

**DECISION OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE UNDER ARTICLE 90A OF
THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND) ORDER 1995**

**IN THE MATTER OF COMPLAINTS MADE AGAINST THE
MANUFACTURING SCIENCE AND FINANCE UNION**

APPLICANTS

MR F CAMMOCK

MR K DOHERTY

Date of Decision:

10 July 2002

DECISION

- 1.1 Under Article 90A(1) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended) ("the 1995 Order") 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 paragraph 90A(2) of that Order, may apply to me for a declaration to that effect.
- 1.2 Article 90B of the 1995 Order empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declaration asked for.
- 1.3 Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing. Where I make a declaration under Article 90B I am required, unless I consider it inappropriate, to make an enforcement order on the union. My enforcement order is required to impose on the union one or both of the following requirements -

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

1.4 On 24 January 2001, I received complaints from Mr F Cammock and Mr K Doherty, members of the Manufacturing Science & Finance Union (MSF/the union). Mr Cammock and Mr Doherty (the applicants) were, at that time, MSF senior shop steward and shop steward respectively in Bombardier PLC, Short Brothers, Belfast (the company). The applicants claim they had been suspended from office on 16 November 1999, outside union rules and procedures by full-time officers of MSF, under the authority of the General Secretary (Mr Lyons). The applicants also claim that the union breached its rules by suspending them immediately without any opportunity to hear and question any evidence against them; by refusing to allow the members' branch to investigate matters and by denying them a right of appeal against suspension. The applicants also advised me that "internal procedures are ongoing within MSF and we have been unable to receive any satisfactory replies...".

1.5 The applicants' complaints, numbered 1 to 6 below, covered the following areas, that:

- (1) the union's rules did not empower the General Secretary with the authority to suspend them;
- (2) the union's rules did not permit the General Secretary to authorise fulltime officers of the union to suspend them;
- (3) the full time officer who suspended them with immediate effect on 16 November 1999 did so outside the decision of the National Executive Committee and the union's rules;
- (4) the National Executive Committee breached rule 16(e) of the union's rules by deciding at its meeting on the 11 December 1999 that their branch was unable to investigate the complaint purportedly made against them;
- (5) the National Executive Committee did not have the power under the union's rules to endorse retrospectively their suspension, at its meeting on 11 December 1999; and

- (6) the General Secretary breached rule 17(a)(iii) of the union's rules when he failed to act in accordance with its provisions, following their appeal to him on 11 January 2000 against their suspension under rule 17(a)(ii).

- 1.6 The allegations, that the rules of the union had been breached relating to matters mentioned in Article 90A(2)(b) of the 1995 Order, namely disciplinary proceedings by the union, were accepted by me as complaints under Article 90A(1) of that Order. I investigated the complaints in correspondence and the parties agreed that I would treat the complaints as one application. As required by Article 90B(2) of the 1995 Order, the parties were offered the opportunity of a formal hearing, and this took place over three days, on 5 & 6 December 2001 and 11 March 2002. In days one and two Mr P Talbot, Assistant General Secretary, represented MSF. Mr F Barry, an NEC member and its National President (in 1999) and Mr J Wall, MSF National Secretary for Scotland attended as witnesses and gave evidence. Mr K Mc Adam, MSF Regional Officer and Mr A Mc Kenna, MSF administration officer also attended but did not give evidence and Mr S Agnew, solicitor, Agnew, Andress, Higgins, solicitors also attended. The applicants represented themselves. Mr P Street, a member of the NEC, Mr J Mc Kay and Mr R Mc Bratney, MSF members, attended as witnesses and gave evidence. On the third day Mr Talbot represented MSF. Mr Wall and Mr Mc Adam, attended as witnesses and gave evidence. Mr Lyons, who did not attend the hearings, provided a written statement. The applicants also attended and gave evidence.
- 1.7 My Office prepared bundles of documents for the hearing, consisting of the exchanges of correspondences with the parties, together with their enclosures, and which altogether comprised a considerable amount of material spanning some four years. The parties submitted a number of further documents throughout the hearing; on the first day certain documents were withdrawn by mutual agreement.
- 1.8 This decision has been reached on the basis of the representations made by the applicants and the union, together with the documents provided by them. I have decided to include extracts of the material, which I consider relevant, within this decision.

Declaration and order

- 1.9 After careful consideration of all the documents, evidence and arguments put to me and the relevant rules of the union: -

"I declare that the General Secretary of the Manufacturing, Science and Finance Union

breached the rules of the union as he did not have the power, under its rules, to authorise the suspension of Mr F Cammock and Mr K Doherty.”

“I declare that the General Secretary of the Manufacturing, Science and Finance Union breached the rules of the union as he did not have the power under its rules to instruct the Assistant General Secretary, to suspend Mr F Cammock and Mr K Doherty.”

“I declare that the Manufacturing, Science and Finance Union misapplied and thereby breached rule 16(b) of the union in suspending Mr F Cammock and Mr K Doherty on 16 November 1999.”

“I declare that the decision of the Manufacturing, Science and Finance Union’s National Executive Committee, at its meeting on 11 December 1999, to endorse retrospectively the suspension of Mr F Cammock and Mr K Doherty, by its Assistant General Secretary, breached the rules of the union.”

“I declare that the General Secretary of the Manufacturing, Science and Finance Union breached rule 17(a)(iii) by failing to act in accordance with the provisions of that rule following receipt of an appeal under rule 17(a)(ii) from Mr F Cammock and Mr K Doherty on January 2000.”

“I declare that the Manufacturing, Science and Finance Union’s National Executive Committee breached rules 3(d) and 16(b) in suspending Mr F Cammock and Mr K Doherty on 28 April 2001.”

“I refuse to declare that the Manufacturing, Science and Finance Union’s National Executive Committee breached rule 16(e) by deciding that the applicants’ branch was unable to investigate the complaint purportedly made against the applicants, at its meeting on 11 December 1999.”

The reasons for my decision are set out below.

- 1.10 In view of the fact that the union suspended the applicants outside its rules and, in accordance with the requirements of Article 90B of the 1995 Order, I make the following order to the Manufacturing, Science and Finance Union:

“That the Manufacturing, Science and Finance Union lift its suspensions dated 16 November 1999 and 28 April 2001, in respect of Mr F Cammock and Mr K Doherty from the date of this decision and that it reinstate them in the positions they held within the union, immediately prior to their suspensions.”

- 1.11** I have decided that the NEC’s second suspension of the applicants on 28 April 2001, made under rules 3(d) and 16(b) also constituted a breach or threat of the same or similar kind to the first suspension made on 16 November 1999 and I have used my powers under Article 90(B)(3)(b) to require the union to lift both suspensions.

Requirements of the legislation, the relevant union rules and the relevant union standing orders.

- 1.12** The relevant legislative provisions, union rules and standing orders are attached as **appendix 1** to this decision.

