached the provision of the rule itself.

The Union's Response

- 3.6 Mr Remington responded to a question from Mr Hill by stating that no official of the union would have issued the request for further nominations to the union Appeals Panel in the letter of 15 September 1998, without the sanction of the NEC itself. Mr White argued that although no specific NEC minute demonstrating the interpretation of union Rule I 10.2 could be found, the letter issued in September 1998 indicated that the NEC *had* interpreted the rule.
- 3.7 Mr White further contended that Mr Hill's argument was founded on the belief that the rule specifically required two nominees for the Appeals Panel from each Service Group

Executive. The rule itself stated only that the Service Group Executives were *entitled* to nominate two members. The NEC had interpreted *entitled* to mean that the nomination of a number greater than two was warranted if the circumstances so required. In 1998 there was such a requirement.

3.8 Mr White argued that the NEC had maintained its common sense approach to rule interpretation when, in 1998, the pool of available Appeals Panel members was not sufficient to enable the union to appoint Appeals Committees in respect of the number of appeals outstanding. The decision taken by the NEC had developed into custom and practice and, since 1998, had provided a sufficient pool from which to appoint Appeal Committee members.

3.9 Mr White concluded by stating that Mr Hill's historical understanding was subjective, had no basis in rule and was inadmissible. The fact was that the union had not breached union Rule I 10.2.

Reasons for my Decision

3.10 I accept that Mr Picking, the then Head of Constitutional Matters for the union, would not have issued the letter of 15 September 1998 without the sanction of the NEC.

3.11 I am not convinced that union Rule I 10.2 means two, and *only* two, nominations can be made to the Appeals Panel by a Service Group Executive. I accept that there is some

degree of ambiguity in the construction of the rule itself. What is clear to me, however, is that under the provision of rule D 2.8.3 (see paragraph 2.7 above), the NEC has the power to interpret a union rule in the face of such ambiguity. This it clearly did in 1998. It for that reason that I refuse to make the declaration sought and dismiss the complaint.

Complaint five:

that union Rule “Schedule D disciplinary procedures” paragraph 1 had been breached in that further written material in relation to the charge was added after the hearing commenced in breach of the stated twenty-one (21) day notice period; that the Union failed to provide a report (from Mr Anthony White) twenty-one (21) days prior to the hearing; that the Union failed to provide Mr White’s report in full; and that the Union failed to provide two investigation reports from Chris Lennie.

Jurisdiction

- 4.1 UNISON Rule Schedule D paragraph 1, on which the complaint is founded, is set out in paragraph 1.15 above.
- 4.2 In correspondence, the union gave its response to the substance of the complaint, but also stated its belief that I was not empowered to determine it. In such circumstances, I must address the issue of jurisdiction before considering the substance of a complaint.
- 4.3 The union contended that I did not have jurisdiction to determine the complaint, which was brought under section 108A(1) of the Act, relating to matters under section 108A(2)(b) involving breaches of union rule in respect of “*disciplinary proceedings by*

the union (including expulsion).”

- 4.4 The union stated that union Rule, Schedule D paragraph 26 provides that *“(1) If a member intends to appeal, she/he must exercise her/his right to do so.....within four weeks of her/his being notified in writing of the decision subject to the Appeal.”* The requisite date for Mr Hill’s appeal against the decision of the disciplinary hearing was 12 April 1999, following which the union’s procedure for processing Mr Hill’s appeal commenced.
- 4.5 Mr White contended that Mr Hill had invoked union appeal procedure in relation to the disciplinary hearing which had commenced on 11 March 1998. Therefore, Mr Hill’s complaint was outside the requirements of sections 108A(6) and (7) (see paragraph 1.8 above), even if the date of 12 April 1999 was taken as the date of Mr Hill’s appeal.
- 4.6 Mr Hill maintained that his complaint related to the union Appeal Hearing, held between 26 January 2000 and 12 December 2000. He stated that when he had attempted to raise objections at his disciplinary hearing, he had been advised that the proper place to pursue any such objections would be at an appeal hearing, where he would be able to cite his objections during his summing up. He agreed, however, that the issues in contention related to the original hearing.

Reasons for my Decision

- 4.7 The catalyst for the actual complaint occurred at the disciplinary hearing. Mr Hill ‘complained’, by way of appeal, thereby invoking the internal complaints procedure of the

union. At the point such a procedure is invoked, it starts the time-scales relevant when considering a complaint of this nature in relation to the requirements of sections 108A (6) and (7) of the Act.

