

**CASE MANAGEMENT DECISIONS OF THE ASSISTANT CERTIFICATION OFFICER  
ON APPLICATIONS MADE UNDER SECTIONS 55 AND 108A(1) OF THE TRADE  
UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**Mr John Burgess and Ors.  
Mr Jon Rogers  
Ms Heather Wakefield  
Mr Roger Bannister**

**v**

**UNISON: the Public Service Union**

**Date of Decision**

**12 October 2016**

Applications to the Certification Officer were submitted by Mr Burgess and others, by Mr Jon Rogers, by Ms Heather Wakefield and by Mr Roger Bannister (“the Claimants”) under sections 55 and 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) concerning the election for the position of General Secretary of UNISON: the Public Service Union (“the Union”) in late 2015. The Union was informed of the applications and following fairly extensive correspondence between the parties and the Certification Officer, the parties were invited to attend a preliminary hearing and case management discussion on 6 October 2016.

At the hearing Mr Burgess and others were represented by Mr Yunus Bakhsh, Mr Rogers by Mr George Binette, Ms Wakefield by Ms Ijeoma Omambala and Mr Bannister represented himself. The Union was represented by Mr Antony White QC and Andrew Smith, instructed by Mr Richard Arthur of Thompsons solicitors.

**PRELIMINARY HEARING DECISION.**

1. All extant complaints as set out at appendix 1 to this decision shall proceed to a full hearing.

**CASE MANAGEMENT DISCUSSION ORDERS.**

2. Having heard full representations and submissions from all parties, and in order to enable a just, fair, proportionate and timely determination of the complaints in accordance with the overriding objective set out in the revised guidance issued by the Certification Officer in April 2016 in accordance with his statutory powers, the following Case Management Orders were made.

**Consolidation**

3. The four cases shall be consolidated and determined at a single hearing to encompass breach, the terms of any declaration(s) and any enforcement order(s).

4. In consequence all documents to be served or exchanged under or pursuant to this Order shall be served by the serving party on all other parties to the proceedings and the Certification Office and the parties shall ensure that any open correspondence is sent to all parties to the claims.

#### **Further and better particulars**

5. Mr Burgess and Ms Wakefield shall respond to the Union's request for further particulars of their respective complaints, as set out in the Union's letters to Ms Wakefield on 7 September and to Mr Burgess on 5 October 2016, by **20 October 2016**.

#### **The Issues**

6. The parties agreed that the document prepared by the Union dated 7 September 2016 accurately sets out a comprehensive list of the issues for determination of the complaints, with the one amendment proposed by Ms Wakefield in her email to the Certification Office of 13 September 2016 (3/271) and agreed by the Union. The list, with the agreed amendment is at appendix 2 to this decision.
7. The parties agreed the following list of areas of primary factual dispute which may require live evidence:
  - (a) The content and context of the meeting of 16 September 2015;
  - (b) The context of the meeting of 21 October and the accuracy of one clause only of the words in the transcript submitted: whether the words stated were [Dave is very pleased and has] "asked me to relate this to you personally" (as transcribed and contended for by the Claimants) or "relayed this to me personally" (as contended for by the Union);
  - (c) The communications and dealings between the ERS and the Union in the run up to 21 October guidance including the terms of their appointment;
  - (d) What constitutes normal methods of communication by various nominating bodies;
  - (e) To whom those communications are normally sent;
  - (f) What, if any remedial steps were taken by the Union;
  - (g) What, if any, were the practical consequences of the alleged breaches.

#### **Exchange of documents**

8. The parties shall serve copies of all relevant documents that have not yet been disclosed, together with an index on **28 October 2016**. The Union's disclosure under this direction shall be incorporated in a draft, paginated and indexed bundle which shall include the final pleadings and copies of the documents in chronological order. There will be no need to include party and party correspondence unless it will be relevant to the issues for determination by the ACO.
9. Documents containing commercially sensitive information may be redacted appropriately, as may personal sensitive data not relevant to the issues for determination.
10. Documents disclosed in these proceedings are confidential to the parties, their representatives and witnesses, and are not to be copied or distributed or used for

other purposes. The parties will ensure that their witnesses are aware of this confidentiality.

#### **Final hearing bundle**

11. On **4 November 2016** the parties shall agree a final bundle for hearing comprising the draft bundle served by the Union on 28 October 2016 together with any other relevant documentation disclosed by the other parties on that date, which shall be inserted chronologically in the bundle with a sub numbering system.
12. The bundle shall be served by the Union on the Certification Office on the same date.

#### **Declarations and Enforcement Orders Sought**

13. The Claimants shall serve the wording of any Declarations and Enforcement Orders sought pursuant to ss55 and 108A and 108B of the 1992 Act by **4 November 2016**.

