

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

Mr Terence Chapman

v

Community

Date of Decision

4 May 2016

DECISION

Upon application by Mr Terence (Terry) Chapman (“the claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I refuse the claimant’s application for a declaration that on or about 1 December 2014 Community breached rule 19c of its rules in that the complaint against Mr Chapman by Anna Turley was not referred to the branch committee for consideration and resolution but was elevated straight to the national officers/bodies.
2. I refuse the claimant’s application for a declaration that on or about 16 February 2015 Community breached rule 19c of its rules in that Mr Chapman’s complaint against Tom Blenkinsop was dismissed without having been considered by the branch committee.
3. I refuse the claimant’s application for a declaration that on or about 23 December 2014 Community breached rule 20b of its rules in that it allegedly failed to forward to him an appropriate charge with reasons formulated by the investigating National Officer on behalf of the National Executive Council in relation to the complaint made against him by Anna.
4. I refuse the claimant’s application for a declaration that on or about 5 December 2015 Community breached rule 19d of its rules in that he was not granted an appeal following his suspension.
5. I make the declaration sought by the claimant that on or about 9 March 2015 Community breached rule 20c of its rules in that Mr Chapman was not granted an appeal following his expulsion.

REASONS

1. Mr Chapman brought this application as a member of Community ("the Union"). He did so by a registration of complaint form which was received at the Certification Office on 14 July 2015.
2. Following correspondence with my office, Mr Chapman confirmed his complaints in the following terms:

Complaint 1

On or around 1 December 2014 Community breached rule 19c in that the complaint against Mr Chapman by Anna Turley was not referred to the branch committee for consideration and resolution but was elevated straight to the national officers/bodies.

Complaint 2

On or around 16 February 2015 Community breached rule 19c in that Mr Chapman's complaint against Tom Blenkinsop was dismissed without having been considered by the branch committee.

Complaint 3

On or about 23 December 2014 the Union breached rule 20b in that the Union failed to forward to Mr Chapman an appropriate charge with reasons formulated by the investigating National Officer on behalf of the National Executive Council in relation to the complaint made against Mr Chapman by Anna Turley thereby denying Mr Chapman the opportunity to respond to the charge against him as set out in that rule.

Complaint 4

On or about 5 December 2014 the Union breached rule 19d in that Mr Chapman was not granted an appeal following his suspension and his expulsion.

Complaint 5

On or about 9 March 2015 the Union breached rule 20c in that Mr Chapman was not granted an appeal following his suspension and his expulsion.

At the hearing before me on 13 April 2016, Mr Chapman represented himself and gave oral evidence. The Union was represented by Mr Stuart Brittenden of counsel, instructed by Mr Edward Cooper and Mr Andrew Sladen of Slater and Gordon, solicitors. Oral evidence for the Union was given by Mr John-Paul McHugh, the Union's Assistant General Secretary and Mr William Lambe, a former National Officer of Community. All three witnesses had provided written witness statements. There were also in evidence the rules of the Union and a 424 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. Both parties provided written skeleton arguments.

Findings of Fact

3. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
4. At the relevant time Mr Chapman was self-employed. He had changed his name from Murphy to Chapman on 30 May 2014 on getting married. Having been a member of the ISTC (the former name of Community) when he worked in the steel industry, he rejoined the Union on 29 March 2012 and became the Branch Secretary of its East Coast Community branch on 25 June 2012. The East Coast Community branch is a general branch covering workers in different employments,

roughly between Berwick and Scarborough. I was told that this branch had elected branch committee members but that the branch committee has never met.

5. Community has about 26,500 members. It is divided into regions. This case concerns its Region 2, which has an office in Middlesbrough. Mr Roy Rickhuss is the General Secretary of the Union.
6. Three other people are relevant to the events in question. Mr Simon Galloway was a friend of Mr Chapman who was recruited into the Union by him on 19 November 2014. Mr Galloway was employed by Tesco and was already a member of USDAW and one of its shop stewards. He was said to be a member of the Green Party. He became a member of Mr Chapman's branch but resigned on 24 December 2014. Ms Anna Turley was a member of a different branch of Community within Region 2. The Union supported her in becoming the Labour Party prospective parliamentary candidate for Redcar on 28 July 2012 and she was elected to Parliament in May 2015. Mr Tom Blenkinsop is a member of Community and the branch secretary of its Parliamentary branch. He was elected to Parliament for Middlesbrough South and East Cleveland in 2010 and re-elected in May 2015.
7. The relevant chronology begins on 30 October 2014 when Ms Turley contacted her local Police and Crime Commissioner with concerns about her security. She stated in an email to Mr McHugh, Assistant General Secretary of the Union, of 8 December 2014 that this was on the back of tweets about her by Mr Chapman and Mr Galloway. Mr Chapman had deeply held concerns about her conduct as a prospective parliamentary candidate. The tweets mainly concerned the manner in which she was selected and the role of her partner in that process, as well as her ownership of a flat in London and her proposed living arrangements as an MP. Mr Chapman stated that he had sought to raise these matters with her in correspondence on numerous occasions but was frustrated at getting no replies. On the other hand, Mr McHugh gave evidence that Ms Turley had raised with him that she was left feeling threatened and intimidated by Mr Chapman's repeated questions and his two visits to her office (one being when she was not there).
8. Against this background, there was a meeting of the Union's North East Regional Forum on 1 December 2014, attended by Mr Chapman and Mr Galloway. Nothing of any relevance occurred at that meeting but subsequently, at 6.52pm, Mr Galloway tweeted "My first time at a @CommunityUnion meeting. Disappointing that community backed ppc @annaturley failed to attend". At 9.23pm that same evening Ms Turley sent an email to Mr Rickhuss, General Secretary and Mr McHugh. It was headed "Simon Galloway" and began "*I am writing to send a formal complaint about a new member of Community Union in Region 2, Simon Galloway...*". She set out Mr Galloway's above tweet and stated that it was clear that his only purpose in joining the Union was to have a go at her. The majority of this email refers to Mr Galloway but Mr Chapman is named as having recruited him, as having had allegations made against him of abusive and bullying behaviour towards another female prospective parliamentary candidate, as being the author of offensive tweets that Ms Turley was having to put up with "from these two individuals" and as having turned up at her office making her feel unsafe and threatened. Some example tweets were attached to the email, including 27 from Mr Galloway and eight from Mr Chapman.