- 4.8 This particular complaint was submitted to me by Mr Hill on 20 November 2000. Section 108A(6) of the Act is specific in setting time limits to apply to such a complaint.

108A (6) An application must be made -

- (a) Within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).*

108A (7) Those days are -

- (a) the day on which the procedure is concluded, and*
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.”*

- 4.9 In considering the issue of jurisdiction in this case, sections 108A(6)(b) and 108A(7)(b) of the Act apply. If, taking the last possible date, the date on which Mr Hill submitted his appeal against the decision of the union disciplinary hearing, invoking the internal

complaints procedure was the 12 April 1999, the complaint according to the provisions of section 108A(7)(b) is out of time. I do not, therefore, have jurisdiction to accept this complaint.

Background

(in respect of complaints three and four which concerned the union's political fund and relate to matters in section 108 (2) (d) of the Act, namely the constitution or proceedings of any executive committee or of any decision making meeting)

- 5.1 Contributions made by union members in support of UNISON political objectives are held in the union's political fund. The fund itself consists of two sections - (a), the General Political Fund (GPF) and (b), the Affiliated Political Fund (APF).
- 5.2 The administration of the fund is the responsibility of the NEC, which delegates that responsibility to the exclusive control of two separate committees. The GPF Committee consists of members of the NEC who contribute to the GPF. No contribution from the GPF may be made to the funds of any political party.
- 5.3 The APF Committee consists of twelve (12) members of the NEC, who contribute to the APF (elected by the NEC), plus one representative from each Region (excluding Northern Ireland), who contribute to the APF (elected by members in Branches in that Region). The committee is called the National Affiliated Political Committee, and all members are required to be contributors to the APF *and* paid up individual members of the Labour Party.
- 5.4 Members of the union wishing to contribute to the union's political fund may choose

whether to contribute to the GPF, or the APF, or both. If a union member elects to contribute to both, that member is required to select to which fund she/he wishes that contribution, made by deduction from her/his subscription, to be made. Payment to the other fund is by way of additional levy, payable annually or at shorter intervals as determined by the NEC.

Complaint three:

that non-contributors to the Affiliated Political Fund section had been allowed to determine matters properly restricted to contributing members, thereby breaching union Rule J 8.2.

The Applicants' Case

5.5 In correspondence with my Office, Mr Hill referred to the union's acceptance of the fact that a major computer malfunction caused the failure of the direct debit system in respect of contributions to the political funds.

5.6 Mr Hill contended the union's assertion that the individuals affected by this computer malaise were advised of the situation, and that the individuals concerned had subsequently paid by either cheque or standing order. Indeed, he made the point that he, as a contributor to both funds, only became aware that his contributions were not being deducted because of the union's failure to action his direct debit form. He further stated that when he attempted to pay by cheque, it was returned to him because the union did not have the mechanisms in place to be able to action that particular method of payment. Mr Hill had not, therefore, been able to pay his contributions.

5.7 In furthering his point, Mr Hill referred to four individual members of the union who had

elected to pay to one fund, or the other, or both and who had taken part in the NEC election of members to the APF National Committee. But the failure of the union's contribution deduction system, however, had resulted in those members not making the requisite payments. This position was confirmed by the print-out of the union's records for the four individuals which the union had submitted in evidence.

5.8 In conclusion, Mr Hill maintained that four individuals who had participated in matters specific to the union's political fund had not contributed to the relevant section(s) of the fund in accordance with union rule. This was a clear breach of union Rule J 8.2 (see paragraph 1.13 above).

The Union's Response

5.9 In his witness statement, and during questioning by Mr Hill, Mr Remington, acknowledged that the union's computer system had failed. He further stated that when the direct debit system failed, the union's prime concern had been to implement a system to enable general union subscriptions to be deducted. At the time of the computer failure, the union was suffering a loss of subscription revenue of around £100,000 per calendar month.

5.10 Mr Remington admitted that the union had not been aware that contributions to the political fund were not being deducted from those choosing to contribute to both sections and had only become so aware subsequent to Mr Hill's complaint to me.

5.11 Mr Birch confirmed that checks on the actual status of political fund contributors were made, particularly in 1996, when the funds were realigned following the creation of UNISON from the former COHSE, NALGO, and NUPE trade unions. Individual

members had then, and continue to have, the option to elect to pay to either or both sections of the union's political fund.

5.12 The failure of the computer system had, Mr Birch agreed, created anomalies. As a result, information provided by computer printouts was, even now, often inaccurate. UNISON Head Office had attempted to remedy the situation, but at present, there was no guarantee that information held, or supplied, by computer was correct. It was also impossible to give a break down of individual contributions to the political funds because it was only ever shown as a bulk figure within the overall subscription total.