#### **Witness Evidence**

14. Mr Burgess's witnesses will be himself, Helen Davies, Claire Dixon, John Harris and Hannah O'Reilly.
15. Mr Rogers and Mr Bannister will give evidence themselves.
16. Ms Wakefield's witnesses will be herself, Glen Williams, Paula Barker, Michael Jackson and Eddy Coulson.
17. The Union's witnesses will be Roger McKenzie, Cliff Williams, Bronwyn McKenna, Liane Venner and a witness from ERS.
18. Witness statements shall be exchanged on **11 November 2016**.
19. It was provisionally agreed that the Union's cross examination of each Claimant would be for no more than 30 minutes and that the Claimants would not wish to cross-examine each other or each other's witnesses. The Union anticipates very little, if any, cross examination of the Claimants' other witnesses, apart from Ms Davies, Ms Dixon and Ms O'Reilly whom it would wish to question for no more than 15 minutes each.
20. The Claimants provisionally agreed that the total cross examination of each of the Union's witnesses would last no more than 2 hours, apart from Ms McKenna whose cross examination shall be no longer than 1 hour.
21. The Claimants shall nominate a lead advocate in respect of each of the Union's witnesses. The lead advocate shall be the only advocate to ask questions on behalf of the Claimants in respect of that witness, unless the ACO agrees otherwise in advance of the Hearing.
22. The Claimants to inform the Union and the ACO of the lead advocate in respect of each witness by **25 November 2016**. If the Claimants are unable to agree, the ACO shall decide.

### **Chronology and cast list**

23. The Union shall serve a draft chronology and cast list on **19 November 2016**.<sup>1</sup> The parties to agree and serve the final chronology and cast list by **26 November 2016**.<sup>2</sup>

### **Skeleton arguments and authorities**

24. The parties to exchange and serve skeleton arguments on **2 December 2016** and serve an agreed authorities bundle on **9 December 2016**.

### **The Hearing**

25. The hearing shall take place on **19-21 December 2016** at a venue to be notified to the parties. The concern expressed that the proceedings should be audible to all present was noted.
26. It was provisionally agreed that the first two days would be for witness evidence with the third day for submissions and closing speeches.
27. The Union shall have not more than 1 1/2 hours and the Claimants shall have no more than 45 minutes each for oral submissions, to supplement any written submissions which the parties chose to submit overnight or on the day.

### **Miscellaneous**

28. All parties were invited to raise any further matters for consideration or determination. No applications were forthcoming.

**Mary Stacey**  
**Assistant Certification Officer**

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<sup>1</sup> This date is later than mentioned at the hearing – on reflection I considered the document should be served after exchange of witness statements.

<sup>2</sup> Consequential amendment to f/n 1.

## Appendix 1

### **Burgess and Ors. v UNISON**

#### Complaint 1

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

#### Complaint 2

On or about 2 August 2015 to on or about 24 November 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. These breaches took the form of a sustained and prolonged misuse of union resources as evidenced by the email correspondence from Mr Cliff Williams on behalf of 'Team Dave' the campaign to elect Mr David Prentis. Given that a number of these emails were sent during the time when Mr Williams was being paid to carry out UNISON business the circulation of the emails amounted to a misuse of union resources, funds and property. Further the emails reveal that UNISON resources, funds and property were used to promote and campaign for Mr David Prentis. Examples of these emails are set out in the Annexe to this complaint.

#### Annexe to complaint 2

4. Email from Liz Snape (assistant General Secretary) dated Saturday 29 August 2015  
***'The Health SGE (service group executive) chairs have done a letter to all health branches –this will be sent on Tuesday for the opening of nominations on Wednesday.'***  
Health SGE Chairs have no means of sending any communications out other than via the official channels of the union, the use of these means of communication is a union resource.
5. **Team Dave; Update No 14** dated Sunday 27 September 2015 states  
***'Please use your contacts in the branches to push for more nominations'  
'If you have any contacts that you can lobby, in any of the Regions involved please do what you can to support Dave'***
6. **Team Dave ; Update No 15** sent at 13.19 on Friday 2 October 2015  
***'Use your network to contact any branch that hasn't nominated and try to get them to do so and support Dave'***  
It should be noted that none of the recipients of this instruction are members of any branch and as such could only contact a branch in the capacity as a full time official.
7. **Team Dave; Update No 16** sent at 21.04 on Sunday 4 October 2015  
***'Please don't leave anything to chance and make sure that contact is maintained with our reps on the Execs. The results particularly from Scotland and the NW will mean that there will be lots of pressure on our people to change their votes. Try and speak to them before the meeting starts'***  
It should be noted that the recipients of this instruction could only attend the Executive meetings mentioned, in their capacity as employees which would be in work time, hence they would be using union resources to conduct this campaigning.
8. **Team Dave ; Update No 20** sent at 09.44 on Friday 23 October 2015  
States ***'It may be that in some circumstances you may be able to "circumvent" hostile branches by covertly working with sympathetic employer contacts. I acknowledge that some colleagues may feel that this is ethically inappropriate but it doesn't breach campaign rules; it will however need to be done with caution'***  
We note here that the email refers to 'covertly working with sympathetic employer contacts' we submit that by definition the full time officers recipients are employed by UNISON and the only means they

have to acquire 'sympathetic employer contacts' is in their role as employees of the union which have members employed by the employer contacts. Thus the relationship to the 'sympathetic employer contacts' can only be one that arises from the recipient's position as an employee of the union not as an individual.