9. On 2 December 2014 Mr Chapman sent an email to the Union. It is headed "Complaint Re Mr Tom Blenkinsop". It refers to allegedly abusive tweets that Mr Blenkinsop had sent after the meeting of the Regional Forum to "a member I had recently recruited". The email states "I wish to complain that these actions were disgraceful, disproportionate ..." and concludes "*I wish to discuss this with senior leadership of the Union and expect an apology from Mr Blenkinsop for his disgraceful comments.*"
10. A considerable number of events occurred on 3 December 2014 which I will deal with under two headings.
 - 10.1 Mr Chapman's complaint against Mr Blenkinsop.
 - 10.1.1. The General Secretary sent a letter to Mr Chapman informing him that the matter had been passed to the Union's Lead Organiser Steve Farrell who would contact him shortly.
 - 10.1.2 The General Secretary sent an email to Steve Farrell forwarding a copy to Mr Chapman's email and asking him to make contact with Mr Chapman after having discussed the matter with the General Secretary.
 - 10.1.3 Mr Chapman sent an email to the Union headed "Further Complaint Re Tom Blenkinsop". It included a number of tweets from Mr Blenkinsop which he considered to be abusive and threatening. The email concludes "*I wish to complain again about the bullying of me by the MP*".
 - 10.2 Ms Turley's complaint against Mr Galloway, including Mr Chapman.
 - 10.2.1 The General Secretary sent a letter to Mr Bill Lambe, a National Officer, asking him to investigate the complaint in line with rule 20. This rule deals with disciplinary matters.
 - 10.2.2 Mr Lambe spoke with Ms Turley on the telephone. He gave evidence that it was apparent she felt intimidated and he was concerned that she was considering involving the police and solicitors. Mr Lambe discussed the matter with Mr McHugh who gave him more of the background.
 - 10.2.3 Mr Lambe caused a letter to be sent to the General Secretary recommending the suspension from membership of Mr Chapman and Mr Galloway under rule 20 pending investigation.
 - 10.2.4 The General Secretary wrote to Mr Chapman informing him that a complaint had been made against him on 1 December 2014 which the National Officer appointed to investigate the matter deemed to be a serious matter. The letter went on to inform Mr Chapman that he was suspended. A similar letter was sent to Mr Galloway. The letter did not name Ms Turley or give any details of the complaint. It enclosed a copy of the Union's rule book.

11. On 4 December 2014 Ms Turley sent an email to Mr McHugh with a note headed "Re Terry Chapman and Simon Galloway". She described them as "displaying obsessive, bullying and intimidating behaviour" towards her. She provided brief responses to the concerns about which Mr Chapman had been making enquiries (her selection procedure and her London flat) and enclosed a number of tweets and Facebook posts, including 19 tweets from Mr Chapman, one of which suggested a protest every week outside Ms Turley's office.
12. Also on 4 December 2014 Mr Chapman responded to the General Secretary's letter of 3 December by which he was suspended. He queried what had happened to his complaint about Mr Blenkinsop and indicated that he was prepared to come to a compromise. However, he did not seek to appeal his suspension or refer to it at all.
13. On 6 December 2014 Mr Chapman emailed the Union with further tweets from Mr Blenkinsop. He concluded "I ask Ray/Steve to intervene as soon as possible to resolve this".
14. By 11 December 2014 Mr Lambe had completed his initial investigations into Ms Turley's complaint against Mr Chapman and he submitted a factual report to the National Executive Council (NEC). This report also made reference to Mr Chapman's complaint about Mr Blenkinsop, commenting that a meeting between Mr Chapman and Mr Farrell was being scheduled for early 2015.
15. On 19 December 2014 Ms Turley emailed Mr McHugh sending him a further selection of tweets about her, 11 of which were by Mr Chapman.
16. Based on Mr Lambe's report, the NEC decided that charges should be put to Mr Chapman and Mr Galloway. On 23 December 2014 Mr Lambe wrote to Mr Chapman informing him of the decision of the NEC. For the first time, Mr Chapman was officially informed that the original complaint had been made by Anna Turley. The charge for Mr Chapman to answer as follows:

"You have been using Community trade union to facilitate an obsessive campaign of systematic bullying and harassment against another member both on social media as well as at Union meetings and through the recruitment of Simon Galloway. These actions have brought the Union into disrepute and have impeded the Union's industrial and political agenda."

Mr Chapman was given until 9 January 2015 to submit a written response to the charge.

17. On 24 December 2014 Mr Galloway resigned from the Union.
18. Also on 24 December 2014, Mr Chapman emailed Mr Lambe strongly objecting to the charge and its implications. He stated that he would not be gagged and asked for details of the specific allegations. He commented that he believed his questioning of Ms Turley was tenacious but not obsessive. He also asked for an update on his complaint against Mr Blenkinsop and asked if Mr Blenkinsop had

been written to as he had been written to. Mr Chapman concluded by stating that he would be happy to come to a sensible compromise.

19. In early 2015 there continued to be frequent exchanges of emails between Mr Chapman and the Union. The tone of Mr Chapman's emails indicated an increasing annoyance at the difference in the way that Ms Turley's complaint against him was being treated compared to his complaint against Mr Blenkinsop. He also continued to assert his right to raise his concerns about a prospective parliamentary candidate.
20. On 4 January 2015 Mr Chapman emailed Mr Lambe with regard to Ms Turley's complaint and commented on the questions that he considered Ms Turley was continuing to fail to answer. His letter concluded, *"I also reserve the right to raise this matter publicly in due course. And for as many occasions as I choose. In as many forums as I decide. And right up to the election if I wish."*
21. On 6 January 2015 Mr Chapman emailed the General Secretary asking for a copy of Mr Lambe's report to the NEC and an update on his complaint against Mr Blenkinsop. He stated *"I am still prepared to reach a compromise on this. However if we are unable to do so then I will shout from the rooftops about the abuse that I feel I am being subjected to ...The selective application of the rules is corrupt."*
22. On 9 January 2015 Mr Chapman emailed the General Secretary complaining that he had still not been given sufficient detail to enable him to respond fully to the charge. He concluded by saying, *"This is my final offer to reach a compromise agreement"*.
23. Also on 9 January 2015 Mr McHugh wrote to Mr Chapman asking him to refrain from emailing the General Secretary at this time and to conduct the process in a comradely manner rather than making threats.
24. On 14 January 2015 Mr Chapman emailed the Union complaining about the different treatment his complaint about Mr Blenkinsop was receiving compared to that of Ms Turley against him and about the Union's failure to give him specific details of the allegations against him. The email concludes *"I advise that my '48 hour offer' lapses in 24 hours after which point I will feel at liberty to make public my frustration that lies of Anna Turley had me suspended and the abuse of Tom Blenkinsop goes unaddressed"*.
25. On 15 January 2015 Mr Chapman emailed the General Secretary repeating his outstanding concerns. The email concludes *"A wrong is being perpetrated against me and he (Mr McHugh) is allowing it, overseeing it. I ask you to intervene to stop this abuse. I had made an offer to compromise on this. The timescale for such a compromise ends at 3pm today. I am prepared to extend that by a further 24 hours in order that you may do the right thing but I also understand you need time to consider matters."*

