

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

MR J. J. DUFFY

V

P.O.A.

Date of Decision:

12 February 2008

Upon applications by the applicant under Article 90(A)(2) of The Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended) ('the 1995 Order'):

1. I refuse to make the declaration sought that the Union contrary to its own rules instructed a re-run of the election process for Branch Chairman and one committee member without an investigation into the original process.
2. I refuse to make the declaration sought that the Union contrary to its own rules breached rule 23.3 by instructing a re-run of the election process for Branch Chairman and one Committee member without an investigation into the original process and that the original process complied with the rules.
3. I refuse to make the declaration sought that the Union breached rule 24.1(a), (b), (e), (g), (j) and (k) of its rules as no explanation or evidence had been provided to support how the applicant had breached these rules. I refuse to make the declaration sought that natural justice was denied through the repeated denial of information to prepare a defence.
4. I refuse to make the declaration sought that the Union breached rule 24.2 of its rules, as correspondence was copied to the Disciplinary Committee, which appeared to consist of 9 members and not 7 as stated.
5. I refuse to make the declaration sought that the Union breached rule 24.3(a), (b), & (c) of its rules as the Disciplinary Committee did not act on a

report from the Union's NEC or General Secretary or on a Branch recommendation.

6. I refuse to make the declaration sought that the Union breached rule 24.5 of its rules as the General Secretary did not try to seek a satisfactory resolution of the complaints through the Associations Mediation Policy as mediation was not offered to the applicant. I refuse to make the declaration sought that the Union treated an allegation against Mr. Spratt more favourably than an allegation against the applicant.
7. I refuse to make the declaration sought that the Union breached rule 27.2(c) and (g) of its rules, as the sub-committee did not consider the complaint in accordance with all the rules and did not provide a copy of its Report to the applicant before the Disciplinary Committee took a final decision.
8. I refuse to make the declaration sought that the Union breached rule 27.3 of its rules as the Disciplinary Committee failed to communicate with the applicant directly (correspondence was via Mr. Freeman) and did not give notice to his home address of why he was subject to action under rule 24.1.

I declare that the Union breached rule 27.3 of its rules by failing to give the applicant 21 days notice of the sub-committee meeting.

I declare that the Union breached rule 27.3(a) of its rules in that it did not provide the applicant with a brief statement setting out why in each of the four allegations against him he was subject to action under rule 24.1.
9. I refuse to make the declaration sought that the Union breached rule 27.5 (a) (b) (c) and (e) of its rules as the Disciplinary Committee did not give written notice of the outcome of the enquiry and of the sanction imposed.
10. I declare that the Union breached rule 27.8 of its rules by only notifying the applicant of 3 Members of the Appeal Committee to hear the Appeal and not 7. As the Union recognised and remedied this breach of its own accord, it is not appropriate to make an order in relation to this declaration.
11. I refuse to make the declaration sought that Annex D to the POA 2005 Rules - Tackling Unacceptable Behaviour, was not adhered to, due to the actions of the General Secretary and the Finance Officer concerning the alleged misuse of the Association's finances.
12. I refuse to make the declaration sought that the Union breached rule 25.2 of its rules (Disciplinary Committee not writing direct and then bringing in

POA Circular 72/2005 and using same retrospectively when allegations were made under 2004 rules.)

13-16. These complaints include four alleged breaches of rules and natural justice not included in complaints 1-12.

- (i) I refuse to make the declaration sought that the Union breached rule 27.8 of its rules and natural justice in that it should not have appointed the three members of the original Appeal Committee to the reconstituted Appeal Committee.
- (ii) I declare that the Union breached rules 27.6 and 27.8 of its rules and natural justice in that the applicant was not permitted to attend the Appeal Committee hearing.
- (iii) I refuse to make the declaration sought that the Union breached rule 27.9 (a)(iv) of its rules and natural justice in that the applicant's entire appeal was not distributed to Conference.
- (iv) I refuse to make the declaration sought that the Union breached rule 27.9(c) and natural justice in that the applicant's accusers were heard at Conference and he was not allowed to respond.

Enforcement Order

I order that the Union shall forthwith treat as void the decisions of its Disciplinary Committee of 20 September 2005 that Mr Duffy be expelled from the POA.

REASONS

1. By nine applications (four dated 30 August 2006, and the others dated 28, 26, 20 and 19 October 2005, and 6 May 2005) the applicant, Mr J Duffy, made sixteen complaints against his Union, the POA (Prison Officers' Association). Fifteen related to alleged breaches of the 2004 rules and one to an alleged breach of Annex D to the 2005 rules (titled "Tackling Unacceptable Behaviour"). The complaints, as confirmed in correspondence, alleged that the Union breached its rules as follows:

Complaint 1

Rule 19.6, as the Union contrary to its own Rules instructed a re-run of the election process for Branch Chairman and one Committee Member without an investigation into the original process.

