

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

Mr P McGinley

v

**The Northern Ireland Public Service Alliance
(NIPSA)**

Date of decision:

9 January 2006

DECISION

Upon application by the applicant under Article 90A(1) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended) ('the 1995 Order'):

In respect of Motion 100 at its 2004 conference (conferral of life membership on Mr Jim McCusker) on 4 June 2004:

1. I dismiss the applicant's complaint that the union breached rule 2.7 of its rules as the General Council decided to nominate Mr McCusker for life membership without the support of a branch nomination.
2. I dismiss the applicant's complaint that the union breached rule 5.8 of its rules as the conduct of proceedings in passing motion 100 was not properly governed by the Standing Orders (contained in Annex E to the rules) in that Standing Orders Report No.1 was not complied with, wherein two speakers wishing to speak to Motion 100 occupied the seats reserved for such speakers at the front of the hall and were not called, instead it is alleged that they were ignored and shunned by the acting president.
3. I dismiss the applicant's complaint that the union breached rule 5.9 of its rules as a quorum was not present as required when Motion 100 was called.
4. I dismiss the applicant's complaint that the union breached rule 5.10 of its rules in conjunction with Standing Orders, in that 5.10 states that the President of the union shall preside as chairperson at General Conference, and in the President's absence Standing Orders state that the Vice President shall preside; for motion 100 the Vice President was in the chair although the President was not absent, in breach of rule 5.10 and Standing Orders.

5. I declare that the union breached rule 5.12 of its rules by failing to take a vote by show of hands or card vote on Motion 100 at the 2004 conference.

I consider it inappropriate to make any Order in relation to this declaration.

REASONS

1. By an application dated 19 November 2004, the applicant, Mr P McGinley, complained of five alleged breaches of rules by his union, NIPSA. The complaints, as clarified and confirmed in correspondence, were as follows: That in the passing of motion 100 at its 2004 conference (conferral of life membership on Mr Jim McCusker) on or about May 2004:
 - (i) That the union breached rule 2.7 of its rules as the General Council decided to nominate Mr McCusker for life membership without the support of a branch nomination.
 - (ii) That the union breached rule 5.8 of its rules as the conduct of proceedings in passing motion 100 was not properly governed by the Standing Orders (contained in Annex E to the rules) in that Standing Orders Report No.1 was not complied with, wherein two speakers wishing to speak to Motion 100 occupied the seats reserved for such speakers at the front of the hall and were not called, instead it is alleged that they were ignored and shunned by the acting president.
 - (iii) That the union breached rule 5.9 of its rules as a quorum was not present as required when Motion 100 was called.
 - (iv) That the union breached rule 5.10 of its rules in conjunction with Standing Orders, in that 5.10 states that the president of the union shall preside as chairperson at General Conference, and in the president's absence Standing Orders state that the vice president shall preside; for Motion 100 the vice president was in the chair although the president was not absent, in breach of rule 5.10 and Standing Orders.
 - (v) That the union breached rule 5.12 of its rules, requiring voting by a show of hands only except when a card vote is called by the officer presiding or demanded by at least 10 delegates, in that the passing of a motion by acclamation, on which basis Motion 100 was passed, is not provided for in the NIPSA Constitution or Standing Orders.
2. These matters were investigated in correspondence and, as required by Article 90B(2)(b) of the 1995 Order, the parties were offered the opportunity of a hearing, which took place on 25 November 2005. The union was represented by Mr J Corey, General Secretary, accompanied by Ms C Gates, President of NIPSA, and Mr J Welsh, Vice President, both of whom gave evidence for the union. The applicant, Mr McGinley, acted in person and gave evidence. A bundle of documents containing relevant correspondence and papers was prepared for the hearing by my office. The 2002 rules of the union and the 2004

Annual Delegate Conference Agenda, inclusive of Standing Orders for Conferences, were also in evidence. Both sides submitted skeleton arguments.

Findings of Fact

On the basis of the written and oral evidence and the representations made to me I make the following findings of fact.