9. **Team Dave; Update 22** sent at 18.00 on Friday 30 October 2015

States '**3. The 12<sup>th</sup> of November will be Vote Dave Day**'. **We will aim to ramp up our social media campaign but if you can arrange work site events then do so and send details through to me and Liz**'.

The reference to 'work site events' can only refer to those premises at which UNISON is recognised. We submit that the full time officers who received this email could only organise such events in their capacity as employees of the union, as such this is another use of UNISON resources in breach of rule.

**Point 7. States 'Include Dave in any press releases'**

We submit that this is clearly directed at full time officers misusing the press release facilities of the union in an official capacity to promote the candidacy of Dave Prentis.

10. **Team Dave ; Update No 27** sent at 10.47 on Tuesday 24 November 2015

States '**It's not enough to win, we need a strong margin between Dave and the contenders as we anticipate that there will be attempts to challenge the result. A wide margin minimises that possibility**'

### **Complaint 3**

On or about 21 October 2015 to on or about 18 February 2016, UNISON breached section 49(6) of the Trade Union and Labour Relations (Consolidation) Act 1992 in that it failed to ensure that the Scrutineer duly carried out his functions and that there was no interference with his carrying out of those functions which would make it reasonable for any person to call the Scrutineer's independence in relation to the union into question. This is evidenced by the following:-

1. The Scrutineer/ Electoral Reform Society did not independently investigate and respond to the complaints that were made to it in relation to the General Secretary 2015 Election in accordance with the terms of reference of the election timetable and procedure. Specifically with reference to the complaints arising from the disclosure of the audio tape of the meeting held on 21 October in the UNISON Greater London Regional Office.
2. The ERS issued guidance on 21 October that informed branches and nominating bodies they could now inform their members why they had chosen to make a particular nomination. This guidance was issued after an email from Team Dave, dated 15 October 2015, which informed UNISON branches that they could publish the fact of their nomination together with the reason why. Prior to the issuing of the guidance by the ERS it was established procedure and known throughout the union that branches could only inform their members who the branch had nominated and not why. In any event the new guidance was not endorsed by the NEC as required by rule.
3. The Returning Officer, Alex Lonie, was sent Team Dave emails in January 2016. Mr Lonie neglected to refer to them in his official Returning Officer report published on 18 February.
4. The ERS was asked by Private Eye magazine about the Team Dave emails and their investigation at a time before the report was published and at a time when the ERS should have been conducting an independent investigation. In its response, the ERS informed Private Eye - "UNISON is preparing a report for Mr Lonie which would enable him to decide if the election was properly conducted. UNISON would then in turn report his decision back to its members."

### **Complaint 4**

During a meeting which took place on 16 September 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. This meeting took place between 0900 and 1200 at the University of London Union. This meeting was a conference for all Regional Staff and was called for and chaired by Linda Perks, the Regional Secretary of London Region. The UNISON General Secretary election was discussed at this meeting. Linda Perks allegedly stated at this meeting that Dave Prentis was the only credible candidate for General Secretary and allegedly sought to influence her staff to secure nominations for Dave Prentis. Both this meeting itself, and the discussion/statement made by Linda Perks, amount to the use of UNISON funds, resources and property to campaign for Dave Prentis.

## **Rogers v UNISON**

### **Complaint 1**

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

### **Complaint 2**

During the UNISON General Secretary 2015 elections, on multiple occasions, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. These breaches occurred on the occasions set out in the Annex to this complaint