26. Mr McHugh wrote again to Mr Chapman on 21 January denying any procedural manipulation by the Union and again expressing his wish that the process be conducted in a comradely manner.
27. On 21 January 2015, a meeting was to take place between Mr Chapman and Steve Farrell to discuss Mr Chapman's complaint against Mr Blenkinsop. Steve Farrell's car had a puncture on the way to the meeting, which was rearranged for 2 February.
28. By 22 January 2015, Mr Lambe had completed his more detailed report to the NEC on Ms Turley's complaints against Mr Chapman, which included an attachment with some 56 items. The report concluded by commenting that the NEC now had the task of deciding whether the charge should be dropped or should be processed to a disciplinary tribunal.
29. On 28 January 2015, Mr Chapman emailed the General Secretary with what he described as his final offer to settle the matter. He stated, "*I will withdraw my complaints against others and resign from the Union without a blemish on my reputation if the Union agrees to pay compensation to me to reflect upset and stress of this abuse, the lies and inconsistent application of the rules, as well as loss of income and opportunities.*"
30. On 29 January 2015 Mr Chapman emailed the Union. He stated, "*Please advise that without appropriate compensation from the Union for the stress, the worry and time spent dealing with this issue then I have no alternative (or desire) to resign. I offered to resign as much as a final goodwill gesture that would allow us all to put this behind us, especially so close to the General Election ... Union membership is being abused to use the offices of the Union to continue this vendetta. And I also reserve the right to shout this from the rooftops*". Mr Chapman was in receipt of an honorium from the Union of about £500 p.a for being branch secretary for which he might have claimed compensation.
31. Steve Farrell met with Mr Chapman at the Middlesbrough offices of the Union on 2 February 2015 to discuss Mr Chapman's complaint against Mr Blenkinsop. On 16 February Mr Farrell wrote to Mr Chapman informing him that he would not be taking his complaint against Mr Blenkinsop any further. He indicated his view that the twitter exchange in question regarded political views and opinions which were a personal matter between the two individuals, not a matter for the Union. He further noted that no complaint had been received from Mr Galloway and no Union rules had been broken.
32. On 26 February 2015 there were again a number of relevant events which I will deal with separately.
 - 32.1 At 11.31am Mr McHugh wrote to Mr Chapman to inform him that the NEC had decided that the charge against him was to proceed to a disciplinary tribunal. He stated that "all further and better particulars" would now be furnished to him and arrangements made for a hearing at the Region 2 office.

- 32.2 At 11.41am Mr Chapman emailed the Union. He stated that he was appalled but not surprised. He described Ms Turley and Mr Blenkinsop as “liars, bullies and downright nasty people” and stated, *“I truly look forward to battling them through this process and the Union officials that have corruptly aided and abetted them. Shame on them”*. He said he looked forward to receiving details of Ms Turley’s complaint and shouting from the rooftops about the actions of Ms Turley and Mr Blenkinsop. He also queried why Ms Turley’s complaint was a matter for the Union but not his complaint against Mr Blenkinsop.
- 32.3 At 12.19pm Mr Chapman emailed the General Secretary. He stated, *“The application of rules in different ways to different people, especially when it is powerful and connected people that are beneficiaries is corrupt. I therefore put you on notice of my concerns and expect you to do something about it. Jimmy Saville will be laughing in his grave. The victims of abuse in Rotherham will be disgusted. And you, sir, need to have a good think about your role and the role of others in this abuse. If Blenkinsop and Turley are allowed to abuse the Union’s offices for their own selfish gain, whilst you are General Secretary, then you are not fit to be General Secretary. I look forward at last to receiving the details of the allegations. And fighting them. And telling the world and his brother on Teesside and beyond of the corruption at play within the Union.”*
- 32.4 At 12.33pm Mr Chapman emailed Mr McHugh. He stated, *“You may, in due course, corruptly find me guilty, but that doesn’t matter to me – because what my motivation is, and will always be, is to challenge abuse and corruption by powerful people (on the left or the right), especially when such abuse is against those who have the audacity to challenge them. Applying rules differently to different people is corruption – shame on those involved. And I will campaign against you, the Union and party from now until May and I am sure Community members of Teesside will be appalled at how their Union is being corruptly ran”*.
- 32.5 Also that day Mr Chapman tweeted *“When powerful people abuse their position I get determined to tell the world.... Watch this space”*.
33. On 3 March 2015 Mr Chapman sent an email to the General Secretary headed “Corruption”. It accused the General Secretary of cowardly behaviour and stated *“Please answer my legitimate question today. And stop this abuse of the Union’s offices, this corruption and your collusion in this corruption (and de facto corruption) NOW.”*
34. The following events occurred on 5 March 2015.
- 34.1 Mr Chapman emailed the General Secretary indicating his wish to appeal against the decision of Steve Farrell not to take further his complaint against Mr Blenkinsop. He commented, *“Your record of not responding to my emails, questions etc and that of other*

longstanding members suggests you are not fit to be General Secretary.”

- 34.2 Mr McHugh wrote to Mr Chapman stating that he had serious concerns about his continuing communications and commented that they may give rise to further disciplinary action. He urged Mr Chapman to focus on the charges he was facing and stated that he was seeking legal advice about the process from now on.
- 34.3 Mr Chapman tweeted the following, *“How long has @CommunityUnion been corrupt, exploited by bullies and led by people more interested in their salaried Union careers than justice?”*
35. At 1.20pm on 6 March 2015 Mr McHugh sent an email to all members of the NEC together with copies of all recent email exchanges etc with Mr Chapman. He requested that the NEC consider making a decision under rule 19a that Mr Chapman’s membership be terminated forthwith on the basis that his conduct is bringing the Union into disrepute and that, further and in the alternative, the Union accepts Mr Chapman’s conduct as bringing his membership to an end. The email concluded by stating that due to the intensity of Mr Chapman’s activities the Union was seeking a response by 5pm that day.
36. Later the same day, 6 March 2015, Mr McHugh wrote to Mr Chapman. He stated
- “The National Executive Council have today resolved to accept your conduct (namely your abusive, and at times public, communications and threats), which fundamentally undermines your membership relationship with the Union, as bringing your membership of the Union to an end forthwith.
- Further, and in the alternative, that your membership terminates forthwith under rule 19a as this conduct in the opinion of the National Executive Council, brings the Union into disrepute.”
37. On 9 March 2015 Mr Chapman emailed Mr McHugh to appeal against the decision to expel him from the Union.
38. On 19 March 2015 Mr McHugh responded to Mr Chapman informing him that there was no appeal against the NEC’s decision to accept his conduct as bringing his membership to an end nor an appeal under rule 19 against the decision to terminate his membership.
39. On 26 March 2015 Mr Chapman emailed the General Secretary to complain about the procedures adopted for dealing with Ms Turley’s complaint against him, with his complaint against Mr Blenkinsop and with his expulsion. He explained that before making an application to the Certification Office, he was obliged to exhaust all avenues to resolve the matter. The General Secretary responded on 10 April, asking Mr Chapman to set out the grounds for his complaint in respect of each of the three matters. Mr Chapman responded to that letter on 16 April stating that it was not incumbent upon him to advise the Union of the specific rule broken.