3. NIPSA's 2004 Annual Delegate Conference took place from Wednesday 2 June to Friday 4 June of that year. In preparation for the conference, Branch 7 and Branch 8 of NIPSA held a mandating meeting to decide how they wished their delegates to vote on each of the motions on the agenda. Between them Branches 7 and 8 had some 1400 members and were sending 13 delegates to the conference. Both branches instructed their delegates to oppose Motion 100, which asked conference to confer life membership of NIPSA on Mr Jim McCusker, who had retired the previous year after 26 years as the union's General Secretary. Mr McGinley was one of two delegates from Branches 7 and 8 chosen to speak against the motion when the time came. Their intention was to propose that the award be deferred until a legal issue on which Mr McCusker was then in dispute with NIPSA, and which involved some members of Branches 7 and 8, was settled.
4. On the evening before the first day of the conference, some of the delegates from Branches 7 and 8, including Mr McGinley, were approached by Ms Gates and Mr Corey, who had heard that they were intending to oppose Motion 100. There was even some concern that they might stage a disruptive protest of some kind during the final session of the conference on Friday morning, when the motion was called. Ms Gates and Mr Corey asked the Branch 7 and 8 delegates to reconsider their position and not to oppose the motion. They thought it particularly important at that time, when the union was involved in a lengthy industrial dispute, that the conference should end on a show of unity, not division. The delegates replied that they had been mandated by their Branches to oppose the motion, and intended to speak. The discussion ended without any agreement being reached, but with each side apparently believing that they would hear again from the other before the Friday morning session. In the event neither made any further overture about the matter.
5. On Friday morning Motion 100, which was shown on the agenda as originating from the General Council, was duly moved by a member of that body. It was the conference's last piece of business. Mr Welsh was presiding at this session. Mr McGinley and his colleague from Branch 7 had, as recommended in Standing Orders Report No.1, taken seats in an area at the front of the hall which was reserved for delegates wishing to speak. As soon as the motion was moved, there was an immediate and prolonged standing ovation by the generality of the delegates. When this ended, Mr Welsh said that the delegates had clearly shown their approval, announced that the motion was carried and called Mr McCusker to respond, which he did. Mr McGinley and his colleague signalled their confusion at these developments to Mr Welsh, but without effect. Considering that their opportunity to speak against the motion was lost, they returned to their seats in the body of the hall. Consequently Mr Welsh was not able to contact them to explain the decision he had taken. At the end of Mr

McCusker's address, Mr Welsh formally presented him with his life membership medal.

The Relevant Statutory Provisions

6. *Right to apply to Certification Officer*

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) *.....*

(c) *.....*

(d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*

(e) *.....*

Declarations and orders

90B. –

(3) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements –*

(a) *to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*

(b) *to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

The Union's Rules (extracts from NIPSA Rule Book 2002)

7. The NIPSA rules most relevant to these complaints are given below.

Life Membership

2.7 *Branches may submit to the General Council the name of any person upon whom it is thought that life membership should be conferred. Such names*

shall be considered by the Council which may make recommendations to Annual General Conference.

- 2.8 Not more than three persons shall have life membership conferred upon them in any one year. The decision as to the person or persons on whom Life Membership shall be conferred shall be taken by Annual General Conference on the proposal of the General Council.*

Membership: General

- 2.9 Where any dispute arises as to the qualification for membership of an applicant, the question at issue shall be referred to the General Council, whose decision shall be final.*

Life Members

- 2.19 Life members shall be entitled to receive a free copy of the union journal. They shall have no other rights and benefits except those which may be determined by the General Council at its discretion, and those which may be expressly provided for in these rules.*

Delegate Conferences: General

- 5.8 The proceedings of Delegate Conferences shall be governed by the Standing Orders contained in Annex E to these rules, and shall not be invalidated by any accidental omission to give any notice required by these rules or by any defect in the election or qualification of any member of such Conferences.*
- 5.9 The quorum at any Conference shall be a majority of the delegates entitled to attend.*
- 5.10 The President of the union shall preside as chairperson at General Conference. In the absence of the President the chairperson of the Conference shall be decided in accordance with Standing Orders.*
- 5.11 Members of the General Council shall attend at Conferences but shall not be entitled to take part in any vote or election, save that the officer presiding at the time shall be entitled to a casting vote in the event of an equal number of votes being cast on each side of a motion.*
- 5.12 Voting shall be by show of hands except when a card vote is either called by the officer presiding or demanded by at least 10 delegates. No one other than a delegate shall be entitled to take part in any vote at Conference. The basis of a card vote shall be one vote for each ordinary member of the branch.*
- 5.15 The General Council shall be empowered, after consultation with branches, to appoint observers and trainee delegates, who shall not be entitled to speak or vote on Conference business. The Council shall select tellers, for the purpose of ensuring where necessary the counting of votes cast during Conference proceedings. The tellers may be appointed from the trainee delegates present.*

Conference Representation

5.16 Representation at General and Group Conferences shall be from branches on the basis of fully paid up branch membership on 31 December preceding Conference. The number of delegates to be selected shall be as follows:-

- Branches with up to 80 ordinary members – 1 delegate.
- Branches with 81-200 ordinary members – 2 delegates.
- Branches with 201-300 ordinary members – 3 delegates.
- With one additional delegate for each complete 100 ordinary members thereafter.