### **Annexe to complaint 2**

1. On or about 19 November 2015 when an email was sent to Branch Secretaries of UNISON branches in the Local Government Service Group from the campaign to elect Dave Prentis. The email encouraged Branch Secretaries to pass the campaigning message on without advising them that they ought not to use UNISON resources in so doing.
2. On or about 9 November 2015 when the London Ambulance Service Branch published, on their branch website, a story promoting support for Dave Prentis as a candidate in the election.
3. On or about 8 November 2015 when the Torbay branch of UNISON published on their branch website a story including a link to the campaign website of Dave Prentis as a candidate in the General Secretary election.
4. On or about 9 November 2015 when the CVO branch of UNISON published on their branch website a story reporting that the Greater London Regional Council and National Executive Council had nominated Dave Prentis as a candidate in the General Secretary election. They also published a story reporting on the work of Dave Prentis in relation to the members of their branch on the same date.
5. On or about 9 November 2015 when the North Devon branch of UNISON published on their branch website a story encouraging members to vote for Dave Prentis as a candidate in the General Secretary election.
6. On or about 30 November 2015 when the University of Cumbria branch of UNISON published on their branch twitter feed a tweet encouraging members to vote for Dave Prentis as a candidate in the General Secretary election.
7. On or about 9 November 2015 when the University of Cumbria branch of UNISON published a story on their branch website urging members to vote for Dave Prentis, a candidate in the General Secretary election.
8. On or about 11 November 2015 when the Monmouthshire branch of UNISON published a story on their branch website urging members to vote for Dave Prentis, a candidate in the General Secretary election.
9. On or about 19 November 2015 when the NRHCB branch of UNISON published a story on their branch website urging members to vote for Dave Prentis, a candidate in the General Secretary election.
10. On or about 20 September 2015 when the North West Gas branch of UNISON published a story on their branch website urging members to vote for Dave Prentis, a candidate in the General Secretary election.
11. On or about 1 October 2015 when the Blackburn with Darwen branch of UNISON published a story on their branch website reporting the nomination of the National Executive Council for Dave Prentis, a candidate in the General Secretary election.

12. On or about 20 November 2015 when the Gateshead health branch of UNISON published a story on their branch website campaigning in support of Dave Prentis, a candidate in the General Secretary election.
13. On or about 12 November 2015 when the UNISON QEHLK branch published stories on their branch website campaigning in support of Dave Prentis, a candidate in the General Secretary election.
14. On or about 9 September 2015 when the UNISON Aberdeen branch published stories on their branch website campaigning in support of Dave Prentis, a candidate in the General Secretary election.
15. On or about 20 November 2015 when the North West Gas Branch used their official twitter feed in support of Dave Prentis, a candidate in the General Secretary election.
16. On or about 12 November 2015 when the UNISON North Wales Health Branch used their official twitter feed in support of Dave Prentis, a candidate in the General Secretary election.
17. On or about 27 November 2015 when the UNISON Wakefield Branch used their official twitter feed in support of Dave Prentis, a candidate in the General Secretary election.
18. On or about 9 November 2015 when the UNISON Humber Police Branch used their official twitter feed in support of Dave Prentis, a candidate in the General Secretary election.
19. On or about 9 November 2015 when the UNISON Lancashire Police Branch used their official Facebook Page in support of Dave Prentis, a candidate in the General Secretary election.
20. On or about 5 November 2015 when the UNISON Nottinghamshire Police Branch used their official Facebook Page in support of Dave Prentis, a candidate in the General Secretary election

### **Complaint 3**

On a date before the commencement of the General Secretary election, UNISON appointed Electoral Reform Services (ERS) as independent scrutineer in accordance with section 49 of the Trade Union and Labour Relations (Consolidation) Act 1992. UNISON appointed ERS as both scrutineer and Returning Officer. The additional functions specified in the appointment of ERS did not preclude ERS taking on responsibility for the interpretation of the election procedures from the UNISON NEC. Therefore the inclusion within the terms of appointment of ERS of these additional functions are such as to make it reasonable for a person to call the scrutineer's independence in relation to the union into question in breach of section 49(4).



## **Bannister v UNISON**

### **Complaint 1**

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

### **Complaint 2**

On or about 21 October 2015, UNISON breached paragraph 7 of Schedule C to the UNISON rules by issuing guidance to nominating bodies about the General Secretary election which was not agreed by a meeting of the National Executive Council of UNISON. In so doing UNISON also breached rules D.7 and E3.3, which require elections to be conducted in accordance with Schedule C to the UNISON Rulebook and regulations made by the National Executive Council

## **Wakefield v UNISON**

### **Complaint 1**

On or about 21 October 2015, UNISON breached paragraph 7 of Schedule C to the UNISON rules by issuing guidance to nominating bodies about the General Secretary election which was not determined by a meeting of the National Executive Council of UNISON. The guidance had the effect of making a material change to the terms of paragraph 51 of General Secretary 2015 Election Procedures.

### **Complaint 2**

During the UNISON General Secretary 2015 elections, on multiple occasions, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. These breaches occurred on the occasions set out in the Annex to this complaint.

### **Annexe to complaint 2**

1. On or about 5 November 2015 when the North Yorkshire Branch of UNISON published a story on their branch website giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
2. On or about 20 November 2015 when the Gateshead Health Branch of UNISON published a story on their branch website giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
3. On or about 19 November 2015 when the UNISON Northern Region Health Commissioning Branch published a story on their branch website giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
4. On or about 11 November 2015 when the Monmouthshire Branch of UNISON published a story on their branch website giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
5. On or about 9 November 2015 when the London Ambulance Service Branch published, on their branch website, a story giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
6. In her email to Clare Williams et al of 10 November 2015, Wendy Nichols – using the email address of her employer/the UNISON branch – says that ‘Branches are distributing posters etc and are also using email’.