40. On 6 May 2015 Mr Chapman emailed the General Secretary to ask when he might expect a response to his complaints of double standards, corruption, abuse of power and an unfair process etc. He sent a further email to the General Secretary on 15 May seeking a response. That email concludes, *“If I have not had a response, or proposals to settle this matter, by this time next week then I shall be obliged to make a complaint to the appropriate authorities and bring this matter to the attention of member and the media.”*
41. Mr Chapman commenced this complaint to me by an application which was received at my office on 14 July 2015.
42. On 3 March 2016, during the course of preparing this matter for a hearing, the Union offered Mr Chapman the opportunity of an appeal with a view to resolving those parts of his complaints that relate to the denial of such an appeal. Mr Chapman declined this offer.

The Relevant Statutory Provisions

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

108A Right to apply to Certification Officer.

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

(2) The matters are -

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

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

...

(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).*

(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.*

108B Declarations and orders.

(1) – (2) ...

(3) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing 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.*

The Relevant rules of the Union

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

Rule 3 Membership

3h. The NEC shall allow all persons to apply to and become members but it shall have the right to decline applications for membership, if not to do so would result in the membership base of the union being such that the union would not be comprised mainly of workers. The NEC may also decline an application for membership if the applicant has previously been expelled from any trades union for misconduct or in order to comply with a finding of a Trades Union Congress Disputes Committee. No person shall be admitted into membership of Community if by choice they are members of, supporters of, or sympathisers with, organisations which are opposed to the objects of the union.

Rule 19 Termination of Membership and Resolution of Disputes within the Union

a. Subject to such statutory restrictions as may apply, membership of the union may be terminated if a member acts in a way which, in the reasonable opinion of the NEC, brings the union into disrepute or for one or more of the reasons set out in rule 3h. Except where removal from membership is due to arrears of subscription or resignation, the procedures set out in this rule shall be followed.

b. The following procedures shall apply for the resolution of disputes within the union. Disputes covered by this rule shall be disputes between members, disputes between members and their branches, disputes between branches, disputes between branches and their regional officials, and disputes between branches and the NEC. No other matter shall be capable of forming a dispute within the union for the purpose of resolution under this rule.

c. A member who has a dispute with another member shall refer it to the branch committee for consideration and resolution. If that does not achieve resolution it may be referred to the relevant National Officer or equivalent, whose decision shall be final. In the event of a dispute between a member and a branch or between a branch and a regional official or between a branch and another branch or branches it shall be referred for determination by the NEC. In the event that the matter is not satisfactorily resolved or if the matter is a dispute between a branch and the NEC it may be referred by either party to the General Secretary whose decision shall be final.

d. All disputes and appeals raised by reference to this rule shall be submitted in writing with the reasons for the dissatisfaction. In the case of a decision by the NEC or the General Secretary that decision shall be set out in writing.

Rule 20 Disciplinary matters

- a. (i) subject to statutory requirements, the union shall have the power to discipline any member in accordance with the provisions of these rules. This rule shall apply where the member's conduct has brought the union into disrepute, which shall include conduct determined to be contrary to the interests or any object of the union.*

(ii) Without limitation, this shall include behaviour by members which involves libelling or slandering the union or any official of it; disrupting meetings of the union; using offensive language; being drunk and disorderly at any official meeting of the union; improperly using the union's funds or property; publishing or displaying literature in an environment where such publication is likely to be associated with the union and considered to be offensive or contrary to the interests of the union, damaging or destroying property of the union; being found to be a member of an organisation the objects of which are contrary to any of the rules or objects of the union; and failing to comply with any requirement imposed under this rule.

b. Where any member, branch or officer believes that a member may have so conducted him or herself so as to bring the union into disrepute such as to justify disciplinary action under this rule, a written report shall be made by the complainant. The complaint shall first be investigated by a National Officer or equivalent, who shall investigate and produce a written report to the NEC. On receipt of a written report under this rule the NEC shall first exclude three of its members, a different National Officer or equivalent, the three trustees, and the General Secretary from consideration of the report and its subsequent discussions of the matter then having considered the report cause such further enquiry, if any, to be made to verify the facts as it considers necessary. If the NEC believes a charge should be proceeded with then or after further enquiry, it shall direct the investigating National Officer to formulate an appropriate charge with reasons and forward it to the member.

If a complaint made against a member is deemed to be of a nature that requires it then the investigating National Officer may ask the General Secretary acting on the authority of the NEC to suspend the member from participating in all affairs of the union pending the outcome of the disciplinary process.

The member shall be given the opportunity to respond to a charge by written reply. If, after considering that response, the NEC considers that the member has a case to answer, then the NEC shall summon a disciplinary tribunal comprised of the three excluded NEC members, who shall be supported by the excluded National Officer or equivalent. The tribunal shall be conducted in accordance with the requirements of natural justice and, on conclusion of the disciplinary hearing, a decision shall be reached by the tribunal who shall make a recommendation to the NEC as to how to proceed. The recommendations available to the tribunal shall be that the matter has not been proved and that no further action be taken or that the matter has been proved and action should be taken of a specified type. The NEC shall apply the recommendation of the tribunal.

The types of action that may be specified by the tribunal may be a reprimand, suspension from all union offices for a specified period of time, suspension from membership for a specified period of time with loss of rights to benefits during that time, or expulsion from the union.

c. There shall be a right to an appeal against a decision, and/or against a punishment other than a reprimand, to the three excluded trustees, who shall be assisted by the General Secretary. The decision of the three trustees shall be final. If they find the charge proved or if the appeal is just against punishment they may apply any one of the sanctions specified in 20b above.

CONSIDERATIONS AND CONCLUSIONS

Complaint One

45. Mr Chapman's first complaint is as follows:

Complaint 1

"On or around 1 December 2014 Community breached rule 19c in that the complaint against Mr Chapman by Anna Turley was not referred to the branch committee for consideration and resolution but was elevated straight to the national officers/bodies."

46. Rule 19c of the rules of the Union provides as follows:

rule 19 Termination of Membership and Resolution of Disputes within the Union

19(c). A member who has a dispute with another member shall refer it to the branch committee for consideration and resolution. If that does not achieve resolution it may be referred to the relevant National Officer or equivalent, whose decision shall be final. In the event of a dispute between a member and a branch or between a branch and a regional official or between a branch and another branch or branches it shall be referred for determination by the NEC. In the event that the matter is not satisfactorily resolved or if the matter is a dispute between a branch and the NEC it may be referred by either party to the General Secretary whose decision shall be final.