Conference Motions

5.19 Motions must proceed either from branches or from the General Council or the Group Executive Committee and be received by the date specified in rule 5.2(b). Motions proceeding from a branch must have been passed at a properly constituted meeting of the members of the branch and shall, when forwarded to the General Secretary, be submitted on the pre-prepared motion forms and be signed by two officers of the branch concerned. Motions proceeding from the General Council or the Group Executive Committee must have been passed at a properly constituted meeting of the Council or the Executive Committee. The General Secretary shall maintain a supply of pre-prepared motions forms so as to be available at all times.

Standing Orders Committee

5.22 A Standing Orders Committee of 4 members, consisting of at least one member of each Group, shall be elected by ballot vote at the General Conference and shall serve for three years being then eligible for re-election. The chairperson shall be elected annually by the Committee at its first meeting following the Annual Conference. Members of the General Council shall not be eligible to serve on the Committee. In the event of a vacancy occurring on the Committee, the Council may appoint a member from that Group to serve until the next succeeding Annual General Conference.

Powers of the General Council

6.9 (m) To establish, subject to these rules, an Equal Opportunities Committee. The Equal Opportunities Committee will be elected by ballot vote at the NIPSA Annual Delegate Conference. The Committee shall comprise 12 members and shall include at least two members from the Public Officers' Group and two members from the Civil Service Group.

Nominations [for membership of the General Council]

6.34 Nominations may be made only by Branches.

Elections for Equal Opportunities Committee

6.50 Nominations for the members of the Equal Opportunities Committee to be elected by the annual delegate conference may be made only by branches.....

SECTION 12: RULES

12.2 Except as expressly provided for elsewhere in these rules, these rules (including the provisions of the Annexes thereto) shall not be rescinded, added to or altered except by a Delegate General Conference of the Union. A motion to rescind, add to or alter these rules should be submitted in accordance with rule 5.19. Notice of any such amendment shall be given on the agenda of the Conference, and in order to be carried a resolution approving an amendment shall require no dissent on a show of hands or support by at least two-thirds of the total votes cast on a card vote.

ANNEX E: STANDING ORDERS FOR CONFERENCES

Reports of Standing Orders Committee

4. The first report of the Standing Orders Committee to an Annual Conference hereinafter referred to as "**Report No 1**", shall comprise the agenda, which shall contain all the motions received in accordance with these standing orders and the Committee's recommendation on the timetable and other matters.

The Agenda

5. The Standing Orders Committee will include in a **primary agenda** those motions which require a decision by conference and will place the remaining motions in a secondary agenda.

The Timetable

18. In order to make the maximum use of conference time for the discussion of motions on which there may be differing opinions, the General Council will indicate which **motions, if any, on the primary agenda it is willing to have adopted without discussion**. These motions will be listed in a report of the Standing Orders Committee and by adopting the report the conference will carry the motions.

Conduct of Debates

20. At the beginning of each item of business the **conference doors shall be closed** and no one will be permitted to enter or leave until the item (including any vote thereon) has been concluded.

25. The mover of a motion on the agenda shall have the **right of reply** at the close of the debate upon the motion, if anyone has expressed opposition to the motion.
32. **The ruling of the President** on any question under standing orders or on points of order or explanation, shall be final unless challenged by not less than 10 delegates. In the event of such a challenge the President shall vacate the chair. The Vice-President, failing whom a member of the General Council, shall then take the chair and shall put it to the vote that the ruling of the president be upheld. Unless two-thirds of the delegates present and voting vote against the motion that the ruling of the President be upheld, the ruling of the President shall stand. When the result of the vote has been declared, the President shall resume the chair and proceed in accordance with the result of the vote.

Procedural Motions

37. When the motion to adopt a report of the Standing Orders Committee has been moved the President may call any Branch or the General Council, which wishes to move reference back to vary or delete a part of the report. The Standing Orders Committee may reply to such a **reference back** before it is voted upon. If subsequently the motion to adopt the report is carried, the report shall have effect as amended by any reference back accepted by the conference.
39. A debate shall be closed if:-
- (a) A motion **“that the vote now be taken”** is carried but such a motion cannot be put to Conference until the opportunity to oppose the motion under debate has been given. Then if such a motion is moved and seconded it shall be put to the vote without discussion. Such a motion shall not be moved or seconded by a delegate who has previously spoken in the debate. If such a motion is carried the mover of the motion under debate shall, before the motion is put exercise any right of reply that s/he may have but no other speeches shall be allowed.
 - (b) A motion **“that conference proceed to next business”** is carried but such a motion cannot be put to Conference until the opportunity to oppose the motion under debate has been given. Then if such a motion is moved and seconded it shall not be moved or seconded by a delegate who has previously spoken in the debate. If such a motion is carried, conference shall proceed forthwith to the next item on the agenda.