### **Complaint 3**

On or about 10 November 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). This breach occurred when the Yorkshire and Humberside Region sent a communication by email to at least 55,000 members in its Region, rather than just the members of the Regional Council, in which it set out: (i) the fact of its nomination of Dave Prentis for General Secretary; and (ii) the reasons for this nomination. This communication was not through an established method of communication of the Yorkshire and Humberside Region.

### **Complaint 4**

On or about 10 November 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). This breach occurred when the Greater London Region sent a communication by email to current members and retired members, rather than just the members of the Regional Council, in which it set out the fact of its nomination of Dave Prentis for General Secretary. This communication was not through an established method of communication of the Greater London Region.

### **Complaint 5**

On or about 11 November 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). This breach occurred when the Northern Ireland Regional Committee sent a communication through UNISON’s electronic membership system to all members in its Region, rather than just the members of the

Regional Council, in which it set out: (i) the fact of its nomination of Dave Prentis for General Secretary; and (ii) the reasons for this nomination. This communication was not through an established method of communication of the Northern Ireland Regional Committee.

### **Complaint 6**

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

### **Complaint 7**

On or about 21 October 2015 to on or about 30 October 2015, UNISON breached and/or threatened to breach paragraph 51 of the General Secretary 2015 Election Procedures which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). Examples of these breaches are set out in the Annexe to this complaint.

### **Annexe to complaint 7**

1. By his email of 23 October 2015, Cliff Williams, Assistant General Secretary, encouraged paid officials across the Union to liaise with employers where the branch might be unsympathetic towards Dave Prentis, to work towards distributing literature in support of Dave Prentis. This was a threatened and (if implemented) actual breach of paragraph 51a of the UNISON General Secretary 2015 Election Procedures.
2. By his email of 23 October 2015, Cliff Williams, Assistant General Secretary, encouraged paid officials across the Union to send list of potential recipients for literature in support of Dave Prentis to an internal UNISON resource for distribution (Laraine Senior). This was a threatened and (if implemented, by sending the lists and/or by the literature being distributed by UNISON) an actual breach of paragraph 51a of the UNISON General Secretary 2015 Election Procedures.
3. On 30 October 2015 paid officials of UNISON were told by Liz Snape, Assistant General Secretary: *"Your job is to ensure that all nominating branches [for Dave Prentis] deliver on the action points"*. This was a threatened and (if implemented, by any of those officials taking steps that nominating branches deliver on the action points) an actual breach of paragraph 51a of the UNISON General Secretary 2015 Election Procedures.

## **Appendix 2**

### **UNISON'S PROPOSED LIST OF ISSUES**

#### **Burgess and others:**

##### Complaint 1

1. Did UNISON (“the Union”) breach paragraph 51 of the General Secretary 2015 Election Procedures (“the Election Procedures”) in that the Union’s funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of:

(a) the meeting on 21 October 2015 in the Greater London Region (at Congress House); and/or

(b) the decisions taken at that meeting?

[See also: issue 9 under Complaint 1 for Bannister/issue 13 under Complaint 1 for Rogers/issue 29 under Complaint 6 for Wakefield, all of which are in the same terms].

2. If the Union did breach paragraph 51 of the Election Procedures by reason of the matters referred to in paragraph 1:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

[See also: issue 10 under Complaint 1 for Bannister/issue 14 under Complaint 1 for Rogers/issue 30 under Complaint 6 for Wakefield, all of which are in the same terms].

##### Complaint 2

3. Did the Union breach: paragraph 51 of the Election Procedures in that the Union’s funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of (a) the time of sending and/or (b) the content of the following emails (or any of them):

- (1) Email from Liz Snape (assistant General Secretary) dated 29 August 2015, stating:  
*“The Health SGE (service group executive) chairs have done a letter to all health branches – this will be sent on Tuesday for the opening of nominations on Wednesday.”*
  - (2) Team Dave: Update No.14 dated Sunday 27 September 2015, stating:  
*“Please use your contacts in the branches to push for more nominations”. “If you have any contacts that you can lobby, in any of the Regions involved please do what you can to support Dave”.*
  - (3) Team Dave: Update No15 sent at 13.19 on Friday 2 October 2015, stating:  
*“Use your network to contact any branch that hasn’t nominated and try to get them to do so and support Dave”.*
  - (4) Team Dave: Update No 16 sent at 21.04 on Sunday 4 October 2015, stating:  
*“Please don’t leave anything to chance and make sure that contact is maintained with our reps on the Execs. The results particularly from Scotland and the NW will mean that there will be lots of pressure on our people to change their votes. Try and speak to them before the meeting starts.”*
  - (5) Team Dave: Update No 20 sent at 09.44 on Friday 23 October 2015, stating:  
*“It may be that in some circumstances you may be able to ‘circumvent’ hostile branches by covertly working with sympathetic employer contacts. I acknowledge that some colleagues may feel that this is ethically inappropriate but it doesn’t breach campaign rules; it will however need to be done with caution.”*
  - (6) Team Dave: Update No 22 sent at 18.00 on Friday 30 October 2015, stating:  
*“3. The 12<sup>th</sup> of November will be Vote Dave Day. We will aim to ramp up our social media campaign but if you can arrange work site events then do so and send details through to me and Liz.”*
  - (7) Team Dave Update No 27 sent at 10.47 on Tuesday 24 November, stating:  
*“It’s not enough to win, we need a strong margin between Dave and the contenders as we anticipate that there will be attempts to challenge the result. A wide margin minimises that possibility”?*
4. If the Union did breach paragraph 51 of the Election Procedures by reason of the matters referred to in paragraph 3:
- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
  - b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Complaint 3 (as substituted by the Complainants on 14 June 2016)