Complaint 2

Rule 23.3, as the Union contrary to its own Rules instructed a re-run of the election process for Branch Chairman and one Committee Member without an investigation into the original process and that the original process had complied with the Rules.

Complaint 3

Rule 24.1 (a), (b), (e), (g), (j) and (k), as no explanation or evidence had been provided to support how the applicant had breached these Rules. Further the applicant alleges that natural justice was denied through the repeated denial of information to prepare a defence.

Complaint 4

Rule 24.2, as correspondence was copied to the Disciplinary Committee, which appeared to consist of 9 members and not 7 as stated.

Complaint 5

Rule 24.3 (a) (b) & (c), as the Disciplinary Committee did not act on a report from the Union's NEC or General Secretary or on a Branch recommendation.

Complaint 6

Rule 24.5, as the General Secretary did not try to seek a satisfactory resolution of the complaints through the Association's Mediation Policy as mediation was not offered to the applicant. Further the Union treated an

allegation against Mr. Spratt more favorably than an allegation against the applicant

Complaint 7

Rule 27.2 (c) & (g), as the Sub-Committee did not consider the complaint in accordance with all rules and did not provide a copy of its Report to the applicant before the Disciplinary Committee took a final decision.

Complaint 8

Rule 27.3 (a), as the Disciplinary Committee failed to communicate with the applicant directly (correspondence was via Mr. Freeman), did not give 21 days notice to his home address, of why he was subject to action under Rule 24.1(25.1) and no names or documentation to support the alleged charges.

Complaint 9

Rule 27.5 (a), (b), (c) and (e), as the Disciplinary Committee did not give written notice of the outcome of the enquiry and of the sanction imposed.

Complaint 10

Rule 27.8 (a), as the Union only notified the applicant of 3 Members of the Appeal Committee to hear the Appeal and not 7.

Complaint 11

Annex D to the POA Rules – Tackling Unacceptable Behavior, was not adhered to, due to the actions of the General Secretary and the Finance Officer concerning the alleged misuse of the Association's finances.

Complaint 12

POA Circular 72/2005 is included in the supporting documents in respect of an alleged breach of Rule 25.2 (Disciplinary Committee not writing direct and then bringing in POA Circular 72/2005 and using same retrospectively when allegations were made under the 2004 Rules.

Complaint 13

Unfair expulsion from the Union when it was wrongly alleged that the applicant had refused to give Mr. Waterworth information he required in order to prepare an affidavit against the Maghaberry POA Chairman, Mr. Lewis.

Alleged rule breaches.

Rules 24.2 24.3 24.5 27.2(c)(e)(g) 27.3 27.5 27.6(c) 27.7 27.8 27.9 and the rules of natural justice; as the Disciplinary Committee did not consist of 7 members (24.2); it did not act properly by acting on a complaint by an individual member (24.3); no proper attempt was made at mediation (24.5); he (the applicant) was not provided with a copy of the sub-committee investigation report, the investigation was inadequate and not carried out in accordance with the rules (27.2(c)(e)(g)); he was not given 21 days notification, to his home address, of the intended investigation (27.3);

He was not informed precisely what it was alleged he had done, how his actions had breached the rules, he was not notified to his home address of the sanctions against him (27.5); the appeals committee was wrongly constituted, the appeals committee decision could not be made good by reconstituting it, the reconstituted appeal committee's decision should be voided as 3 members of the original appeal committee who had already decided his guilt sat on the reconstituted committee, the appeals committee heard his complaint but refused to let him attend, his entire appeal was not distributed to conference, he was not allowed to attend or make representations at the disciplinary hearing, the wrongly constituted appeal, or the reconstituted appeal or Conference appeal. His accusers were heard and he was berated at Conference immediately before his appeal was voted on, without being allowed to respond (27.6(c) 27.7 27.8 27.9).

Complaint 14

Unfair expulsion from the Union by letter dated 13 June 2006, for signing a petition demanding that Mr. Lewis's legal expenses in his judicial review against the employer be met from Union funds.

Alleged rule breaches – as set out under Complaint 13

Complaint 15

Unfair expulsion from the Union by letter dated 13 June 2006, for refusing to re-run a properly held election for the post of Maghaberry POA Chairman, and the committee member post, until ordered to do so by the National Secretary (Mr. Caton).

Alleged rule breaches – as set out under Complaint 13.