Miscellaneous

41. In the **absence of the President** the Vice-President shall preside at conference. In the absence of both the President and Vice-President, the General Council shall elect a member of the Council to preside. The use of the term “President” in these standing orders shall be construed to

include the person, other than the President, who presides at conference in accordance with this standing order.

STANDING ORDERS REPORT NO. 1

LIFE MEMBERSHIP

5. *In order to expedite Conference business, Standing Orders Committee recommend that delegates wishing to speak to a Motion once it has been moved, occupy seats reserved for such persons at the front of the Conference Hall. Only those delegates who comply with this procedure may be called upon to address Conference.*

Submissions and Conclusions

Complaint 1:

8. The applicant, Mr McGinley, said that rule 2.7 meant that proposals for the award of life membership must come from a Branch. The rule said “Branches may submit to the General Council the name” of any candidate for life membership. It did not mention any other source of submissions. The word “may” was to be understood as meaning that Branches could submit names if they wished, but did not have to do so. NIPSA would argue that “may” was used in a permissive sense, meaning that Branches, as well as the General Council, were allowed to submit names: but the Council was not mentioned in rule 2.7, and in Mr McGinley’s view NIPSA’s interpretation would entail that anyone not mentioned in the rule (for example an ordinary member, a sports association, even a political party) could make nominations. This could not be right, and so the intention clearly was that Branches, and only Branches, should submit names. Since no Branch nominated Mr McCusker, rule 2.7 was breached.
9. For the union, Mr Corey said that the purpose of rule 2.7 was to make clear that only the General Council could approve and submit to conference proposals for life membership of NIPSA. It made a distinction between life membership nominations and all other motions and nominations under section 5 of the rulebook, which could be put on the conference agenda directly by Branches and the Group Executive Committees, as well as by the Council. Rule 2.7 allowed Branches to submit nominations for life membership to the Council, but only the General Council could put them before conference. Mr McGinley’s interpretation of rule 2.7 would leave the General Council of the union with no power to put forward its own nominations for life membership. That would be contrary to all the other rules and would make no sense. NIPSA had conducted a search of its records at the request of the Certification Office and had found that in recent years only one nomination for life membership had emanated from a Branch; the rest had come from the Council. There had been no breach of rule 2.7.
10. Conclusion on Complaint 1: I am not persuaded by Mr McGinley’s argument that rule 2.7 must mean either that only Branches can make nominations for life

membership of NIPSA, or else that anyone at all, even persons or bodies unconnected with NIPSA, can do so. When the writers of the rule book wished to give a power exclusively to Branches, they were capable making this very clear, as shown by rules 6.34 and 6.50, which say (in relation to elections) "Nominations may be made only by Branches". Section 2 of the rule book gives the General Council many powers in relation to membership generally, including for example the power to decide disputes over membership. Rules 2.7 and 2.8 make it clear that the Council alone may put before conference proposals for the award of life membership. I agree with Mr Corey that it cannot have been intended that the Council, the holder of general powers on membership, and the sole arbiter of whether a life membership nomination shall be put to conference, should itself be unable to initiate such nominations. I interpret rule 2.7 as giving Branches, and Branches only, the right to an input into the General Council's deliberations on the matter of nominations for life membership awards.

11. I therefore dismiss Mr McGinley's complaint that the union breached rule 2.7 of its rules as the General Council decided to nominate Mr McCusker for life membership without the support of a branch nomination.

Complaint 2:

12. Mr McGinley said that rule 5.8 required that Conference be governed by Standing Orders, including Standing Orders Report No 1. Paragraph 5 of that report advised delegates wishing to speak to a motion to sit in the reserved seats at the front or they would not be called. He recognised that this did not give delegates an automatic right to be called, but it was custom and practice that the only constraint on speakers was lack of time. If time was short and there were many intending speakers, the president of conference would often have to limit the numbers called, but otherwise everyone who wished was allowed to speak. On this occasion, time was not an issue and only Mr McGinley and the Branch 7 delegate were waiting to speak. They were ignored and, without being given any explanation, and in breach of the rule, were denied the opportunity to represent the views of 1400 NIPSA members.
13. Mr Corey said that there could be no dispute that the proceedings of the conference had been governed by the standing orders printed alongside the agenda. Had there then been a breach of standing orders, because Mr McGinley had not been called to speak? Mr Corey emphatically denied this. The advice that delegates wishing to speak should take up reserved seats at the front of the hall did not give delegates a guaranteed right to be called, as Mr McGinley had recognised. In all union conferences, including NIPSA's, the president of conference had absolute discretion as to who would be called; this was essential if order was to be maintained and the business of the conference carried through. He referred to a number of standing orders which demonstrated the extent of the president's powers. In NIPSA's rules there were only two speaking rights over which the president did not have discretion – the mover of a motion's right to reply if the motion was opposed and the right of a nominated General Council member to speak before a vote was taken.
14. Mr Corey went on to say that the Annual Delegate Conference was NIPSA's supreme authority. The president's power over the conduct of the conference

was subject to the authority of conference itself, and if any delegate considered that the president was acting outside the rules, he/she had the right to raise a point of order. The president then had to rule on the point, and that ruling in turn could be challenged by delegates. The whole system put conference itself in control of all its business. No point of order was raised by Mr McGinley or his colleague or any other delegate in respect of the president's handling of the life membership motion.