Relevant Facts

- 2.1** Having heard the witnesses, read the extensive correspondence and considered the large number of documents to which I was referred, I list the following relevant facts in chronological order:-
- 2.2** In April 1998 Mr R Mc Nulty, Chairman of the company, wrote to Mr Lyons to say that it wasn’t prepared to work with “the present MSF (Staff) interface in future”. In August 1999 Mr D Molloy, company Vice President, Human Resources, wrote to Mr A Robson, General Secretary, Confederation of Shipbuilding & Engineering Unions to say that over recent months the company had suffered significant relationship problems “due to one of the regional officers.....I am sure that both Roger Lyons and John Wall can fill you in with the details” and the relationship had impacted “on day-to-day relationships with senior local representatives” and efforts “put into building constructive relationships was starting to erode.”
- 2.3** In October 1999 Messrs Wall and Lyons sent a memo to Shorts MSF members, to say they had “clear evidence” that a politically orchestrated/motivated campaign was underway among MSF members, exhorting them to leave MSF and “conspire to take them into a so-called ‘section’ of a general union” [the Amalgamated Transport & General Workers Union/ATGWU campaign]. They said the campaign “would be fiercely challenged by MSF.” On 3 November, they wrote again to MSF members at Shorts repeating that “difficulties would be dealt with firmly and efficiently.”

- 2.4 On 9 November 1999 Mr Wall wrote to Mr Cammock under the heading “Officer Coverage” saying he would meet the applicants and Ms Boyle [another MSF shop steward] on 16 November, and it was “imperative that all three..... attend.” The minutes of the NEC meeting on 13 November record that Mr Lyons advised it of a “serious situation at Shorts” in that MSF members had been asked to join a branch of the ATGWU. Mr Lyons said a further meeting would take place on Tuesday next (16 November) with Mr Whiteley and Mr Wall. The NEC minutes [which did not name the applicants] record that it was decided: “no further discussion should take place until the appropriate officers investigated the issue further and reported back to it.” (my emphasis).
- 2.5 The applicants met Mr Wall, Mr Whiteley and Mr J Shanahan, Acting National Secretary Ireland, at 2.00pm on 16 November 1999 (Ms Boyle did not attend). The minutes record that the applicants were asked about their involvement in the ATGWU campaign. Mr Whiteley asked them to “disassociate themselves” from that campaign and when this was not forthcoming “he had no choice but to issue them both with letters [previously prepared] suspending them as representatives of MSF Shorts pending an NEC investigation”. Each letter, signed by Mr Whiteley, read as follows:

“I have received information that I regard as prima facie evidence that there are grounds for believing you may be implicated in activities to encourage members of MSF within Shorts to resign from the Union and to join the ATGWU.

In view of the serious nature of these matters I am, on the authority of the General Secretary, suspending you from all the Union offices that you hold, including those as workplace representative.

Arrangements will be made for an NEC investigatory panel to consider the matters further and you will be advised of all your rights and, of course, of the case to be answered.”

An alternative letter [also previously prepared] said:

“On 16 November, John Wall, Tony Whiteley, and Jerry Shanahan asked your senior representatives if they played any part in the [ATGWU campaign]. All three categorically denied any involvement whatsoever... Furthermore they have committed to assist MSF in its investigation into who is responsible.”

This letter contained the pre-typed names of, and was to be signed by, Mr Wall, Mr Lyons, the applicants and Ms Boyle but in the event it did not issue. Also on the 16 November Mr Wall faxed Mr G Crawford, Human Resources Manager, Shorts, to say: “at 2.45pm this afternoon the staff representative credentials of both Frank Cammock and Kevin Doherty were suspended pending an investigation. Until further notice I would request, therefore,

that the company suspend accreditation accordingly.”

- 2.6 On 22 November 1999 Messrs Wall and Lyons wrote to MSF staff members saying that the “campaign to coerce MSF members into resigningand joining the unskilled Transport & General Workers’ Union has intensified”; that the applicants had been asked at a meeting if they had played any part in the ATGWU campaign and “Both refused to confirm or deny any of these actions. We were faced with no alternative but to suspend their credentials as shop stewards pending investigation We will resolve this problem as speedily and effectively as possible”.
- 2.7 On 24 November 1999, MSF staff representatives wrote to MSF staff members saying that MSF had no authority in its rules to suspend the applicants; they also wrote to Mr Wall the next day to say that the rules didn’t allow for the applicants’ suspensions by full - time officers. On 1 December Mr Mackin and Mr Lunn, Chair & Secretary of MSF Belfast Central Branch respectively wrote to MSF’s [then]

President, Mr Barry, expressing their alarm at the action of three full time officers issuing a pre-typed letter of suspension to the applicants. They said; the rules did not allow full time officers to suspend shop stewards from elected positions, or for immediate suspension in this case; the complaints procedure [Rule 16] hadn’t been followed and as President and “guardian of the rules” he was authorised to rule on the “illegal action of the three officers”; if he failed to act against “abuse” of rule he would, by default, hand guardianship of the powers to Mr Lyons and undermine the responsibility vested in him.

- 2.8 Mr Barry replied [3 December 1999] saying that the decisions were taken to “protect the integrity of the vast majority of MSF members and MSF within Shorts.” He said he was consulted and told that senior officers would meet MSF senior representatives to determine the truth and facts and “give the benefit of the doubt to anybody involved.” He said “the simple question which was the intention of the officers to ascertain ‘did you collectively or individually be responsible (sic) for circulating material which requested or encouraged MSF members to leave or resign from MSF and join the ATGWU. The simple answer required from the senior representative was NO or YES. Had they answered ‘no’ immediately no action could or would have been taken against them. As they refused to answer any question or to help in any way to determine who was responsible and to co-operate they were suspended pending a completed report to the NEC and as is customary a fair and full investigation by the NEC”. He said “Rule 16(ii) and (iv) [are the most appropriate sections of the Rule to address]. If [the applicants] can unequivocally respond to me or to the NEC that they have not contravened Rule 16 by being part of or involved in any way, shape or form and have to the best of their ability attempted to determine who was or is responsible Then after a complete investigation by the NEC and the facts determined, it is found that

they acted or behaved.... to protect MSF and its Rules then they must be restored to their former positions as there is no justification for their continued suspension.”