5. Did the Union breach section 49(6) of the 1992 Act in that it failed to ensure that the Independent Scrutineer, Electoral Reform Services (“ERS”), duly carried out its functions and that there was no interference with its carrying out of those functions which would make it reasonable for any person to call the Scrutineer’s independence in relation to the Union into question, as evidenced by the following claims made by the Complainants:
  - (1) ERS did not independently investigate and respond to complaints made to it in accordance with the terms of reference of the election timetable and procedure – specifically, with reference to complaints arising from the disclosure of the audio tape of the meeting in the Greater London Region on 21 October 2015 (at Congress House);
  - (2) ERS issued guidance on 21 October 2015, not endorsed by the NEC, informing branches and nominating bodies that they could inform members why they had chosen to make a particular nomination, such guidance being issued after an email from ‘Team Dave’ dated 15 October 2015 informing branches that they could publish the fact of their nomination together with the reason why (with the previous established procedure known throughout the Union being that branches could only inform members who the branch had nominated and not the reasons);
  - (3) the Returning Officer, Mr Alex Lonie of ERS, was sent ‘Team Dave’ emails in January 2016 but did not refer to them in his Returning Officer’s report published on 18 February 2016;
  - (4) ERS was asked by Private Eye magazine about the ‘Team Dave’ emails and their investigation before the Returning Officer’s report was published and at time when it should have been conducting an independent investigation and, in its reply, ERS informed Private Eye “UNISON is preparing a report for Mr Lonie which would enable him to decide if the election was properly conducted. UNISON would then in turn report his decision back to its members”; and
  - (5) the report referred to at (4) was compiled by a staff member who was a prominent member of the ‘Team Dave’ campaign?
6. If the Union did breach section 49(6) of the 1992 Act by reason of the matters claimed at (1) to (5) of paragraph 5:
  - a. Should the Certification Officer make a declaration under section 55(2) of the 1992 Act?
  - b. If so, what should be the terms of any declaration for the purpose of section 55(3)?
  - c. If the Certification Officer does make a declaration:
    - (i) is the Certification Officer satisfied that steps have been taken by the Union with a view to remedying the declared failure, or securing that a failure of the

same or any similar kind does not occur in the future, or that the Union has agreed to take such steps and, if so, what they are; and

- (ii) should an enforcement order be made under section 55 (5A) imposing on the Union one or more of the following requirements:
  - (a) to secure the holding of an election in accordance with the order;
  - (b) to take such steps to remedy the declared failure as may be specified in the order;
  - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in the future?

Complaint 4 (as added by the Complainants on 24 May 2016)

7. Did the Union breach paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of the following claim made by the Complainants:

At a conference for all Regional Staff held at the University of London Union on the morning of 16 September 2015, which was called for and chaired by Linda Perks (the Regional Secretary of London Region), Ms Perks allegedly stated that Dave Prentis was the only credible candidate for General Secretary and allegedly sought to influence her staff to secure nominations for Dave Prentis?

(The Complainants accepted on 29 July 2016 that the reference to a separate alleged meeting on 7 September 2015 in their original complaint number 4 discloses no breach of rule and should be dismissed as a ground of complaint for the purpose of these proceedings).

8. If the Union did breach paragraph 51 of the Election Procedures by reason of the matters referred to in paragraph 7:
- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
  - b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

## Complaint 1

9. See issue 1 under Complaint 1 for Burgess and others/issue 13 under Complaint 1 for Rogers/ issue 29 under Complaint 6 for Wakefield, all of which are in the same terms.
10. See issue 2 under Complaint 1 for Burgess and others/issue 14 under Complaint 1 for Rogers/issue 30 under Complaint 6 for Wakefield, all of which are in the same terms.