Complaint 16

Unfair expulsion from the Union by letter dated 13 June 2006, when it was wrongfully alleged that the applicant knew that Mr. Lewis (Maghaberry Chairman) was going to report the conduct of Mr. Spratt (NI Chairman) and Mrs. Robinson (NI Secretary) to the NEC at the 2005 Annual Conference and ask the Certification Officer to investigate.

Alleged rules breaches – as set out under Complaint 13.

2. The complaints are matters potentially within my jurisdiction under Articles 90A (1) and 90A (2) (a) (b) and (c) of the 1995 Order. They 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 Monday 19 and Tuesday 20 November 2007. The Union was represented by Mr. T. Marriott of Lees Lloyd Whitley Solicitors, with Ms. Coakley - Harding of Lees Lloyd Whitley in attendance. Mr. B. Caton, POA General Secretary, Mr. G. Pike and Mr. J. Smyth (POA members) gave evidence for the Union. Mr. Dickson (POA member) represented Mr. Duffy, who gave evidence on his own behalf. Mr. T. Moody (Northern Ireland Prison Service [NIPS]) gave evidence for Mr. Duffy. Also in attendance for Mr. Duffy were Mr. Jameson, Mr. Brown and Mr. Lewis (NIPS members). A 469-page bundle of documents containing relevant correspondence, minutes of meetings, and other papers, was prepared for the hearing by my office. The rules of the union (2004 and 2005 editions) were also in evidence. The Union provided a skeleton argument and three witness statements on 17th November 2007. On the morning of the hearing, further documents were introduced by the Union and the applicant. After hearing reasons for the late submissions, I admitted them to the proceedings and ordered a recess to allow the parties time to study them.

Findings of Fact

3. On the written and oral evidence available to me, I find the facts to be as follows. A number of the matters leading to these complaints were developing simultaneously, but I have set them out separately below for reasons of clarity.

(1) The Maghaberry Branch election of December 2004 - January 2005.

4. On 3 December 2004 Mr Duffy, Secretary of the HMP Maghaberry Branch of the POA, issued an e-mail addressed to "Maghaberry Staff". It invited nominations for the positions of Branch Chairman and one Committee member, and said that a nomination sheet would be posted in the staff search area of the prison (through which all staff entering the prison must pass) from 16 December 2004 to 1 January 2005 inclusive. It added that

a date would be set as early as possible in January for a ballot.

5. The nomination sheet was put up, in the place indicated, around midday on 16 December and taken down around midday on 1 January. Mr M Lewis, the current Chairman, had been nominated for the post of Chairman and Ms M Wilson for the post of Committee member. Mr J Blundell, the current Treasurer, had put his name on the sheet for the Committee member post, but he had no proposer or seconder, so his was not a valid nomination. On 3 January Mr Duffy sent an e-mail to Maghaberry Staff advising them that, as there was only one valid nominee for each post, there was no need for a ballot and therefore Mr Lewis and Ms Wilson were elected. The following day he sent a letter to the same effect to the POA Northern Ireland Area Chairman, Mr F Spratt.
6. On 10 January 2005 Mr G Stewart, a member of the Maghaberry Branch, wrote to Mr Lewis. He said that at around 4-30pm on 1 January a proposer and seconder had attempted to put his name on the nomination sheet in the staff information room but had failed, because they could not locate the sheet. He asked why the sheet had been removed. (Mr Duffy's e-mail of 3 December had specified the staff search area, not the staff information room). Mr Lewis was on sick leave, but Mr Duffy forwarded Mr Stewart's complaint to him and advised both Mr Stewart and the Northern Ireland Area Vice-Chairman, Mr J Smyth, who had general oversight of Branch elections, that he had done so.
7. On 13 January the Disciplinary Committee of the POA decided to suspend Mr Lewis from office pending investigation of a complaint made against him by POA members in Northern Ireland. This complaint concerned comments he had made on a television programme in October 2004 and was not connected with the recent election.
8. Mr Lewis replied to Mr Stewart by a memorandum that was undated, but had apparently been sent before he received the Disciplinary Committee's notice of suspension. He asked a number of questions to which he said he needed answers in order to investigate the complaint, including the names of those who had intended to propose and second Mr Stewart. When Mr Stewart learned of Mr Lewis's suspension, he wrote to Mr Duffy asking that the latter now answer the question about the removal of the nomination sheet. In reply, Mr Duffy asked Mr Stewart to answer the questions posed by Mr Lewis. Mr Stewart considered those questions irrelevant and asked Mr Duffy for advice on his next avenue under POA rules to have his complaint dealt with. He received no reply and on 11 March 2005 he referred the matter to Mr Smyth.