- 2.9 Shortly before Mr Lyons reported to the December 1999 NEC meeting, Mr Wall wrote to him about the ATGWU campaign, to say that; numerous factors indicated direct involvement of “a number of MSF senior representatives ... as long as staff reps refuse to meet us, we will have difficulty in concluding if all of the staff reps are complicit or not. The point is, as an entity, they are circulating documentation... damaging MSF, adversely effecting relationships within our own Union and ... other Unions, and exacerbating an already fraught relationship with a major employer ... we appear to have reached a stalemate, which is not of benefit to the Union. We clearly need legal advice on our position re current and possible future action regarding the lay reps. We need a green light from the NEC re current handling of the problem and action from them re an investigation. We need their clear understanding of the importance of how we are seen to handle this problem in relation to the big picture....”.
- 2.10 The NEC minutes [meeting on 11 December 1999] record that Mr Whiteley sought support for the suspensions “made to defend MSF and its members against an attempted breakaway.” The NEC “endorsed that there was possible evidence” to support the allegation that members of the Shorts Belfast Branch were involved in attempts to encourage MSF members to join ATGWU. In specific regard to the applicants, the minutes also “endorsed that their suspensions accorded with rules 14 & 16(b)” and the applicants should be advised that they may face disciplinary action under rule 16.
- 2.11 The minutes also record that the NEC invoked rule 16(e) as it was of the opinion that the applicants’ branch would be unable to investigate the complaint “in a fair manner” as it was “too familiar with the individuals concerned” and that the NEC held to the opinion that if it allowed the branch to conduct the investigation it may result in the applicants being “treated unfairly and/or the process being handled unfairly.” The NEC decided instead to ask the Executive Committee Ireland (ECI) if it would conduct the investigation and, if not, the NEC would appoint an investigation panel. The minutes record that the NEC President, Mr Barry, asked NEC, and ECI member Olivia Roche if she thought the ECI would do the investigation but “she thought it would be unlikely”. On the basis of this the NEC agreed to “endorse” a three-person investigation panel.
- 2.12 On 11 January 2000 the applicants formally appealed against their suspensions to Mr Lyons by way of a jointly signed letter. The ECI minutes of 21 January record that Mr Lyons wrote to it to ask if it wished to carry out the investigation instead of the NEC. The ECI declined. On 28 January Mr Barry received a letter signed by 20 MSF

representatives asking him to act impartially and protect membership. Mr Lyons acknowledged the applicants appeal on 1 February, viz: "I acknowledge receipt of the letter jointly signed by Kevin Doherty and yourself dated 11 January." Mr M Stroud, MSF Regional Secretary, Ireland wrote to Mr Lyon's on 15 February, replying to his letter of 3 December 1999 [eight days prior to the NEC meeting on 11 December 1999 when it decided to invite the ECI to conduct the investigation]. Mr Stroud stated that the ECI had decided on 21 January 2000 that it did not wish to conduct the investigation into the applicants and the matter should be left to the NEC.

- 2.13 Mr Talbot wrote to the applicants on 13 July 2000 to say that the NEC had decided in December 1999 to instigate a disciplinary hearing against them to ascertain if they had been involved in the ATGWU campaign and also to say that the ECI had decided not to be involved. [Mr Talbot confirmed at hearing that this letter was the first official notice given to the applicants of the NEC and ECI's decisions. He initially referred to the matter as "disciplinary" and in his letter of 20 October 2000 to the applicants changed this to "investigatory"].
- 2.14 The 13 July letter initiated an exchange of correspondences between the applicants and Mr Talbot over several months, which can be précised as follows: the applicants denied involvement in the ATGWU campaign, they asked for the source of the allegations and the evidence held by MSF (claiming entitlement to information under MSF rules and natural justice) they argued that MSF had misapplied its rules 16 a) iii & 16 a) v, 16c) & 16e), they repeated concerns that the investigatory meeting had become disciplinary. They claimed that Mr Talbot failed to provide information that he'd previously agreed to provide, they refused to participate in proceedings until the information was provided and, Mr Cammock [who had gone on sick leave from June 2000 to February 2001] claimed that illness prevented his participation in hearings.
- 2.15 On 28 August 2000, Mr M Sharp, MSF Irish Regional President, wrote to Mr Lyons to say it was clear to the ECI that the applicants' suspensions were "causing difficulties"; and it was concerned that the position had existed for a long time without apparent progress. He said ECI knew that the allegations were serious and reminded the NEC that 'justice delayed was justice denied.' On 30 August Mr M Davison, technical staff rep, wrote to Mr Talbot to say that the proposed disciplinary enquiry was not being conducted in accordance with MSF rule 16(e). Mr Talbot replied that he wasn't prepared to enter into correspondence with anyone other than the applicants. On 27 October Ms Boyle, wrote to Mr Talbot saying Shorts Branch was available to deal with any allegations against the applicants under rules 16 (c) & (d), and asked him to send all information to allow the branch to carry out its responsibilities under rule.
- 2.16 On 24 January and 5 February 2001 MSF's [then] Vice President, Mr Galbraith, wrote to Mr Talbot to say MSF had failed to respond to reasonable written requests for details of

allegations / evidence against the applicants or to explain why it hadn't complied with rules 16 & 17; he said the applicants were entitled to expect it to conform to its rules, or provide an "alternative opinion if its rules shouldn't apply". He said the applicants had concerns about participating in meetings outside rule as it may prejudice their rights and "if it were accurate that MSF's actions to date had been flawed" then all of the actions that flow would also be flawed and that it was clear to him that the applicants' "arbitrary suspension" and MSF's refusal to provide information or explanation "is a breach of natural justice." In reply Mr Talbot said he wasn't prepared to engage in a dialogue with him.

- 2.17 Mr Talbot wrote to the applicants on 12 February 2001 saying that the NEC Investigation Panel met on 7 February and decided the way to discharge the NEC remit [of 11 December 1999] was to investigate the allegations according to procedural guidelines and in line with rules 3(d), 14 & 16. He said the Panel wanted to meet them and offered several dates. The applicants declined.
- 2.18 The Panel submitted its report to the NEC meeting on the 28 April 2001. Amongst its findings were that: full time officers didn't have power to suspend members from office whether acting under the authority of the General Secretary or not; only the NEC had that power; this was an emergency situation and Mr Whiteley had the delegated authority of the National President to formally suspend the applicants and that this action was endorsed by the next available NEC meeting and therefore the suspensions were legitimate; the NEC was concerned that its' decision to endorse the applicants suspension [December 1999] wasn't conveyed to them until July 2000; the applicants' appeal against suspension acknowledged by Mr Lyons [February 2000] wasn't drawn to the Panel's attention until March 2001, nor drawn to the NEC's formal attention until April 2001; no attempt was made to open and collect a file for this investigation between December 1999 and January 2001 and legal advice wasn't sought until February 2001. The Panel said that the investigation process would have been expedited earlier if this had been done. Continuing, the Panel said: "for 760 MSF members to sign forms to join another union in less than 3 months there must have been involvement of other MSF members at Shorts whose judgment was trusted by the members; the ATGWU were willing to retain the applicants in a similar capacity as its representatives; as the previous and present regional officers opposed the campaign and the applicants refused to dissociate themselves from it, the applicants must have been involved to some degree."
- 2.19 The NEC accepted the report and its recommendations, which were put in place with immediate effect, viz; "NEC member Laurence Galbraith takes no part in the investigation; the applicants appeal against suspension is held as soon as possible; using rule 3(d) the NEC suspend the applicants under rule 16(b) [this refers to the second suspension imposed on the applicants] and invoke disciplinary procedures

under rules 16a i, to iv; the General Secretary brings all future appeals against NEC decisions under rule 17 to the next NEC/GPFC meeting” and put in place the following controls to ensure: “that NEC/Annual Conference recommendations are expedited by MSF employees; that the NEC and any NEC panels are kept accurately and timely aware of correspondence and developments affecting the investigation/disciplinary process; that accurate files are prepared and maintained for all investigation/disciplinary procedures and in such procedures senior officers must only act as agents of the NEC panel and on the instructions of the panel Chair.”