15. Conclusion on Complaint 2: Paragraph 5 of Standing Orders Report No 1 is in the nature of an advice or warning to delegates: it alerts them that those sitting outside the designated area will not be called to speak. It does not say that those within it will be called, and it does not impose any duty on the president of conference to call them. Not calling a delegate is therefore not a failure to comply with paragraph 5. It follows that complaint 2 falls, since it depends on there having been such a failure. Mr McGinley argued that, by custom and practice, only time constraints justified not calling those waiting in the reserved area, but be that as it may, the president's refusal or failure to call a speaker does not conflict with paragraph 5.
16. I therefore dismiss Mr McGinley's complaint that the union breached rule 5.8 of its rules as the conduct of proceedings in passing Motion 100 was not properly governed by standing orders.

Complaint 3:

17. Mr McGinley said that rule 5.9 defined the quorum of Conference as "a majority of the delegates entitled to attend". NIPSA has some 43000 members and Branches are allowed one delegate per 100 members (rule 5.16), so some 430 delegates would be entitled to attend. A quorum would therefore be 216 delegates. The delegates in the hall when Motion 100 was called did not approach that number (he estimated that there were about 180 persons present, including non-delegates), and rule 5.9 was therefore breached.
18. Mr Corey responded that Mr McGinley had provided no evidence whatever in support of his claim that the conference was inquorate on the Friday morning. The union on the other hand had submitted documents which showed that, of 322 delegates entitled to attend the 2004 conference, 205 had been present at the Friday session. He said that session cards were collected from delegates as they entered the hall at the start of the session, but he accepted that delegates sometimes arrived late, or did not hand in their cards, or left the hall for a period, so that, despite the union's best efforts, establishing how many were present at any time was not an exact science. It was clear, however, that on this occasion the quorum (162) had been comfortably exceeded. In addition, it was the duty of the president of conference to be aware at all times whether there was a quorum and Mr Welsh had been satisfied that there was. Again, any delegate was free to raise a point of order if he/she had a doubt about quorum, but no delegate (including Mr McGinley) raised such a point at the Friday session.
19. Mr Corey rebutted Mr McGinley's argument that 430 delegates were entitled to attend (and that a quorum was therefore 216). To be entitled to attend the

conference as a delegate, a member had to be formally nominated, elected at a properly constituted Branch meeting, and the name had to be submitted on a delegate form duly signed by the appropriate Branch officers. Those put forward in this way were the delegates entitled to attend the conference, and they numbered 322 in 2004.

20. Conclusion on Complaint 3: I do not accept Mr McGinley's contention that 430 delegates were entitled to attend the conference and that this number was the base for calculation of the quorum. His argument means that the base for the quorum should be the total number of *potential*, rather than *actual*, delegates. I consider this untenable. Rule 5.9 says that the quorum is "a majority of delegates entitled to attend." If a Branch appoints no delegates, then clearly that Branch, having no delegates at all, has no delegates "entitled to attend". The union has a clear process by which persons are inscribed on the list of conference delegates. Those properly inscribed in this way were the delegates "entitled to attend" in 2004.
21. The union presented evidence, in the form of session attendance sheets, to show that of 322 accredited delegates, 205 were present at the Friday morning session of the conference. It admitted to weaknesses in the method of counting by session cards, but also pointed out that checks could be made on the spot if the president of conference or a delegate raised a concern about quorum. Mr McGinley had no hard evidence to offer, only his subjective impression of the numbers present. In light of the above, I accept that a quorum (162 or more delegates) was present at the relevant time.
22. I therefore dismiss Mr McGinley's complaint that the union breached rule 5.9 of its rules as a quorum was not present as required when motion 100 was called.