## Complaint 2

11. Did the Union breach:

- (i) paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..." ; and/or
- (ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council"; and/or
- (iii) rule E3.3 of the Union's rules which provides that "The ballot for the post of General Secretary shall be a secret postal ballot of the membership.....The electoral rules in Rule D.7 and Schedule C shall apply to such elections"

by reason, as claimed by the Complainant, of its issuing guidance to nominating bodies about the General Secretary election which was not agreed by the National Executive Council of the Union?

12. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 11:

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

(Complaints 3, 4 and 5 of Mr Bannister were struck out by the Certification Officer in a Decision dated 30 August 2016, on the basis that they had no reasonable prospect of success and/or were otherwise misconceived).



## **Rogers**

### **Complaint 1**

13. See issue 1 under Complaint 1 for Burgess and others/issue 9 under Complaint 1 for Bannister/issue 29 under Complaint 6 for Wakefield, all of which are in the same terms.
14. See issue 2 under Complaint 1 for Burgess and others/issue 10 under Complaint 1 for Bannister/issue 30 under Complaint 6 for Wakefield, all of which are in the same terms.

### **Complaint 2**

15. Did the Union breach paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of the following claims made by the Complainant:

- (1) an email sent on or around 19 November 2015 to UNISON branch secretaries in the Local Government Service Group from the campaign to elect Dave Prentis, such email encouraging Branch Secretaries to pass the campaigning message on without advising them that they ought not to use union resources in so doing;
- (2) a publication on or about 9 November 2015 by the London Ambulance Service branch on its website of a story supporting Dave Prentis;
- (3) a publication on or about 8 November 2015 by the Torbay branch on its website of a story including a link to the campaign website for the election of Dave Prentis;
- (4) a publication on or about 9 November 2015 by the CVO branch on its website of a story reporting that the Greater London Regional Council and National Executive Council had nominated Dave Prentis as a candidate, and a further publication on the same date by the branch of a story reporting on the work of Dave Prentis in relation to members of the branch;
- (5) a publication on or about 9 November 2015 by the North Devon branch on its website of a story encouraging members to vote for Dave Prentis;
- (6) a publication on or about 30 November 2015 by the University of Cumbria branch on its branch twitter feed of a tweet encouraging members to vote for Dave Prentis;

- (7) a publication on or about 9 November 2015 by the University of Cumbria branch on its website of a story encouraging members to vote for Dave Prentis;
- (8) a publication on or about 11 November 2015 by the Monmouthshire branch on its website urging members to vote for Dave Prentis;
- (9) a publication on or about 19 November 2015 by the NRHCB branch on its website of a story urging members to vote for Dave Prentis;
- (10) a publication on or about 20 September 2015 by the North West Gas branch on its website of a story urging members to vote for Dave Prentis;
- (11) a publication on or about 1 October 2015 by the Blackburn with Darwen branch on its website of a story reporting the nomination of the National Executive Council for Dave Prentis;
- (12) a publication on or about 20 November 2015 by the Gateshead health branch on its website of a story campaigning in support of Dave Prentis;
- (13) a publication on or about 12 November 2015 by the UNISON QEHLK branch on its website of stories campaigning in support of Dave Prentis;
- (14) a publication on or about 9 September 2015 by the Aberdeen branch on its website of stories campaigning in support of Dave Prentis;
- (15) use by the North West Gas branch on or about 20 November 2015 of its official twitter feed in support of Dave Prentis;
- (16) use by the North Wales Health branch on or about 12 November 2015 of its official twitter feed in support of Dave Prentis;
- (17) use by the Wakefield branch on or about 27 November 2015 of its official twitter feed in support of Dave Prentis;
- (18) use by the Humber Police branch on or about 9 November 2015 of its official twitter feed in support of Dave Prentis;
- (19) use by the Lancashire Police branch on or about 9 November 2015 of its official Facebook Page in support of Dave Prentis; and
- (20) use by the Nottinghamshire Police Branch on or about 5 November 2015 of its official Facebook Page in support of Dave Prentis?

16. If the Union did breach paragraph 51 of the Election Procedures by reason of the matters referred to in paragraph 15(1) – (20):

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

### Complaint 3

17. Did the Union breach section 49(4) of the 1992 Act in that it failed to ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment of ERS) was such as to make it reasonable for any person to call the scrutineer's independence in relation to the Union into question by:

- (i) the Union appointing ERS as both Returning Officer and Scrutineer; and
- (ii) the additional functions specified in the appointment of ERS not precluding ERS taking on responsibility for the interpretation of the election procedures from the Union's National Executive Council?

18. If the Union did breach section 49(4) of the 1992 Act by reason of the matters referred to in paragraph 17:

- a. Should the Certification Officer make a declaration under section 55(2) of the 1992 Act?
- b. If so, what should be the terms of any declaration for the purpose of section 55(3)?
- c. If the Certification Officer does make a declaration:
  - (i) is the Certification Officer satisfied that steps have been taken by the Union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in the future, or that the Union has agreed to take such steps and, if so, what they are; and
  - (ii) should an enforcement order be made under section 55 (5A), imposing on the Union one or more of the following requirements:
    - (a) to secure the holding of an election in accordance with the order;

- (b) to take such steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in the future?