- 2.20 Mr Talbot advised the applicants [3 May 2001] of the NEC decisions. They replied on 6 June, repeating their concerns about natural justice saying they had never been informed of the allegations against them and asking questions about their appeal and the relevance of applying rules 3(d), 16(a) (i) to (v). In his reply [15 June] Mr Talbot again refused to discuss the matters, saying they could raise them at the disciplinary meeting. The applicants wrote to Mr Lyons [8 June] to appeal against the NEC suspensions in April 2001. On 26 June they wrote to Mr Galbraith, MSF’s [then] President, asking him to uphold MSF rules and natural justice. They wrote to Mr Talbot the same day saying they hadn’t been given enough time to consider documents nor given full disclosure of all information. They questioned how the NEC reached an “informed decision” in “half an hour” on the 75 page report at its April 2001 meeting. Mr Talbot replied [9 July] by offering a new date for the applicants to meet the Panel and confirming that it had seen all their correspondence.
- 2.21 On 29 August 2001 the applicants wrote to Mr Talbot claiming the NEC breached MSF rules by establishing a disciplinary committee in the absence of evidence; they asked why their branch was prevented from investigating the complaint under rule 16(d); they said they had a right to the protection provided in the rules and agreed to meet the disciplinary panel on 5 September provided he answered their questions. Mr Talbot replied [31 August] repeating that these matters could all be raised with the Panel and if they refused to appear, it would proceed in their absence.
- 2.22 Mr Galbraith wrote to Mr Lyons [25 October 2001] raising “serious concerns” and offering evidence about actions taken by the company. He suggested that it had “embarked on a policy of victimisation against key MSF figures” linked to MSF’s suspension of the applicants. He said that had the applicants not been suspended “their jobs would be protected” and it would be “regrettable” if this resulted in future legal proceedings because of these issues.
- 2.23 Those then are the relevant facts.

Complaints 1 - 3.

- (1) the union's rules did not empower the General Secretary with the authority to suspend them;
- (2) the union's rules did not permit the General Secretary to authorise full time officers of the union to suspend them;
- (3) the full time officer who suspended them with immediate effect on 16 November 1999 did so outside the decision of the National Executive Committee and the union's rules;

The applicants' case

- 3.1 The applicants said that under the rules of the union only the NEC may discipline or suspend members and whilst the rules give the NEC power of suspension, such power is limited. They told me that in their case, they were suspended immediately on 16 November 1999 and under the rules immediate suspension may only occur in two expressly defined circumstances; the first relates to misappropriation of union funds and the second relates to the dissemination of racist propaganda, neither of which, they claim, applied to them. They referred me to two documents; the first was a finding by an NEC investigation committee, which had concluded in April 2001, that full time officers didn't have power to suspend members from office whether acting under the purported authority of the General Secretary, or not; the second document was a letter to the General Secretary from MSF's [then] National President, Mr Galbraith, in January 2001, relating to the applicants' suspensions. In his letter Mr Galbraith said MSF had failed to follow its disciplinary rules. The applicants claimed these two documents supported their argument that the rules were improperly applied. The applicants said the NEC had made a decision on 13 November 1999 to ascertain the facts surrounding the allegation against them and report back to it, and nothing more than that.
- 3.2 Mr Street told me he was an NEC member for 15 years and that he was present at the NEC meeting [13 November]. He confirmed the only decision made by the NEC in relation to this matter was that the officers ascertain facts and report back to it. He said, the way the applicants were suspended was unheard of in his experience and was contrary to the union's disciplinary procedures. Mr Street told me that the rules were very detailed, with a step-by-step disciplinary procedure, with natural justice built into the process. In reply to a question he said that MSF's rules do not allow the General Secretary to suspend a lay member from office, or to delegate such responsibility to any full-time officer.
- 3.3 Mr Mc Bratney told me that he was a member of the union and its predecessors for 37

years and he had been involved at every level in the union. He said he had never known of an occasion where a full-time official was involved in disciplining a lay member. He told me the rules did not allow this and if it were permissible it would overturn the ethos of the union as an organisation led by lay members.

- 3.4 Mr Mc Kay told me he was the National President of TASS, before it merged with other unions to form MSF and he was involved in the working party to co-ordinate the union rules post merger. He said that MSF is a 'lay membership democracy' and that the merging unions were in full agreement about lay membership control. He said that full time officials cannot suspend lay members and to allow this would be a dangerous precedent. In reply to a question on the function of the rulebook he told me "it is the experience of the membership for generations and is there to protect the members. It is not there to protect the 'civil service' of the union nor to protect the full-time officials who are lucky enough to get employment and get paid by the members of the union. The rule book is there specifically to look after the members of the union, to protect them, and their interests; and to reflect their culture."
- 3.5 The applicants also provided two letters in evidence; the first, from Ms B Switzer, who had retired in 1997, having spent 10 years as an Assistant General Secretary(AGS) in MSF and before that 5 years as AGS of TASS. In her opinion there were no circumstances where a full-time officer could suspend an elected lay member and such an action couldn't be justified under MSF's rules. The second letter was from Mr M Seifert, a solicitor who stated that he had been involved in "merger negotiations.... which produced the original MSF rulebook." It was his opinion that there was nothing in the rules which authorised the applicants' suspensions by a union official.
- 3.6 Turning to their suspensions in November 1999, the applicants referred me to the NEC's decision [13 November] that appointed officers were instructed to investigate and report back to it. They said the decision taken by the NEC was clear and limited and that the NEC did not take any other decision. Mr Street confirmed that at the meeting the General Secretary had made a verbal report on the situation in Belfast and that it had been agreed appropriate officers were being sent to investigate the allegation that the applicants were involved in forming, or assisting the formation, of a breakaway union. Mr Street, told me "it was for them to go and find out what was going on, come back to the NEC and report the findings."
- 3.7 The applicants then referred me to the NEC minutes of December 1999 which said "their suspensions accorded with rules 14 &16(b) and the applicants should be advised

that they may face disciplinary action under rule 16.” They said the NEC clearly intended to suspend them using rule 16(b). The applicants said it is a matter of fact that their suspensions were immediate and that the only rules that permit such action are 16(a)(iii), the misappropriation of union funds and 16(a)(v), the dissemination of racist propaganda, and clearly neither of these rules applied to them. All the applicants’ witnesses held this view. The applicants said that despite having repeatedly asked MSF for evidence of their involvement in setting up an alleged breakaway union no evidence had ever been provided. Nor, they said, was any evidence provided at this hearing. The applicants said that it was unfair of MSF to argue that their refusal to participate in the meeting [16 November 1999] somehow implied their involvement in the setting up of a breakaway union. They said they refused to participate in that meeting so as not to give credence to the process and that they had, effectively, been tricked into attending the meeting.