Complaint 4:

23. Mr McGinley argued that under rule 5.19 and standing order 41, the President of the union had to act as president (or chairperson) of conference. Only in the President's absence was anyone else (the Vice President or a member of the General Council) allowed to preside. The President was in the hall when Motion 100 was moved and remained there throughout (the doors are closed once an item of business begins –standing order 20), yet the Vice President was in the chair. This was a breach of rule.
24. Mr Corey said that it was a long-standing practice at the Annual Delegate Conference that the Vice President of the union chaired one of the sessions. The President had to have a break from the arduous work of chairing the conference at some point during the three days. Rule 5.10 and standing order 41 made provision for this and laid down who should preside in the absence of the President. The rule was about how the business of the conference was to be carried on, not about defining how or when the President was to be considered to be absent. "Absence" meant "absence from the chair", and the fact that the President was in the hall during the Friday session was irrelevant. It did not touch the rules, much less breach them.

25. Conclusion on Complaint 4: I believe, with Mr Corey, that the purpose of the rules is to ensure that the conference can continue under another chairperson if the President for any reason has to, or wishes to, excuse him/herself from the chair for a period. The aim is not to compel the President to be continuously in the chair unless he or she is physically away from the conference. This latter interpretation, which is Mr McGinley's, would raise awkward questions if correct. If the President must leave the platform or the conference hall for a short time for any reason, is she then not absent, and can no one else therefore take the chair? If she wishes to take a break, or to give the Vice-President the experience of chairing a session, must she leave the conference venue entirely in order to be deemed "absent"? These would be unreasonable requirements, and incompatible with the sensible management of a conference. They do not arise if the union's interpretation, which is surely the common sense and commonly understood one, is adopted: that "absence" is to be understood as "absence from the chair". In my view, the Vice-President was legitimately in the chair at the Friday morning session of conference.
26. I therefore dismiss Mr McGinley's complaint that the union breached rule 5.10 of its rules, and standing orders, because the Vice President was in the chair although the President was not absent.

Complaint 5:

27. Mr McGinley said that Motion 100 was on the primary agenda, which meant (under standing order 5) that it was a motion requiring a decision by conference, i.e. a vote. Rule 5.12 specified the two ways in which voting was to be carried out at conferences – namely, by show of hands or by card vote, the latter applying only if the officer presiding called for it or at least 10 delegates demanded it. There had been no vote by either method on Motion 100.
28. NIPSA would argue that the motion was passed by acclamation, Mr McGinley said, but that concept was unknown to the NIPSA rule book. He agreed that there had been a prolonged standing ovation when the motion was moved; however, there were many motions (including some he had moved himself) which received long standing ovations at conference, but a vote was always still taken. There was no legitimate way to pass a motion at conference except by vote, but though this had happened with the other 99 motions, it had not happened with Motion 100. Mr McGinley said he had subsequently introduced a motion at the 2005 conference, asking for advance notice if any motion was to be decided by acclamation, and NIPSA's argument in ruling this out of order had implied that acclamation was not recognised in the rule book.
29. Mr McGinley went on to say that, apart from the fact that there was no such thing as acclamation in the rules, the circumstances on the Friday morning made it impossible to know who actually was supporting Motion 100. There were many people in the body of the hall who were not delegates and so not entitled to a say – the President of the union herself, members of the General Council, union officials, journalists, members of Mr McCusker's family – but who nevertheless joined in the applause. The conference president at that time, Mr Welsh, could not have determined whether a majority of delegates entitled to attend was in favour of the motion or not.

30. Finally, Mr McGinley said that NIPSA might invoke standing order 32 to explain how the motion had been passed. This allowed the president of conference to make a ruling on any question under standing orders, or on any points of order or explanation arising. But no question or point of order or explanation had been raised and therefore in declaring the motion passed, Mr Welsh was not making a ruling – he was giving a decision. Standing order 32 was not relevant.
31. Mr McGinley summed up by saying that, at the time, he had not clearly understood what had happened in the Friday morning session; and neither had any of the other delegates he had asked about it afterwards. Many delegates had told him during the conference that the NIPSA management would not let Branches 7 and 8 speak against Motion 100, and though he had not believed this possible, it had proved to be true. He said that annual conference was the opportunity for ordinary members of the union to be heard and to make decisions on union policy. It operated through debates on motions, in which views for and against were allowed to be aired and decisions were taken by vote. On this occasion, debate was suppressed, in order to prevent any embarrassment to Mr McCusker, and no vote was taken. In his view NIPSA management had taken a cynical decision, exploiting delegates' comparative ignorance of the rules, to manipulate the constitution and prevent the views of 1400 members being heard. If those views had been heard, the decision of conference might have been different. His complaints, he stressed, were not to do with Mr McCusker's award (members of Branches 7 and 8 were ready to acknowledge his services to the union), but to prevent NIPSA ignoring its own rules whenever it wished. Next time it might do so on a more significant matter.
32. Mr Corey said that, by its reaction when Motion 100 was moved, conference had clearly, overwhelmingly and enthusiastically supported the award of life membership to Mr McCusker. In view of this, the president, as was the practice on such occasions, then "called the decision" of conference, namely that the motion was carried and the award approved. He recognised, that is to say, the clear will of conference and gave formal expression to it. No voice of dissent and no point of order was raised by any delegate. Mr Welsh said in evidence that he was able to see clearly who were delegates and who were not, and to know that a large majority of delegates was joining in the applause. He added that he had seen many motions for the award of life membership at NIPSA annual conferences and all of these had been carried in the same way; none had been put to a vote.
33. Mr Corey said that rule 5.12 defined the methods by which a vote was to be taken, if a vote was required. But it did not prevent the president of conference from exercising discretion to call the decision in such exceptional, and emotional, circumstances as the award of life membership to someone who, like Mr McCusker, had made an outstanding contribution to the union over more than 25 years. When the delegates had clearly shown their will, as they had in this case, by a spontaneous and prolonged standing ovation, for the president then to ask for a show of hands would have been wholly superfluous. If anyone had wanted to question the president's action, it was open to them to raise a point of order there and then in the hall; that was the trade union way and NIPSA's way. Nothing of the sort had happened. There was no breach of rule 5.12.