Summary of Submissions

47. Mr Chapman submitted that the complaint made by Ms Turley on 1 December 2014 was not made against him but against Mr Galloway. He argued that, even though the Branch Committee of the East Coast Community branch had never previously met, the General Secretary should have caused it to meet to consider Ms Turley's complaint against him. Mr Chapman maintained that when a complaint is made, the appropriate procedure to be followed is that in rule 19c. He maintained that his claim was in time as, from the outset, he had continually sent emails to the Union about Ms Turley's complaint, disputing the way in which it was being handled. He further maintained that I had jurisdiction over a potential breach of rule 19c as it is headed "Termination of Membership and Resolution of Disputes within the Union" and therefore comes within section 108A(2)(b) of the 1992 Act. He further argued that a "dispute" for the purposes of rule 19c includes the imposition of discipline by the Union and that any ambiguity in the meaning of the word dispute should be resolved against the Union which had the ability to remove any ambiguity should it so wish.
48. Mr Brittenden, for the Union, submitted that this claim is out of time, out of jurisdiction and misconceived. He noted that it complains of an event on or around 1 December 2014 and that Mr Chapman's complaint to my office was not received until 14 July 2015, more than six month after the event about which it complains. He further argued that there was no basis for Mr Chapman to claim the benefit of the extended limitation period in section 108A(6)(b) and (7) of the 1992 Act. Mr Brittenden further submitted that rules 19b, c and d are in reality a grievance procedure and so outside section 108A(2)(b) which applies to rules relating to disciplinary proceedings. In this connection he referred to the case of **Fenton v. GMB D/16-20/2004 (Certification Officer)** and **Irving v. GMB (2008) IRLR 202 (EAT)**. Mr Brittenden also observed that the Union had a discretion to invoke its disciplinary powers under rule 20 and argued that it is misconceived for Mr Chapman to suggest that the same issue must be processed through the grievance procedure in rule 19 before being processed as a disciplinary matter under rule 20.

Conclusion – Complaint One

49. The 1992 Act gives me a limited jurisdiction to consider breaches of trade union rules. I may only consider certain categories of rule as provided for in section 108A(2). One of these categories is rules relating to "disciplinary proceedings by the union (including expulsion)". Mr Chapman argues that I have jurisdiction under this provision to consider the lawful application of rule 19c. I disagree. In my

judgement, rules 19b, c and d do not relate to “disciplinary proceedings by the union (including expulsion)”. They are in effect a grievance procedure to enable the resolution of differences that may emerge at different levels within the Union. These rules do not provide for the imposition of a sanction on either party to the dispute which is to be considered for resolution. Some confusion may arise from the inclusion of the words “termination of membership” in the title to rule 19 but this is clearly a reference to rule 19a and not to rules 19b, c and d. Accordingly I find that in complaining about a potential breach of rule 19c, Mr Chapman is complaining about a rule which is outside my jurisdiction.

50. Had this complaint been within my jurisdiction, I would have had to consider whether Mr Chapman had brought it in time. Section 108A(6) of the 1992 Act provides that an application must be made within the period of six months starting with the day on which the breach is alleged to have taken place. The date of the alleged breach was 1 December 2014. The date the application was made to me was 14 July 2015. This is more than six months from the date of the alleged breach and accordingly this claim was brought outside the primary limitation period. However, section 108A(6)(b) provides for an extended limitation period should the claimant have invoked an internal complaints procedure of the union within the primary limitation period. On the facts of this case, it would not appear that the Union has such an internal complaints procedure. In any event, I find that Mr Chapman did not raise within the primary limitation period the matter of Ms Turley’s complaint not being referred to the Branch Committee for consideration and resolution through any procedure of the Union . Accordingly had this complaint been in jurisdiction I would have found that it had been made out of time.
51. I further find that, on the proper construction of rule 19c, it is not for the General Secretary to refer a matter to the Branch Committee under that rule but for the member who has a dispute with another member.
52. For the above reasons I refuse to make the declaration sought by Mr Chapman that on or around 1 December 2014 the Union breached rule 19c in that the complaint against Mr Chapman by Ms Turley was not referred to the Branch Committee for consideration and resolution but was elevated straight to the National Officers/Bodies.

Complaint Two

53. Mr Chapman’s second complaint is as follows:

Complaint 2

“On or around 16 February 2015 Community breached rule 19c in that Mr Chapman’s complaint against Tom Blenkinsop was dismissed without having been considered by the branch committee”.

54. Rule 19c is set out above.

Summary of Submissions

55. Mr Chapman asked me to consider the submissions he had made regarding his first complaint in this matter also. He submitted that his complaint against Mr Blenkinsop should have been referred to Mr Blenkinsop’s Branch Committee for consideration and resolution. Mr Chapman also commented that he considered it

inappropriate that the General Secretary had spoken with Mr Farrell before Mr Farrell had begun looking into Mr Chapman's complaints and that he considered that Mr Farrell was wrong to consider that Mr Blenkinsop's tweets were a personal matter, not a Union matter.

56. Mr Brittenden, for the Union, again submitted that rule 19c falls outside my jurisdiction under section 108A(2) of the 1992 Act. On the facts, he submitted that Mr Chapman had not made a disciplinary complaint under rule 20 by his email to the General Secretary of 2 December 2014. Whilst noting that Mr Chapman's email is headed "Complaint Re Tom Blenkinsop" and refers to Mr Chapman's wish to complain, he placed emphasis on the final sentence of the email which states "I wish to discuss this with senior leadership of the Union and expect an apology from Mr Blenkinsop for his disgraceful comments". Mr Brittenden observed that the Union had acceded to this request by facilitating a meeting to discuss his complaint with a senior official, Mr Farrell. He also repeated his argument that under rule 19c it is not for the General Secretary to refer a matter to the Branch Committee but for the person who has a dispute with a member. He further maintained that, as Mr Chapman and Mr Blenkinsop belonged to different branches, it was not possible for a Branch Committee to consider his complaints.

Conclusions – Complaint Two

57. I have already found in dealing with Mr Chapman's first complaint that rules 19b, c and d do not fall within my jurisdiction under section 108A(2) of the 1992 Act. That in itself is sufficient to dispose of this complaint. I also repeat my finding that the General Secretary is under no duty to submit a rule 19 complaint to a Branch Committee. I find that it is the duty of the member who has the dispute to make such a reference.
58. I also find that the Union made a correct initial distinction between the nature of the complaint made by Ms Turley against Mr Chapman and the complaint made by Mr Chapman against Mr Blenkinsop. The facts of each complaint can be distinguished so as to enable the Union to have reached a reasonable decision that Ms Turley's complaint was the more serious, having regard in particular to the concluding words of Mr Chapman's email of 2 December 2014 that he wished to discuss this matter with senior leadership and that he expected an apology from Mr Blenkinsop. Nevertheless, he later made it abundantly clear, as appears from his many subsequent emails, that he wished his complaint to be processed in the same way as that of Ms Turley. Neither Mr Chapman nor Ms Turley had expressly requested that their complaints be processed under rule 20 yet the Union decided to process Ms Turley's complaint under rule 20 but not Mr Chapman's complaint. It is not for me to suggest how a union operates its rules, as long as it does so lawfully, but Community may wish to draw lessons from this case as to the circumstances in which rule 20 is invoked. In this regard it is helpful that the rules contain a sensible sieving mechanism for unmeritorious complaints. A National Officer shall make a report and the NEC shall consider whether any charge is merited. The NEC has a wide discretion in deciding if a charge should be proceeded with. Whilst I find that there was no breach of rule 19c on the facts of this case, the Union may wish to identify a way forward which clarifies the expectations of members and officials alike.