- 3.8 The applicants said the actions of MSF leading up to and including their suspensions and the actions of Messrs Lyons and Wall in sending memos to MSF members (paras 2.3 & 2.6) implying that they were involved in the breakaway campaign, were contrary to natural justice and, in any event the union had greatly exaggerated the situation because not one MSF member left the union as a consequence of the alleged campaign. They also argued that, in all the circumstances, and particularly after the memos issued by messrs Lyons and Wall they could not receive a ‘fair hearing’ within the union.
- 3.9 In his evidence, Mr Mc Bratney said he had attended an MSF Annual Delegate Conference in May 2000 and asked Mr Lyons to immediately reinstate the applicants’ credentials. He claimed this drew an immediate, agitated response from Mr Lyons who made it clear to conference that the applicants “were engaged in recruiting members to another organisation.” It was Mr Mc Bratney’s opinion that Mr Lyons’ publicly stated views would be taken very seriously among the 600 or so lay members and NEC members present and that the applicants would not be able to get a fair hearing within the union.

The union’s case

- 3.10 At the start of his evidence to me, Mr Talbot said the NEC met on a four - weekly cycle and sometimes, as in this case, issues arose requiring the General Secretary to take action to safeguard the union’s interests between meetings. He said the mechanism allowing the General Secretary to do this is found in the union’s Standing Orders, which, he described, are the administrative measures for the application of the rules. He said rule 3(d) provided the power to allow Standing Order 9 (S.O.9) to operate in this case and in his view S.O.9 gave the General Secretary the power to either suspend the applicants himself or to delegate his power, and he chose to do the latter.

- 3.11** Mr Talbot said S.O.9 is clear, and is not limiting, provided the General Secretary consults the President, or in the absence of the President, the Vice-President and the chair of the relevant committee when S.O.9 is put into effect and also provided the decision is reported to and endorsed at the next NEC meeting. Mr Talbot told me that it would be untenable for a union to operate in a manner where urgent and important decisions could not be taken until the next NEC meeting. Referring to the NEC's decision (13 November 1999) not to discuss the allegations against the applicants, he said the reason behind this was to stop any dialogue among members that may have been prejudicial to this issue.
- 3.12** Mr Talbot said that the day after the NEC met (13 November) further discussions took place between Mr Barry, Mr Lyons, Mr Whiteley and possibly the union's Vice-President and the outcome was that Mr Whiteley was empowered to take whatever action was necessary to safeguard the union's interests. Mr Talbot told me the President and the Vice-President, in consultation with the Chair of the General Purposes & Finance Committee (GP&FC) delegated this authority to Mr Whiteley via the General Secretary. He also said that rule 14(c) gives the authority to suspend in circumstances where members may be facing disciplinary action; he said clear evidence existed of the prospect that members may be facing disciplinary action.
- 3.13** Mr Talbot reiterated that this was an emergency situation, which had to be dealt with as such; and under rule 14(c), it was entirely appropriate for the NEC to have the power to endorse these suspensions retrospectively. He said to argue the contrary would mean that nothing could happen between NEC meetings and this would clearly be ridiculous as no organisation could function on that basis. He said that in the circumstances, it was reasonable for the union to believe it faced a serious threat to its membership base at Shorts. The union had invited the two senior representatives to meet it and assist it in an attempt to resolve this matter, but at the meeting Mr Cammock and Mr Doherty had refused categorically to deny any involvement in the ATGWU campaign. Mr Talbot asserted that the union was facing a very serious situation which could not wait until the next NEC meeting.
- 3.14** Referring to the meeting between the applicants and MSF officials (16 November) Mr Talbot said they were the two most senior individuals that MSF had representing it in the factory and by failing to provide satisfactory answers to the questions put to them, and by refusing to disassociate themselves from the ATGWU campaign, Mr Whiteley had no option but to suspend them from office. He said MSF had faced a serious situation with the threatened loss of several hundred members. He told me that the only reason letters had been prepared in advance was in case the applicants were not

prepared to give the assurances the officers were looking for. He said there was an alternative letter, which, in the event, never circulated because of their lack of responses and unwillingness to assist.

- 3.15 Mr Talbot argued that the act of having letters prepared in advance did not mean that the issue had been prejudged, as it could also be argued that had the applicants been prepared to co-operate and deny involvement, the alternative letter (also dated 16 November) would have issued instead. In response to questions Mr Talbot confirmed that a letter of suspension had also been prepared for Ms Boyle and that MSF was unable to identify whether any MSF member had resigned as a result of the ATGWU campaign.
- 3.16 Mr Talbot referred to the letters submitted by Michael Seifert, solicitor and Barbara Switzer, a former MSF assistant general secretary and argued before me that no weight should be given to their opinions.
- 3.17 In his evidence, Mr Barry told me he'd consulted the Vice-President and Chair of the GP&FC and the General Secretary over the weekend (13 November) and that he gave the General Secretary and the other officers involved the authority to do what was necessary to contain the situation. He said the NEC meeting, which took place that weekend decided not to have a full discussion in order not to prejudice any appeal or investigation. Mr Barry also said he was kept regularly informed on the investigation's progress through dialogue with the General Secretary.
- 3.18 In his written evidence to me dated 19 February 2002, Mr Lyons stated that S.O. 9 gave him "the power to take a decision that is not covered by established NEC policy or decisions in authorising Tony Whiteley to suspend, if necessary, I was acting in accordance with Standing Order 9." He continued "in doing so I would normally consult the President, or on (sic) the absence of the President, the Vice-President I was unable to contact the President and so I spoke to the Vice-President ". (This latter statement contradicted Mr Barry's evidence to me). Mr Lyons claimed that the NEC agreed [13 November] that Mr Whiteley and Mr Wall should investigate the situation at Shorts as a matter of urgency (This is not supported by the NEC minutes). He stated "it emerged that Mr Doherty and Mr Cammock were prima facie involved in trying to encourage MSF members to leave our union" and "we wanted to know from them precisely what their involvement was. If they were involved ... then disciplinary action would have to be taken against them. They were given the opportunity to disassociate themselves but refused to do so. Obviously action being taken by individuals which may result in undermining the union had to stop. This meant that consideration had to be given to suspending these individuals if no assurances could be obtained from them that they were not involved in this activity and that action had to be taken quickly.