34. Conclusion on Complaint 5: Rule 5.12 reads as follows:

“Voting shall be by show of hands except where a card vote is either called by the officer presiding or demanded by at least 10 delegates. No one other than a delegate shall be entitled to take part in any vote in Conference. The basis of a card vote shall be one vote for each ordinary member of the branch”.

Neither this rule nor any other says, in terms, that no motion shall be passed or decision made by conference except by vote. Equally, there is no rule that mentions any method other than vote by which conference may carry a motion or make a decision. (Standing order 18 allows certain motions listed in a report of the Standing Orders Committee to be carried by conference adopting the report, but this, as standing order 37 shows, means that conference must vote to adopt the report. Rules 5.22 and 6.9(m) specify vote by ballot for the election by conference of members of the Standing Orders Committee and the Equal Opportunities Committee).

35. Mr McGinley argued that rule 5.12 shows that conference can carry (or defeat) a motion only by means of a vote of one or other of the two kinds it specifies. Mr Corey claimed that the point of the rule is to lay down two methods of voting that may be used, if a vote is required, but that it does not exclude other ways of reaching a decision in conference. I believe that Mr McGinley’s is the more natural, and the correct, interpretation.
36. It seems to me to be implicit in the NIPSA rules generally that conference will make its decisions by vote. Several rules exclude certain categories of persons from voting at conference. Rule 5.11 says that General Council members may not take part in any vote or election at conference, except that the presiding officer may have a casting vote in the event of an equal number of votes being cast on each side of a motion. Rule 5.12 itself lays down that no one but a delegate may take part in any vote at conference. Rule 5.15 says that observers and trainee delegates are not entitled to vote on conference business.
37. The drafters of the rules clearly intended to ensure that the persons mentioned should have no say in decision-making at conference. The fact that they can achieve this simply by forbidding them to vote implies that, in their eyes, voting is the decision-making mechanism of conference. If they had considered that some other mechanism was also available, they would have had to use a broader form of words to achieve their purpose. In my reading of it, rule 5.12 takes it for granted that voting is the means by which conference will reach decisions, and then proceeds to limit the forms voting can take. It does not allow for some unspecified other method, about which it (and the rest of the rules) says nothing. I believe that is how any ordinary member of NIPSA would be most likely to understand the rule. I conclude therefore that in deciding Motion 100 without a show of hands or a card vote the union breached rule 5.12.
38. The union made a powerful and coherent argument concerning the discretion of the president and conference’s ultimate authority in the union. It claimed that once conference is in session the president has very wide discretion over the handling of business. This discretion extends to deciding that the will of conference on any particular motion has been made so clear by the reaction of

delegates (e.g. a standing ovation by a large majority) that no vote is needed to determine it, and declaring the motion carried. Moreover, since conference is sovereign, such a decision can be questioned by a delegate under a point of order, and the president must then make a ruling. That ruling itself can be challenged by 10 or more delegates, in which case the president must leave the chair and the matter is put to a vote under another chairman. The conclusion of the argument is that if the president, in such circumstances as described above, interprets the will of conference and declares a motion carried, and conference does not challenge his interpretation, then that is a valid decision of conference.