59. For the above reasons I refuse to make the declaration sought by Mr Chapman that on or about 16 February 2015 the Union breached rule 19c in that his complaint against Mr Blenkinsop was dismissed without having been considered by the branch committee.

Complaint Three

60. Mr Chapman's third complaint is as follows:

Complaint 3

"On or about 23 December 2014 the Union breached rule 20b in that the Union failed to forward to Mr Chapman an appropriate charge with reasons formulated by the investigating National Officer on behalf of the National Executive Council in relation to the complaint made against Mr Chapman by Anna Turley thereby denying Mr Chapman the opportunity to respond to the charge against him as set out in that rule."

61. Rule 20b of the rules of the Union provides as follows:

Rule 20 Disciplinary matters

*20(b). Where any member, branch or officer believes that a member may have so conducted him or herself so as to bring the union into disrepute such as to justify disciplinary action under this rule, a written report shall be made by the complainant. The complaint shall first be investigated by a National Officer or equivalent, who shall investigate and produce a written report to the NEC. On receipt of a written report under this rule the NEC shall first exclude three of its members, a different National Officer or equivalent, the three trustees, and the General Secretary from consideration of the report and its subsequent discussions of the matter then having considered the report cause such further enquiry, if any, to be made to verify the facts as it considers necessary. **If the NEC believes a charge should be proceeded with then or after further enquiry, it shall direct the investigating National Officer to formulate an appropriate charge with reasons and forward it to the member.** (my emphasis).*

If a complaint made against a member is deemed to be of a nature that requires it then the investigating National Officer may ask the General Secretary acting on the authority of the NEC to suspend the member from participating in all affairs of the union pending the outcome of the disciplinary process.

The member shall be given the opportunity to respond to a charge by written reply. If, after considering that response, the NEC considers that the member has a case to answer, then the NEC shall summon a disciplinary tribunal comprised of the three excluded NEC members, who shall be supported by the excluded National Officer or equivalent. The tribunal shall be conducted in accordance with the requirements of natural justice and, on conclusion of the disciplinary hearing, a decision shall be reached by the tribunal who shall make a recommendation to the NEC as to how to proceed. The recommendations available to the tribunal shall be that the matter has not been proved and that no further action be taken or that the matter has been proved and action should be taken of a specified type. The NEC shall apply the recommendation of the tribunal.

The types of action that may be specified by the tribunal may be a reprimand, suspension from all union offices for a specified period of time, suspension from membership for a specified period of time with loss of rights to benefits during that time, or expulsion from the union.

Summary of Submissions

62. Mr Chapman submitted that the letter from Mr McHugh to himself of 23 December 2014 expressed the charge against him in insufficient detail to satisfy the requirements of rule 20b. He observed that the charge must be accompanied by reasons and argued that no or insufficient reasons were given. He noted in

particular that the charge did not refer to any specific tweet or facebook post. In Mr Chapman's submission, the charge was not expressed in sufficient detail for him to respond appropriately, as he was required to do by rule 20.

63. Mr Brittenden, for the Union, submitted that this complaint was brought out of time and repeated his previous submissions in this regard. He further submitted that, on the facts, the charge drafted by Mr Lambe was an appropriate one and gave sufficient reasons, namely that Ms Turley had complained about his behaviour and his use of social media. He commented that the context of the charge is important and that Mr Chapman, as the author of the postings, would have had access to them and would have known what he had written. Mr Brittenden argued that the charge was obviously expressed in a way that enabled Mr Chapman to respond as he had in fact responded to the charge in his letters to the Union of 24 December 2014, 4 January 2015 and subsequent correspondence with Mr Lambe. He observed that in these letters Mr Chapman accepted that he had challenged Ms Turley with regard to her relationship with a Redcar councillor, the procedure for her selection as the prospective parliamentary candidate and her London flat but had defended his actions by saying that it was her failure to respond to questions that meant he was obliged to tenaciously enquire. Mr Brittenden observed that Mr Chapman's representations were at least partially successful as Mr Lambe's report to the NEC of 22 January 2015 removed any allegation against Mr Chapman's conduct at the regional forum on 1 December 2014. In his submission, rule 20b does not require the Union to state all the facts and matters it relies upon, as the requirement is merely to formulate an appropriate charge with reasons.

Conclusions – Complaint Three

64. In dealing with Mr Chapman's first complaint, I considered whether a complaint about an alleged breach that occurred on or about 1 December 2014 had been brought in time. I found that it had not been. I am now called upon to decide whether a complaint about an alleged breach that occurred on or about 23 December 2014 was brought in time. For the reasons set out at paragraph 50 above, I find that it was not brought in time.
65. If this complaint had been brought in time, I would have accepted Mr Brittenden's submission that a requirement to formulate an appropriate charge with reasons does not oblige the Union to provide the member to be charged with all the facts and matters that it would subsequently rely upon at a hearing. I observe that the member's response to a charge is to be put to the NEC for it to decide whether the matter should be dropped or should proceed to a disciplinary tribunal. If the matter is to proceed to a disciplinary tribunal, the Union is then under an obligation to provide the member with all the facts and matters upon which it intends to rely. I find that Mr Lambe's letter to Mr Chapman of 23 December 2014 was sufficient to satisfy the requirement in rule 20b for there to be an appropriate charge with reasons.
66. For the above reasons I refuse to make the declaration sought by Mr Chapman that on or about 23 December 2014 the Union breached rule 20b in that the Union failed to forward to Mr Chapman an appropriate charge with reasons,

Complaint Four

67. Mr Chapman's fourth complaint is as follows:

Complaint 4

"On or about 5 December 2014 the Union breached rule 19d in that Mr Chapman was not granted an appeal following his suspension and his expulsion".

68. Rule 19d of the rules of the Union provides as follows:

Rule 19 Termination of Membership and Resolution of Disputes within the Union
19(d). All disputes and appeals raised by reference to this rule shall be submitted in writing with the reasons for the dissatisfaction. In the case of a decision by the NEC or the General Secretary that decision shall be set out in writing.

Summary of Submissions

69. Mr Chapman submitted that it was wrong for him not to have been offered an appeal at the time he was suspended from membership. He stated in evidence that he thought he had submitted such an appeal in writing, although the Union had no knowledge of this and there was no documentary record of such an appeal in evidence. Mr Chapman argued that rule 19d refers to "appeals" and that the right to appeal in rule 19d applies to all "decisions", including the decision to suspend him. He accepted that he was not expelled on 5 December.
70. Mr Brittenden for the Union, submitted that this complaint was out of time, out of jurisdiction and misconceived. As to the issue of time and jurisdiction, Mr Brittenden repeated the submissions he had made on these issues in Mr Chapman's first complaint. Further, he argued that as at 5 December 2014, Mr Chapman had not been expelled and could not therefore appeal about his expulsion. He further argued that Mr Chapman had not sought to appeal against his suspension. He also observed that Mr Chapman's suspension was under rule 20b and that rule 19 was not engaged at this time.