- 3.19 Mr Lyons' written evidence also referred to the next meeting of the NEC [11 December 1999], where he stated "a decision concerning Mr Doherty and Mr Cammock could not wait until then if indeed they were involved in supporting the breakaway union". He stated "I discussed the position with Tony Whiteley and it was agreed that he would obtain an assurance from them that they were not involved. If this assurance was not forthcoming he was authorised to immediately suspend them from office. I am well aware that the union's rules allow suspension by the NEC in certain circumstances as set out in rules 14 and 16. These individuals would be facing disciplinary proceedings if such an assurance was not given and so the NEC had power to suspend. However, I appreciated that the suspensions would have to have immediate effect. Inevitably, decisions have to be taken between NEC meetings that in the ordinary course of events would have to be taken by the NEC. When this is impractical because an emergency or some urgent business arises there is a procedure in place to deal with this problem. The NEC has the power to set its own standing ordersin authorising Tony Whiteley to suspend if necessary I was acting in accordance with NEC Standing Order 9."
- 3.20 During their cross-examination of Mr Talbot the applicants argued rule 3(d) could not apply, as its purpose is limited to dealing with matters not otherwise provided for in the rules and the matters before me were covered by rule 16 (Disciplinary Procedures). They added that the rules are there to protect them as union members. They also drew my attention to a letter from Mr Talbot to my office (26 March 2001) which claimed that Mr Lyons had consulted the Vice-President and not Mr Barry; they argued that the reason for this was because the President was too close to the matter as he was from the Irish section.

Reasons for my decision

- 3.21 It is clear to me that the NEC had decided to investigate the allegation made against the applicants to establish the facts and have a report made to it to determine if the applicants had a case to answer. In my view, the NEC's decision was the correct one in the circumstances. No evidence was produced to me to suggest that the NEC was contemplating any other course of action at its November 1999 meeting. Nor was any evidence offered to show that the circumstances reported by the General Secretary to the NEC (13 November) had changed in the period of three days to justify the applicants' immediate suspension on the 16 November. The only proper way under the union's rules in which the applicants could have been suspended immediately would have been by applying rule 16(b) provided, of course, it was supported by evidence to show that they were involved either in the misappropriation of money or the propagation of racist propaganda and no such evidence was produced. Therefore, I believe that rule 16(b) was misapplied and consequently breached in this case. It is also clear from my reading of the union's rules that only the NEC has been given the power to suspend a member. The rules contain no provision for the General Secretary or any

other MSF official to effect a suspension whether immediately or otherwise.

- 3.22 In my opinion Rule 3(d) does not provide the General Secretary with the authority that Mr Talbot claims in this case. Rule 3(d) is only there as a long stop provision to enable the NEC to make decisions in respect of matters on which the rules are silent. It should not be relied upon in this case as it does not permit the NEC to override other clear provisions in the rulebook. Other avenues were open to the union, specifically the use of its disciplinary procedures under rule 16.
- 3.23 Furthermore, in my opinion, Standing Order 9 does not give the General Secretary the authority Mr Talbot claims in this case. It states that “the General Secretary shall be responsible for ensuring the NEC decisions are carried out...if a decision is required that is not covered by established NEC policy or decisions...”(my emphasis) The NEC had clearly taken a decision in this case, i.e., to investigate the allegations against the applicants, therefore, there was no need to invoke Standing Order 9 and, indeed, it was incorrect to do so.
- 3.24 Turning to Rule 14 (Removal from Office) the union claims sub-section (c) of this rule gave it the authority to suspend in circumstances where members may be facing disciplinary action.
- 3.25 In order to examine this claim I have posed the question - was the rule applied as it is written and would be understood by ordinary union members? Rule 14(c) says “An office holder facing disciplinary procedures under rule 16 (Disciplinary Procedures) may be suspended from office pending an appeal. If the appeal is unsuccessful, the NEC shall have the authority to exclude the member from office”. I believe as it is written, rule 14(c) links the suspension to the right of appeal. In my opinion the NEC may only use this power to suspend where an office holder facing disciplinary procedures decides to exercise his or her right of appeal and, under MSF’s rules, a proper appeal can only follow once all the evidence supporting the complaint has been gathered and heard first and the accused members given the opportunity to question the evidence and also given the opportunity to have other member(s) speak on their behalf; this did not happen in this case. It follows that where an office holder decides not to exercise this right of appeal, then the question of suspension does not arise.
- 3.26 Furthermore, as written, rules 14(c) and 16 are to be read in conjunction. I believe the disciplinary procedures provided for in rule 16 were not properly applied in this case, and as a consequence 14(c) cannot be relied upon to support the union’s action in suspending the applicants in the way it did.
- 3.27 I do not need to consider the contents of the Seifert and Switzer letters as their comments and views do not materially affect my decision in this case.

Complaint 4

That the National Executive Committee breached rule 16(e) of the union's rules by deciding at its meeting on the 11 December 1999 that their branch was unable to investigate the complaint purportedly made against them;

The applicants' case

3.28 Mr Doherty told me that he and Mr Cammock were active representatives in the union for many years at both regional and national levels and are very well known throughout the union. He drew my attention to rule 16(e) where it states "if in the opinion of the NEC a branch is unwilling or unable to consider a complaint, the NEC has authority to instruct the appropriate regional council to investigate the complaint." Mr Doherty said his branch wrote to the NEC confirming it was both willing and able to conduct the investigation, notwithstanding this it took the view that the branch was unable to conduct the investigation in a fair manner, because of what it described as the issues involved and also due to the branch members being too familiar with himself and Mr Cammock. He contended the NEC had acted unreasonably in interpreting this rule in the way it did. (I note from the written evidence that the applicants branch did not write to the NEC to confirm its willingness/ability to conduct the investigations until 27 October 2000).

3.29 Mr Doherty told me that the Shorts branch contains not only members at Bombardier Shorts, but is a multi-workplace based branch, spanning various locations. In relation to the interpretation of the word "unable" he argued, that the ordinary member would take it to mean that the branch was not physically able to do so. He said that the union has many branches which do not function, and are therefore not physically able to deal with these matters but this was not the case here. He said that "unable" has nothing to do with familiarity and to argue otherwise is nonsensical as every branch in the Union would face the same problem and the rule would be unworkable. Mr Doherty said that I should consider the term unable to mean that a branch could not carry out an investigation because it lacked resources and he particularly cited as an example of this, the lack of staff and/or finance.

The union's case

3.30 Mr Talbot made the point to me that the applicants were senior representatives who were very active within their branch. He told me that the union had received various

communications from members of their branch, some of which supported the applicants and others which did not. He then referred me to the case of MacDonald v. MSF (Ref: HQ 0001466 QB 12 May 2000) arguing that whilst the background may differ slightly the principles involved were much the same.

- 3.31 Mr Talbot said that the case involved Mr MacDonald, an active member of his branch who had been disciplined by the NEC because of his conduct. The NEC had set up an investigating committee having taken the view that there would plainly have been difficulties in the members' branch investigating the complaint against him. During the internal investigation, Mr MacDonald had claimed, as a part of his defence, that he had acted merely on the instructions of his branch and had been no more than a mouthpiece for it. Mr Talbot said that Judge Peter Crawford ruled that the union had acted rightly by finding that the branch was unable to consider the complaint. Mr Talbot argued before me that a similar situation existed here in regard to the complaints made against the applicants.
- 3.32 Continuing, Mr Talbot argued that the only test to be applied to rule 16(e) was whether or not the NEC had formed a decision about the branch's willingness/ability. He said it did not matter whether the branch or the applicants disagreed with the NEC's opinion.