9. On 15 March 2005 Mr Smyth faxed Mr Duffy as follows:

I have been asked to investigate a complaint from Gordon Stewart...reference the nomination for the position of Branch Chairman at HMP Maghaberry, held from 16th December 2004 to 1st January 2005.

After reading the paperwork, I have come to the conclusion that in the interests of the membership and the Association, I am instructing yourself to re-run the process of electing a chairman for the Maghaberry Branch as there was clear interference in the process to nominate and elect a Chairman.

Please confirm the new dates to re-run this process.

10. Mr Smyth consulted Mr Caton, the POA General Secretary, before sending this fax to Mr Duffy and also after sending it. He then sent a second fax, three hours later, in which he instructed Mr Duffy to re-run the election for Committee member as well as Chairman and to do so “as per rule 23.3”. He made clear that, though suspended, Mr Lewis was entitled to stand for either post.
11. In telephone conversations on 15 March Mr Duffy told both Mr Caton and Mr Smyth that the election process had been carried out in accordance with POA rules and that he was not prepared to re-run it: indeed, he was prepared to take the matter to annual conference, if necessary.
12. Ms Wilson and Mr Lewis both saw Mr Smyth’s faxes and wrote to him, on March 15 and 21 respectively, stating that the election had satisfied all the rules and asking him to justify under the rules the decision to re-run it. Mr Lewis mentioned the phrase “clear interference in the process”, which he took to be a slur on his integrity. Mr Duffy faxed a reply to Mr Smyth on 22 March in which he confirmed that he would not re-run the election, as there had been no breach of rule 23.3, and said that he took great exception to the allegation of “clear interference”.
13. During March 2005, Northern Ireland Area HQ received two other communications about the election. On 2 March, Mr Blundell made a formal complaint that (i) the nomination sheet for the recent Maghaberry election had been taken down two hours too soon, having been put up around 2pm on 15 (sic) December and taken down at 12 noon on 1 January; and (ii) Maghaberry members outposted to a unit in Belfast (the “Pre-Release Unit”, PRU) had not been given a chance to nominate candidates in the election because no nomination papers were sent to the PRU, and there was no e-mail link between it and Maghaberry at that time. On 21 March Mr R Davidson of the PRU wrote to Mr Smyth asking him to ensure that in the re-run of the election a nomination sheet would be posted in the unit. He said that this had not been done in December and

that Maghaberry branch members in the PRU (17 in number) did not know there had been an election then until the results were announced. The Branch Committee had disenfranchised those members, he said.

14. On 24 March 2005 Mr Duffy sent a long letter to Mr Caton. Mr Smyth had carried out no investigation into the complaint, he said, and Mr Caton therefore appeared to be unaware of the facts. He proceeded to set out in full detail the sequence of events outlined above. He also enclosed the election paperwork.
15. Mr Caton replied on 5 April. He said that he rejected Mr Duffy's assumption that he could disobey a directive or instruction from the General Secretary, and that it was unacceptable for Mr Stewart's complaint not to be dealt with because he would not name his intended proposer or seconder. He continued:

"Having considered your submission and the complaints made both to yourself from Gordon Stewart and the letter I have received from Mr R Davidson, pre Release Unit , whom you have authority for and where the workers are represented by HMP Maghaberry Branch, I believe that the ballot held by yourself on behalf of the Maghaberry Branch has not been held in accordance with the Rules & Constitution, in particular Rule 23.3 a, b, c and d.

Based on your evidence, the election notice was not posted continually for at least 17 days, since it was not available throughout a full 17 day period or beyond.

Secondly, those members of the Maghaberry branch working at the pre-release unit were not informed that the election was taking place, nor were they instructed on how they could nominate or place themselves forward for an election.

Whilst it could be said that no one would have applied outside these timings or indeed, from other areas of the branch, the fact remains that members of the Maghaberry Branch were excluded from standing for election. It is therefore my clear instruction that the election be carried out again, with immediate effect and carried out fully under the terms outlined in the Rules and Constitution of the Association. I expect this instruction to be complied with. I will ask the Northern Ireland Chairman to ensure that the process is carried out in an appropriate manner."