Conclusions – Complaint Four

71. In deciding Mr Chapman's first complaint I made findings both on my jurisdiction to consider alleged breaches of rule 19b, c and d and on whether any complaint relating to an alleged breach earlier than 6 months before the complaint was brought was in time. For the reasons given at paragraphs 49 and 50 above, I find that rule 19d is not a rule relating to any of the matters listed in section 108A(2) of the 1992 Act and is therefore outside my jurisdiction. I further find that this complaint was brought outside of the time limit provided for in section 108A(6) of the 1992 Act.
72. In any event, I find this complaint to be misconceived for the reasons given by Mr Brittenden in his submissions. I do not accept that Mr Chapman submitted a written appeal against his suspension.
73. For the above reasons I refuse to make the declaration sought by Mr Chapman that on or about 5 December 2014 the Union breached rule 19d by not granting him an appeal against his suspension.

Complaint Five

74. Mr Chapman's fifth complaint is as follows:

Complaint 5

"On or about 9 March 2015 the Union breached rule 20c in that Mr Chapman was not granted an appeal following his suspension and his expulsion".

75. Rule 20c of the rules of the Union provides as follows:

Rule 20 Disciplinary matters

20(c). There shall be a right to an appeal against a decision, and/or against a punishment other than a reprimand, to the three excluded trustees, who shall be assisted by the General Secretary. The decision of the three trustees shall be final. If they find the charge proved or if the appeal is just against punishment they may apply any one of the sanctions specified in 20b above.

Summary of Submissions

76. Mr Chapman submitted that he was expelled from the Union summarily on grounds that were never put to him, without an opportunity to make representations, without a hearing and without an appeal. He argued that the procedure to expel a member is contained in rule 20 which provides for a right of appeal at rule 20c. He maintained that he sought to exercise his right of appeal but he was refused. He argued that his conduct did not amount to a repudiatory breach of contract as he was provoked by the Union's inconsistent treatment of his complaint against Mr Blenkinsop and that, whilst he may have expressed himself harshly, what he said was fair comment. He argued that he had to use strong language as otherwise the Union would not have taken any notice of him and he only acted as a whistleblower in wanting to expose what he considered to be an injustice.
77. Mr Brittenden, for the Union, submitted that I had no jurisdiction to consider this complaint as section 108A(3) of the 1992 Act provides that the applicant must be a member of the union, or had been one, at the time of the alleged breach. He observed that Mr McHugh's letter of 6 March 2015 had terminated Mr Chapman's membership of the Union "forthwith" and accordingly he had not been a member of the Union on 9 March, the date of the alleged breach. In any event, Mr Brittenden argued that Mr Chapman did not have a right of appeal under rule 20 as he had not been expelled under rule 20. He argued that Mr Chapman's membership had been terminated under rule 19a or that the Union had accepted Mr Chapman's repudiatory breach of the contract of membership. As to the express termination of Mr Chapman's membership under rule 19a, Mr Brittenden argued that rule 19a provides for a freestanding right for the Union to terminate a person's membership summarily, akin to the right of summary dismissal in employment law. He argued that, in the circumstances provided for within rule 19a, the Union has the right to terminate a person's membership without a hearing and without an appeal. He submitted that the Union had the right to have such a rule and that I should give effect to it. As to the Union's acceptance of Mr Chapman's alleged repudiatory conduct, Mr Brittenden argued that a Union member is subject to an implied term of mutual trust and confidence or an implied duty of cooperation, as explained by Lord Steyn in **Malik v BCCI (1997) ICR 606 HL**. The implied term approved by the House of Lords is as follows:

“... without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”

Mr Brittenden submitted that I should consider the whole of Mr Chapman’s conduct but he referred specifically to six matters. First, to Mr Chapman’s attempt to extort compensation should he withdraw his complaint and resign from the Union. Secondly, to the imposition of arbitrary deadlines for reaching a compromise. Thirdly, to threats to communicate negative and hostile messages on social media. Fourthly, to failing to heed Mr McHugh’s fair and measured guidance on how he should conduct himself in this matter. Fifthly, to the deeply insulting and inappropriate, vindictive and malicious attacks on the leadership/senior officials of the Union, at one time allegedly likening their behaviour to the actions of Jimmy Saville or the abuse that occurred in Rotherham. Sixthly, to the threat to “campaign against you, the Union ... from now until May” in his email of 26 February 2015 and his tweet of 5 March 2015 in which he accused the Union of being corrupt. Mr Brittenden submitted that rule 20 was simply not engaged on the facts of this case as Mr Chapman’s termination of membership was under rule 19a or as a consequence of his repudiatory breach of contract. He concluded that there was therefore no breach of rule 20c.

Conclusion – Complaint Five

78. The Union submits in the alternative that Mr Chapman’s membership of the Union terminated by reason of its acceptance of his alleged repudiatory breach or by the NEC exercising its powers under rule 19a to terminate his membership summarily.
79. I deal firstly with whether Mr Chapman’s membership of the Union terminated by reason of the Union’s acceptance of his alleged repudiatory breach. I accept Mr Brittenden’s submission that a contract of membership of a trade union is a contract which is subject to all the usual contractual principles which are of general application. Accordingly, I accept that there may be a general duty of cooperation between members and their union and between members inter se, ephemeral though such a duty may be and its precise content being dependent upon context. I do not accept, however, that the duty of trust and confidence to be found in contracts of employment and as described in **Malik v BCCI** is directly applicable to the contract of membership of a trade union, which is of a substantially different nature. In my judgement any such duty of cooperation of union members is significantly lower and must be identified on a case by case basis in context.
80. On the facts of this case, I observe that Mr Chapman’s communications with the Union became increasingly sharp following his suspension on 3 December 2014, when he was told nothing more than a complaint had been made against him which was deemed to be of a serious nature. At that stage he was not even told the name of the person who had made a complaint about him. He next received notice of the charge against him on Christmas Eve, after which Mr McHugh saw fit to remind him to act in “a comradely manner” in his letters of 9 and 13 January 2015. Events escalated when Mr Chapman was told by Mr Farrell on 16 February 2015 that his complaint against Mr Blenkinsop was to be taken no further, whilst on 26 February he was informed that he must face a disciplinary tribunal. It was at this stage that Mr Chapman’s communications became most intemperate and caused Mr McHugh to warn him on 5 March that his recent emails may give rise to further disciplinary

issues. At that stage the Union was still contemplating the use of its rule 20 disciplinary procedures against Mr Chapman. Matters changed dramatically the following day. At 1.20pm on the 6 March Mr McHugh sent a circular email to all members of the NEC requesting that they consider terminating Mr Chapman's membership under rule 19a or accepting his conduct as bringing his membership to an end. A reply was required by 5pm. There was no opportunity for discussion, no opportunity to seek clarification or more information and no involvement of Mr Chapman. Later that day Mr Chapman was effectively expelled from the Union. I have considered Mr Chapman's conduct from 3 December 2014 as a whole and as a series of separate incidents. There is no doubt that he expressed himself intemperately, even after being given a warning not to do so. However, there is a distinction between a person behaving in a culpable manner and a person being in repudiatory breach of his or her contract of membership. In my judgement, Mr Chapman's conduct did not cross that line. Mr Chapman had laid himself open to further disciplinary action being taken against him which, together with the existing disciplinary action, must have put his continued membership at risk. Rather than take this course, however, the Union acted hastily to rid itself of Mr Chapman forthwith. In as much as it relied upon his allegedly repudiatory breach to achieve this end, the Union acted wrongly. I find as a fact that Mr Chapman was not in repudiatory breach of his contract of membership.