39. However, the president's discretion and the conference's authority must both be exercised within the rules as they stand at the time. The union's argument is valid if its own interpretation of rule 5.12 is granted, since that means that a decision method other than a show of hands or a card vote is possible and there is scope for the president's discretion to operate. On my interpretation of the rule, the union's argument is not valid, since only a show of hands or a card vote is allowed and there is no such scope. I therefore do not accept the union's argument in this instance. (Conference does, of course, have power to change the union's rules, but not in mid-process, so to speak - only in the manner carefully defined by rule 12.2).
40. The union also argued that Mr McGinley or his colleague could have invoked the checks on the president's discretion mentioned at paragraph 38 above. They could have raised a point of order, and since there were at least 10 delegates from Branches 7 and 8 present, could have forced a vote on Mr Welsh's declaration; the matter would then have been settled on the spot. That may be so, but it does not change the situation. Intervention by Mr McGinley might possibly have saved the union from breaching the rule, but it remains the union's responsibility that it was actually breached.
41. I consider that the rules intend that motions at NIPSA conferences will be debated: i.e. that, as a matter of course, others apart from the mover will speak on a motion, and especially any delegate who wishes to oppose it. Standing order 18, mentioned in paragraph 34 above, provides for some motions to be carried without discussion, *in order to allow conference maximum time for discussion of motions on which there may be differing opinions*. Standing order 25, on the basis that any motion may be opposed, gives the mover the right of reply. Standing order 39, which deals with procedural motions, lays down that a vote cannot be taken, or a decision deferred, *until the opportunity to oppose the motion has been given*. These instances, allied with the democratic traditions of NIPSA and trade unions in general, seem to me to show definitively that the spirit, at least, of NIPSA's rules demanded that Mr McGinley and his colleague should be heard on Motion 100. Ms Gates and Mr Corey seem to me to have accepted as much when they tried, on the eve of conference, to persuade them not to speak against the motion. This view is not inconsistent with my decision above that failure to call Mr McGinley did not conflict with paragraph 5 of Standing Orders Report No 1. That decision says only that paragraph 5 does not give a delegate a right to be called by virtue of sitting in a certain area.
42. The union said that it was traditional for life membership to be awarded by acclamation, which was sanctioned therefore by custom and practice. But if

custom and practice is to modify or interpret a rule, it must be well-known, precise and reasonable. Since Mr McGinley did not understand what had taken place, and, on his uncontested evidence, many other more experienced delegates were also confused, it seems clear that at least two of these conditions were not met. I think also it must make a difference that in this case it was known that there were delegates who wished to oppose the award and that they were in their place waiting to do so. If there is a conflict between a custom and practice and the fundamental principle of allowing a contrary view to be heard, one would expect that a union would have no hesitation in giving precedence to the latter.

43. I can understand the feeling of the union's officers and officials that, on a celebratory and emotional occasion such as a life membership award, acclamation is the natural and human way for conference to express itself. There were also understandable wider reasons why they thought it important for the conference to end on an upbeat and harmonious note. But on my interpretation of it, rule 5.12, while not preventing conference expressing its feeling by acclamation, does not allow acclamation as a legitimate means of decision. The fact that in this instance there was known opposition to the motion made acclamation an inappropriate means as well. Mr Corey's argument that it would have been superfluous in the circumstances for the president to seek a vote disregards the stage of the process that gives opportunity for opposition to be heard.
44. One can well imagine that events acquired a momentum of their own after Motion 100 was moved, and everything is of course simpler in hindsight, but the president of the session, Mr Welsh, could nevertheless have paused before declaring the motion carried. He could have told conference that although it had made its view very clear, there were delegates wishing to oppose the motion who should be heard before the award was confirmed. This would certainly have dampened, and might even have soured, the end of conference atmosphere, but it would have maintained the rule, and the principle of hearing the opposing view.
45. I therefore declare that the union breached rule 5.12 of its rules by failing to take a vote by show of hands or a card vote on Motion 100 at the 2004 annual conference.
46. It follows that Motion 100 was not validly carried and that the award of life membership to Mr McCusker was not validly made.
47. When I make a declaration that a rule has been breached, I have discretion under Article 92B(3) of the 1995 Order to make an enforcement order. I consider that it would be inappropriate to do so in this case. The award of life membership is a major honour for the recipient, but it does not affect the interests of any member of the union or have any material consequences. Mr McCusker himself, who is an innocent bystander in this dispute, is unfortunately the person most affected by the outcome. The union will have an opportunity in a few months' time, if it wishes, to ask the Annual Delegate Conference to confer life membership on Mr McCusker in a way that is compatible with the rules. The union pointed out to me that the proposal for a life membership

award does not have to be put to conference in the form of a motion. It could be presented as a proposal of the General Council and could be approved by acclamation, if the union feels that that is its preferred way of making such awards. If it chooses to proceed by way of motion, however, it must abide by its rules and take a vote, even if there has been an ovation, so as to avoid the possibility of complaints such as this one in the future.

A handwritten signature in black ink that reads "R Gamble". The letter "R" is large and stylized, followed by the name "Gamble" in a cursive script.

Roy Gamble
The Certification Officer for Northern Ireland