Reasons for my decision

- 3.33 I agree with Mr Talbot that on its face, rule 16(e) requires the NEC to form an opinion as to whether a branch is unwilling or unable to consider a complaint; however, I do not accept there is no other test to be applied. It is already well documented that the rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what they must have been intended to mean, bearing in mind their authorship, their purpose and the readership for which they were intended.
- 3.34 I believe it was the intention of those who framed rule 16(e) to allow a branch to hear complaints against its members unless there were particular circumstances which made this inappropriate. I believe such cases would be relatively small in number and be the exception rather than the rule and that the branch would normally expect to handle the complaint. I am not wholly persuaded by Mr Talbot's argument when he says that the applicants would not get a fair hearing by their branch because they were too well known. If Mr Talbot is right and familiarity is the test then I can foresee this creating regular difficulties in relation to branches investigating complaints made against its elected members and I cannot believe the ordinary member would readily accept this interpretation of the rule.

3.35 Turning to the case cited by Mr Talbot, I believe it does not support his argument. It is clear from my reading of the MacDonald case that he had been the “mouthpiece” for his branch and it was in the particular circumstances of that case Judge Crawford ruled that the union cannot be criticised for taking the view that it would not be appropriate for his branch to investigate the complaint made against him. In the case before me neither Mr Cammock nor Mr Doherty claimed to have acted as spokesmen for their branch, nor was any evidence offered to me by the union to say that they were so acting.

3.36 Rule 16(e) allows the NEC to form an opinion about a branch’s willingness or ability to consider a complaint and in doing so it must act in a reasonable way and not in a perverse manner; whether or not their opinion holds popular sway is irrelevant. It is a matter for judgement in the circumstances of this case, and on balance in this case, I have decided to allow the NEC’s opinion to stand, but given my reservations expressed above this should not be taken as a general endorsement by me, and all future cases must be considered on an individual basis.

Complaint 5

That the National Executive Committee did not have the power under the union’s rules to endorse retrospectively their suspension, at its meeting on 11 December 1999.

The applicants case

3.37 The applicants said that the union’s rules did not allow the NEC to endorse their suspensions retrospectively.

The union’s case

3.38 Mr Talbot said that the suspensions were in accordance with the rules and Standing Orders of the union, and as they were reported to and endorsed by the NEC in December 1999 they were, therefore, legitimate.

Reasons for my decision

3.39 Standing Order 9 restricts the General Secretary to a particular course of action in the specific circumstances where a decision is required that is not covered by established NEC policy or decisions. As I have said above the NEC had clearly taken a decision to call for an investigation into the allegations against the applicants, therefore, there was no need to invoke Standing Order 9 and the union was incorrect in concluding that it

allowed it to endorse retrospectively the suspension of the applicants by the Assistant General Secretary.

Complaint 6

(4) That the General Secretary breached rule 17(a)(iii) of the union's rules when he failed to act in accordance with its provisions, following their appeal to him on 11 January 2000 against their suspension under rule 17(a)(ii).

The applicants case

- 3.40 The applicants told me that they had made a joint written appeal to the General Secretary, in line with rule 17(a)(ii), which he acknowledged by letter. Mr Doherty said the rules required the General Secretary to go much further than this by preparing a full set of papers for each member of the appeals court and the appellants and this he had failed to do.
- 3.41 Mr Doherty said an internal enquiry had found that Mr Lyons had failed to act in accordance with the rules and he drew my attention to the NEC Investigation Panel Report (April 2001) which said that on 11 January 2000 the applicants “both appealed against their suspension from Office under MSF Rule 17. This was acknowledged by the General Secretary on 1 February 2000 but not drawn to the attention of the NEC Investigation Panel until March 2001.....to date (April 2001) this has not been drawn to the formal attention of the NEC.”
- 3.42 Mr Doherty said they knew they had been suspended out of rule, adding that they were confused about their rights and had appealed on 11 January 2000, i.e. within thirty days of the NEC’s decision to suspend them [11 December 1999] to ensure they “were not caught out in a technicality.”

The union’s case

- 3.43 Mr Talbot said the applicants appeal “was not taken at the time” for a number of reasons. He said the President (Mr Barry) had attempted conciliation and referred me to an agreement (April 2000) between MSF and one of its regional officer’s based in Belfast which had been signed by, amongst others, Mr Doherty. He said that in April 2000 MSF had thought it was moving towards an internal resolution and when this failed the NEC proceeded (June 2000) to the investigation/inquiry stage.
- 3.44 Mr Talbot also said it was the NEC’s normal practice in the past to stay appeals where disciplinary issues were outstanding, and if there was to be an appeal, it would be heard after the disciplinary hearing and any subsequent decisions taken as a result of disciplinary action. However in the light of the decision of the GB Certification Officer in March 2001 (Michie v. MSF - D/38-42/2001) the union now understood it to mean that where trade union rules say an appeal should be held within two months of the appeal being lodged, that is what should happen, notwithstanding that there may be further disciplinary action to follow. Accordingly the union had offered various dates to the applicants to hear their appeal; however, they failed to respond positively.
- 3.45 During cross examination of the union Mr Doherty rejected the claim that Mr Barry had

tried to conciliate in their case. He said Mr Barry had been conciliating on another matter and his role in that had been unrelated to this case, and in support of this he drew my attention to the agreement document between MSF and its regional officer which was specifically an agreement between these two parties only.

Reasons for my decision

- 3.46** When the General Secretary received the applicants' written appeal the evidence before me showed that his only action was to have his secretary send an acknowledgement. He did not follow the procedures laid out for him in rule 17(a)(iii) viz; preparing a full set of papers for the appeals court and the appellants. This does not surprise me as that rule requires such material to consist of all the written material relating to the original investigation and at the time he received the applicants' appeal no investigation had started.
- 3.47** In support of MSF's actions, Mr Talbot cited the Michie case. I note in that case the GB Certification Officer was satisfied the union had sufficient power under rule 16(b) to make a suspension and to put into place an investigation, what the union had failed to do was to offer Ms Michie a timely appeal under rule. The circumstances in this case are different; the applicants were being offered an appeal some sixteen months after being incorrectly suspended and over a year following the lodgement of their appeal. In this case the union's rules required it to mount an investigation as a first stage and then, if appropriate, suspension followed by penalty and finally appeal in accordance with the provisions of rule 17.
- 3.48** I have sympathy with the applicants' when they told me they were confused and had only appealed on 11 January 2000 to avoid being outside the thirty day period provided for in the appeals machinery and thereby possibly losing their rights on a technicality. At the time they lodged their appeal the NEC had only decided about a month earlier to carry out the investigation into the allegations against them and was still in the process of asking the Executive Committee, Ireland if it would take on the task – it had not taken the decision to suspend them.

Observations

- 4.1** I note that on 1 January 2002 MSF amalgamated with the Amalgamated Engineering and Electrical Union to form a new union, Amicus. The rules of Amicus provide that the former rules of MSF shall continue to apply to the former members of MSF, in so far as they are consistent with the rules of Amicus, and that references to the National Executive Council of MSF are now to be taken to be the National Executive Council of the MSF section of Amicus.