## **Wakefield**

### **Complaint 1**

19. Did the Union breach paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..." by reason of, as claimed by the Complainant, issuing guidance to nominating bodies about the General Secretary election which was not determined by a meeting of the National Executive Council of the Union and which had the effect of making a material change to the terms of paragraph 51 of the Election Procedures?
20. If the Union did breach paragraph 7 of schedule C to the Union's rules, by reason of the matters referred to in paragraph 19:
- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
  - b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

### **Complaint 2 (as amended by agreement of the parties at the preliminary hearing)**

21. Did the Union breach paragraph 51 of the Election Procedures **made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book** in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of the following claims made by the Complainant:
- (1) a publication on or about 5 November 2016 by the North Yorkshire branch on its website of a story encouraging members to vote for Dave Prentis;
  - (2) a publication on or about 20 November 2016 by the Gateshead Health branch on its website of a story giving its reasons for supporting Dave Prentis;
  - (3) a publication on or about 19 November 2016 by the Northern Region Health Commissioning branch on its website of a story giving its reasons for supporting Dave Prentis;
  - (4) a publication on or about 11 November 2016 by the Monmouthshire branch on its website of a story giving its reasons for supporting Dave Prentis;

- (5) a publication on or about 9 November 2016 by the London Ambulance Service branch on its website of a story giving its reasons for supporting Dave Prentis;
- (6) Wendy Nichols, in an email of 10 November 2015 to Clare Williams and others, sent using the email address of her employer/the UNISON branch, saying that “Branches are distributing posters etc and are also using email”?

22. If the Union did breach paragraph 51 of the Election Procedures, by reason of the matters referred to in paragraph 21:

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

### Complaint 3

23. Did the Union breach:

- (i) paragraph 51 of the Election Procedures in that the Union’s funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis); and/or
- (ii) rule D7 of the Union’s rules which provides that “All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council”; and/or
- (iii) paragraph 7 of schedule C to the Union’s rules which provides that “The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election...”

by reason, as claimed by the Complainant, of the Yorkshire and Humberside Region sending an email in which it set out the fact of its nomination of Dave Prentis for General Secretary and the reasons for this nomination:

- (a) to at least 55,000 members in the Region, rather than just members of the Regional Council; and
- (b) otherwise than by an established method of communication of the Yorkshire and Humberside Region?

24. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 23:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

#### Complaint 4

25. Did the Union breach:

- (i) paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to support campaigning for a particular candidate (Dave Prentis); and/or
- (ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council"; and/or
- (iii) paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..."

by reason, as claimed by the Complainant, of the Greater London Region sending a communication in which it set out the fact of its nomination of Dave Prentis for General Secretary:

- (a) to current and retired members, rather than just members of the Regional Council; and
- (b) otherwise than by an established method of communication of the Greater London Region?

26. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 25:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

## Complaint 5

27. Did the Union breach:

- (i) paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis); and/or
- (ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council"; and/or
- (iii) paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..."

by reason, as claimed by the Complainant, of the Northern Ireland Regional Committee sending a communication through the Union's electronic membership system, in which it set out the fact of its nomination for Dave Prentis and the reasons for this nomination:

- (a) to all members in its Region rather than just to the members of the Regional Council; and
- (b) otherwise than by an established method of communication of the Region?

28. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 27:

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

## Complaint 6

29. See issue 1 under Complaint 1 for Burgess and others/issue 9 under Complaint 1 for Bannister/issue 13 under Complaint 1 for Rogers, all of which are in the same terms.

30. See issue 2 under Complaint 1 for Burgess and others/issue 10 under Complaint 1 for Bannister/issue 14 under Complaint 1 for Rogers, all of which are in the same terms.

## Complaint 7

31. Did the Union breach, or threaten to breach:

- (i) paragraph 51a of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis); and/or
- (ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council"; and/or
- (iii) paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..."

by reason, as claimed by the Complainant, of the following matters:

- (1) an email of 23 October 2015 from Cliff Williams (Assistant General Secretary), in which he encouraged paid officials across the Union to liaise with employers where the branch might be unsympathetic towards Dave Prentis, to work towards distributing literature in support of Dave Prentis;
- (2) in the same email, Mr Williams encouraging paid officials across the Union to send a list of potential recipients for literature in support of Dave Prentis to an internal Union resource (Laraine Senior) for distribution ;
- (3) sending the aforesaid lists and/or distributing the aforesaid literature;
- (4) On 30 October 2015, paid officials of the Union being told by Liz Snape (Assistant General Secretary) that "...*Your job is to ensure that all nominating branches [for Dave Prentis] deliver on the action points*"; and
- (5) Paid officials taking steps as described in (4) above?

32. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 31:

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?