81. I now consider the Union's termination of Mr Chapman's membership under rule 19a. This rule provides as follows:

"Subject to such statutory restrictions as may apply, membership of the union may be terminated if a member acts in a way which, in the reasonable opinion of the NEC, brings the union into disrepute or for one or more of the reasons set out in rule 3h. Except where removal from membership is due to arrears of subscription or resignation, the procedures set out in this rule shall be followed."

Rule 19a gives the Union the right to terminate membership in a number of defined circumstances and where, in the reasonable opinion of the NEC, the member brings the Union into dispute. The difficulty in applying this rule, however, lies in its final sentence, *"Except where removal from membership is due to arrears of subscription or resignation, the procedures set out in this rule shall be followed."* Firstly, "arrears of subscription" and "resignation" appear to have no relevance to the preceding sentence. Secondly, whilst this sentence appears to require some procedure to be followed for there to be a rule 19a termination, the nature of that procedure is far from clear. It refers to "the procedure set out in this rule" but there is no appropriate procedure in rule 19. As I have previously analysed, rules 19b, c and d provide for a dispute resolution or grievance procedure, not for the circumstances envisaged in rule 19a. It is not unusual that Union rules contain anomalies, which do not give themselves readily to the usual principles of contractual interpretation. This can be as a result of bad drafting by lay members, by amendments over the years which have not been followed through systematically or many other reasons which might arise out of error rather than anything more sinister. Be this as it may, it is my task to make sense of the rules as they are presently. Other courts have faced similar difficulties and various judges have commented on their task. The views that had been expressed are perhaps best summarised by Warner J in **Jacques v. AUEW (1986) ICR 683**.

“The affect of the authorities may I think be summarised by saying that the rules of a trade union are to be construed 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 were addressed.”

Applying this approach, I observe that loss of membership is perhaps the most significant action that might be taken against a member and is accordingly not something that those drafting the rules would take lightly. I further observe the overlap between rules 19a and 20a(i) in as much as both deal with the situation of members acting so as to bring the Union into disrepute. Rule 20 requires a clear procedure to be followed which accords generally with the judicially recognised principles of fairness. On the other hand, whilst rule 19 requires a procedure to be followed, it is unclear what that procedure may be. Mr Brittenden suggests that rule 19a permits summary termination without any procedure being followed. I find it is unlikely that this was the intended meaning of the rule having regard to the importance of membership and the expressed reference to a procedure. Summary expulsion for an alleged offence as subjective as ‘bringing the Union into disrepute’ could easily lead to a perception of abuse and unfairness. For these reasons, albeit with some difficulty, I conclude that the intended meaning of the final sentence of rule 19a is that the procedure to be adopted to bring about termination of membership is the procedure provided for in rule 20. I find that such an interpretation results in consistency and fairness which must have been in the minds of the drafter of the rule and the readership to whom the rule is addressed. I also bear in mind the judicial intervention that has occurred in other cases when a union has applied rules which has resulted in a termination of membership without regard to the judicially recognised principles of fairness.

82. Accordingly, the termination of Mr Chapman’s membership under rule 19a should have been carried out in accordance with the procedures of rule 20. It was not. Rule 20c provides for a right of appeal against termination. Mr Chapman was denied that right of appeal. Accordingly the Union breached rule 20c by not affording Mr Chapman an appeal following his expulsion.
83. Finally, I consider if Mr Chapman can properly bring this complaint to me at all under section 108A(1) of the 1992 Act. The Union submits that section 108A(3) provides that only persons who are members at the time of the alleged breach can bring such a complaint and Mr Chapman’s membership of the Union ceased on 6 March 2015, prior to the date of the alleged breach, 9 March.
84. The logic of the Union’s submission is unattractive. It would mean that anyone who is expelled and later refused an appeal would be unable to bring a complaint to me in relation to the refusal of his or her right to an appeal under rule 20c. Such a person would have to pursue his or her rights in the High Court. If this is the correct legal analysis, it is the outcome I must apply. However I find that it is not the correct legal analysis. Whilst the Union may have purported to terminate Mr Chapman’s contract of membership on 6 March 2015, he continued to enjoy certain rights under his contract of membership, principally his right to appeal against expulsion. In these circumstances, consideration must be given to the meaning of “member” for the purposes of section 108A(3) of the 1992 Act. In my judgement, a person who retains one or more substantial rights under his or her contract of membership

retains a relationship with that Union sufficient for him or her to qualify as a member of it, at least for the purposes of section 108A(3). Accordingly, in my judgement, Mr Chapman was entitled to bring his complaint of an alleged breach of rule 20c on 9 March, notwithstanding Mr McHugh's letter of termination dated 6 March.

85. For the above reasons, I grant the declaration sought by Mr Chapman that on or about 9 March 2015 the Union breached rule 20c in that he was not granted an appeal following his expulsion.

Enforcement Order

86. When I make a declaration, section 108B(3) of the 1992 Act provides that I shall make an Enforcement Order unless I consider that to do so would be inappropriate. An Enforcement Order, in the circumstances of this case, would be an order imposing on the Union a requirement to take such steps to remedy the breach that may be specified in the Order.
87. I asked Mr Chapman at the hearing, should I find for him on any of his complaints, whether he was seeking an enforcement order and, if so, in what terms. He stated that he merely wished for an apology. I explained that such an order is not within my powers under section 108B(3) and that the more usual order in these circumstances would be to require the restoration of his membership, even though this might mean that he would in due course have to face a disciplinary tribunal. Mr Chapman stated that, should I order the restoration of his membership, he would resign from the Union. Mr Brittenden commented that in these circumstances, the restoration of Mr Chapman's membership would be a meaningless token.
88. In the above circumstances I find that what Mr Chapman seeks from this litigation is some vindication and that he has achieved that vindication by virtue of the declaration that I have granted. The Union was wrong to have terminated his membership as it did but this does not mean that the intemperate behaviour of Mr Chapman could not have been the subject of lawful disciplinary action had the Union not acted precipitously. For the above reasons I find that it would not be appropriate to make an Enforcement Order in the circumstances of this case.



David Cockburn
The Certification Officer