4.2 In addition to the complaints I have dealt with above, the applicants told me they considered the union had denied them natural justice throughout their suspension and cited a number of examples in support of this allegation, chief amongst these being that:

- they had been invited to a meeting which they claim was to discuss officer coverage, only to discover that it was arranged by MSF to enquire of them, the extent (if any) to which they were involved in setting up a breakaway union. The applicants told me they refused to answer any questions on this matter and, as a result, were suspended immediately without any opportunity to hear and question any evidence against them (para 2.5);
- following the above meeting Messrs Wall and Lyons had circulated a memo to Shorts members to advise that the applicants had been suspended because they had refused to confirm or deny any involvement in the ATGWU campaign (para 2.6);
- furthermore, I was referred to Mr Mc Bratney's evidence (para 3.9) in which he said he had asked the General Secretary from the rostrum in front of some 600 delegates at the Annual Delegate Conference (May 2000) for assurances that the applicants would have their credentials restored immediately and the company notified accordingly. Mr Mc Bratney said that in his reply the General Secretary publicly expressed the view that the applicants were guilty of attempting to recruit MSF members for another organisation.

4.3 It is already well documented that natural justice is implied into trade union rulebooks and is inherently contained in the disciplinary and appeals procedures laid down in MSF's rules. From the evidence before me I believe natural justice was not dispensed in this case and had the union's rules been applied properly the applicants would not have concerns in this regard.

4.4 From the evidence before me it was clear that the union had been consistently urged from many quarters to follow its own rules in this case and not least from its own National President, Mr Galbraith. I can understand the union's alarm faced with what it perceived to be the very serious threat of losing members and that it felt it had to treat the matter as an emergency, nevertheless, the rules are there to protect the members and there can be no excuse for it acting outside its own disciplinary procedures.

S McElrea

Northern Ireland Certification Officer

APPENDIX 1

IN THE MATTER OF COMPLAINTS MADE AGAINST THE MANUFACTURING SCIENCE AND FINANCE UNION

APPLICANTS

MR F CAMMOCK

MR K DOHERTY

Date of Decision:

10 July 2002

Set out below are the relevant statutory requirements of the 1995 Order referred in this decision, together with the union rules and the union's standing orders, which have a bearing on this application.

The relevant statutory requirements are as follows:

“90A.-(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 paragraph (2) may apply to the

Certification Officer for a declaration to that effect, subject to paragraphs (3) to (7).

(2) The matters are -

(a) ...

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

(c) & (d) ...”

A number of union rules and standing orders were referred to during the course of the hearing. The following are those relevant to the applicants application and their determination.

The relevant union rules are as follows:

“Rule 3 (Rules)

a)

b)

c)

d) The National Executive Council may by resolution provide for all other matters not otherwise provided for in the Rules.

Rule 14 (Removal from Office)

a)

b)

c) An officeholder facing disciplinary procedures under Rule 16 (Disciplinary Procedures) may be suspended from office pending an appeal. If the appeal is unsuccessful, the NEC shall have the authority to exclude the member from office.

d)...

Rule 16 (Disciplinary Procedures)

a) The NEC shall have the power to terminate the membership of, or fine or remove from office any member who, in its opinion, without reasonable excuse:

i) Breaks, evades or violates any provisions contained in the Rules and Objects of the Union;

ii) By his/her conduct acts against the interests of the Union;

iii) Misappropriates or fraudulently receives any money, funds or property of the Union or makes any false declaration in regard thereof;

iv) Being an elected office-holder of the Union, refuses or neglects to perform any duty properly imposed upon him/her;

v) In his/her capacity as a member of the Union, supports or speaks on behalf of organizations

concerned with the dissemination of racist propaganda and/or himself/herself undertakes actions against others, whether members of the Union or not, designed to discriminate on the grounds of race, creed, ethnic origin, nationality, sexuality or sex.

b) In cases referred to the NEC under a) iii) and a) v) above, the NEC shall have the authority to suspend the member immediately from holding office or representing the Union in any capacity pending the outcome of an investigation. In the event of a complaint under a) iii) above being upheld, and in the absence of any other penalty, the member concerned shall continue to be barred from holding office until outstanding monies have been recovered.

c) in all cases other than b) above, where a complaint is made against a member, the member's Branch shall investigate in accordance with d) below

d)

e) if, in the opinion of the NEC, a Branch is unwilling or unable to consider a complaint, the NEC has authority to instruct the appropriate Regional Council to investigate the complaint. The Regional Council shall conduct the investigation in the same manner as that outlined for a Branch in the Rule. (References to 'Branch' in subsequent paragraphs and in Rule 17 [Appeals Machinery] shall be taken to read 'Regional Council' throughout, where appropriate).

f) – p)

q) The NEC shall have the power to delegate the responsibility for Rule 16 to the Executive Committee of the Ireland Section, for members of this Section only.

Rule 17 (Appeals Procedure)

a) Individual Discipline

i) Appeals against a disciplinary action by the NEC shall take place in accordance with the following paragraphs of this Rule.

ii) A appeal shall in the first place be addressed in writing to the General Secretary within 30 days of receipt of the NEC decision.

iii) The General Secretary shall prepare a full set of papers for each member of the Appeals Court and the appellants. This shall consist of all written material received from the Branch and the appellant relating to the original investigation, the National Executive Council decision and the request that the Appeals Court should consider the complaint.

iv) The Appeals Court shall normally meet within two months and consider only the material before it except that the appellant has the right to address the Court. The appellant may be accompanied by a member of the Union who shall be entitled to assist in the presentation of his/her case. If the appellant chooses not to appear or fails to appear without reasonable excuse, the Appeals Court shall proceed to consider the case.

v) The decision of the Appeals Court shall be final. It shall be communicated to the appellant, Branch and the NEC and shall be reported to the next Annual Conference.

Rule 40 (Ireland)

Ireland shall constitute a Region and shall be designated as the Ireland Section- MSF. In Ireland, Rule 39 (Regional Councils) shall be construed so as to empower the membership there to act in accordance with the appropriate trade union legislation. An Annual Policy Conference shall be established from the Ireland Section – MSF and shall consist of delegates elected by the Branches in the Section. The membership in the Section shall elect an Executive Committee with power to make decisions in matters of an industrial or a political nature arising out of or in connection with economic or political conditions in Ireland. The Ireland Regional Council shall meet at least five times a year and shall receive a report at each meeting from the Ireland Executive Committee. One of the full-time officials in Ireland shall be the National Officer for Ireland”.

The relevant National Executive Council Standing Order – (September 2001)

9. DECISIONS BETWEEN NEC MEETINGS

The General Secretary shall be responsible for ensuring the NEC decisions are carried out. The General Secretary shall consult the President (or in the absence of the President, the Vice President) and the Chair of the relevant sub-committee if a decision is required that is not covered by established NEC policy or decisions. They may agree that there be a special NEC meeting or a decision made which would then be reported to the following NEC meeting.”