5.13 Mr White contended that the salient issue was whether individual contributors to the political fund had, in accordance with union rule, elected to contribute to the GPF, the APF, or both. Further, whether by completion of an NEC approved form any of the four individuals to whom Mr Hill had referred, had indicated any change in the contribution to the relevant section of the political fund (union Rule J 8.9, see paragraph 1.14 above).

5.14 He further contended that whether or not contributions to the political fund were actually up to date mattered "not a jot". What was relevant was whether those wishing to contribute had "signed up to it". There was no forfeiture clause if a union member was a debtor to the fund and there was nothing in rule to state that a contribution had actually to be paid before the member who had "signed up" was able to participate in the activities relevant to the fund.

5.15 Referring to Mr Hill's *actual* (my emphasis) complaint, Mr White concluded by stating that the difficulties with the union's deduction system and its computer failure did not alter the fact that the four individuals to whom Mr Hill had referred, and the other contributors to

the APF, had still signed up to contribute. There was therefore, no breach of union rule.

Reasons for my Decision

5.16 It is clear that there were, and that there continue to be, problems with the union's computer system in respect of contributions to the political fund, and more particularly in this case, in respect of the APF from those choosing to contribute to both funds. This is regrettable, and, until those problems are satisfactorily resolved, the onus for which is directly with the union, the scope for uncertainty and confusion remains.

5.17 Nevertheless, I am satisfied, on the basis of the evidence presented in print outs and by Mr Birch in person that the four union members affected by this problematic situation had elected to contribute to the APF and thought they were doing so. By electing to contribute to the APF, and being accepted as contributors by the union, they satisfy the rule as being contributors to the APF. The shambles surrounding the union's computer system is not a reason to penalise those members, or to debar them from participating in matters associated with the APF. I therefore refuse to make the declaration sought and dismiss the complaint.

Complaint four:

that by electing four non-manual workers to the Regional Affiliated Political Fund Committee, the Northern Regional Committee had breached union Rule J 8.2.

The Applicants' Case

6.1 In correspondence with my Office, Mr Hill stated that there were operational rules and a Northern Regional APF Constitution (ostensibly governing proportionality and

representation), in respect of the Northern Regional Committee, which impacted directly on those eligible for election to the Regional APF Committee. Three manual workers (the definition of which was determined by an hourly rate of pay), were required to be so elected.

6.2 Mr Hill contended that this had not been effected in the election because the pay in respect of at least one of those elected exceeded the amount of the hourly rate. He had additionally stated that delegations from a number of Branches had failed to abide by the requirements of local rules by being exclusively non-manual.

6.3 Mr Hill argued that, as a result, the union had, therefore, breached the provisions of the rules governing the administration of the APF.

The Union's Response

6.4 For the union, Mr White stated that UNISON rules governing the administration of the GPF and the APF were quite clearly set out in union Rule J 8.2 (see paragraph 1.13 above).

6.5 The union "rules" to which Mr Hill had made reference were localised and would seem to contain sub-categories, but did not affect all UNISON members. Mr Hill's arguments, Mr White continued, were, therefore, not founded on union Rule J 8.2 and did not relate to the requirements, by contribution, of the individual union member to the relevant section of the political fund. Further, it had not been established whether or not the localised "rules" to which Mr Hill had referred could be considered as, or could be deemed to be, rules of the union.

6.6 Those "rules", however, were not cited in Mr Hill's complaint. The complaint cited a breach of union Rule J 8.2. The union contended that no such breach had occurred.

Reasons for my Decision

6.7 Reference was made by Mr Hill to the operational “rules”, the proportionality and representation matters, and the constitution affecting UNISON’s Northern Region. I have seen the operational rules of the union’s APF. But I have not had sight of the details of how they have been adapted or implemented in the union’s Northern Region, which were the matters to which Mr Hill referred. It is not for me to provide general comment on what those “rules” may, or may not state, whether or not those “rules” have been breached, or whether they can be deemed to be rules of the union.

6.8 The “rules” referred to by Mr Hill are not relevant to the union rule cited in the complaint. In considering the complaint in relation to union Rule J 8.2, I am satisfied that, whatever happened in the union’s Northern Region, it did not breach union Rule J 8.2 and therefore no breach of rule has occurred. I refuse to make the declaration sought and dismiss the complaint.

E G WHYBREW
Certification Officer