16. Mr Duffy replied on 29 April, after two reminders from POA HQ Northern Ireland, in a letter which he co-signed with the acting Chairman of the Maghaberry Branch, Mr G Brown. He said that if he followed Mr Caton's instruction he would breach the POA rules. If Mr Caton gave the Committee clear evidence that they had not upheld the rules, they would

re-run the election, but the evidence so far did not prove this. Rule 23 had been adhered to, the nomination sheet had been up in the staff search area for 17 days and the rule made no reference to times, only days. He asked Mr Caton to point out exactly where they had failed to comply with the rules on elections. With regard to disobeying an instruction from the General Secretary, he believed he could do so, if the instruction itself breached the rules. He also said that members had made a complaint to the Certification Officer in response to Mr Caton's letter of 5 April and therefore to re-run the nomination now would put him in breach of the law. He added:

"Upon this matter being clarified will you give me an assurance in writing that any complaint made against me or any other Maghaberry Committee member by aggrieved member(s) for re-running the nomination will be uptaken by yourself whereby you will take full responsibility?"

17. Finally, he rebutted Mr Davidson's statement that the members at the PRU had not been informed in advance about the December/January election.
18. In his reply dated 3 May 2005, Mr Caton said that Mr Duffy appeared to be intent on disobeying his instruction, which was a clear breach of the rules of the POA and would be dealt with appropriately. He said that he accepted full responsibility for his instruction and ended:

"I once again rule the current election null and void and that you re-run the election in accordance with the Rules and Constitution..."

19. Mr Brown wrote to Mr Caton on 5 May to say that the Committee had decided to comply with his instruction and that the nomination sheet would be in place from 9 to 25 May 2005. Mr Caton replied on 6 May asking that the sheet be displayed at both sites, from 9 to 26 May inclusive. This was done.
20. The ballot was to take place between 13 and 19 June 2005. It was found, however, that a member of another branch, on long-term detached duty at Maghaberry, had proposed one of the nominees for Chairman. Mr Caton was asked whether this was allowed, and the ballot was suspended while he put the question to the Officers of the Association. Their decision, that it was not allowed and that the nomination for Chairman should be re-run, was conveyed to Mr Duffy by Mr Caton in a letter dated 8 June. Mr Duffy asked Mr Caton in a letter of 17 June why the invalid nomination had not simply been set aside and the election allowed to carry on with the remaining nominations. He also asked questions about the appointment of a scrutineer and the supply of ballot papers. This letter received no reply.
21. The new nomination sheet for the Chairman post was displayed from 13

June to 1 July. Three valid nominations were made, including one for Mr Lewis. There then emerged some issues relating to the ballot papers, which Mr Duffy raised with Mr Spratt by letter on 15 July. Two packages containing the ballot papers had been delivered to the Maghaberry Branch office by one of the candidates, Mr E Fair; both were open on delivery; five numbered ballot papers were missing from the Committee member batch; and ten un-numbered spare ballots had been enclosed instead. After discussion with Mr Caton and staff at POA HQ London, as well as local Area HQ, Mr Duffy numbered and signed five of the spare ballots and returned the remaining five to Mr Caton. The ballot was held between 18 and 24 July as planned. Mr Fair was elected Chairman and Mr Blundell Committee member, and this result was announced on 25 July. Mr Lewis wrote to Mr Caton on 27 July, complaining about the ballot issues mentioned above and also about the presence of Mr Smyth in the voting area during voting times, which he claimed had various deleterious effects on the voting and the voters. He demanded that the election be declared void, and re-run. This letter apparently received no reply.

22. In the wake of the differences in March and April over the re-running of the election, Mr Caton made a formal complaint to the POA Chairman, Mr C Moses, against Mr Duffy (and Mr Brown and another Committee member as well). Mr Moses referred the complaint to the Disciplinary Committee on 18 May 2005 and copied it to Mr Caton and to the subjects of the complaint. On 10 August 2005 Mr M Freeman, Deputy General Secretary of the POA, notified Mr Duffy by recorded delivery mail to his workplace that a sub-committee of the Disciplinary Committee would visit Maghaberry on 1 September to investigate the complaint, which alleged breach of rule 24.1a, b, e, g, and j. The letter said that all correspondence relating to the alleged breach was enclosed, and that the mediation policy could not be applied. The complaint was designated "Disciplinary Case No 64".
23. On 11 August Mr Duffy wrote to Mr Moses to say that Mr Caton's complaint had not been enclosed with Mr Moses's letter of 18 May and that despite enquiries, he still had not received it. Mr Moses replied on 15 August that Mr Caton's complaint and all other relevant paperwork had been forwarded to him on 10 August. He reminded Mr Duffy of his duty as a branch committee member under rule 20.3 b to attend duly convened meetings with NEC members.

(2) Disciplinary complaints against Mr Duffy not connected with the election.

- (i) Petition on legal representation for Mr Lewis
24. On 8 March 2005 Mr Lewis sent a petition, signed by 402 members of Maghaberry Branch, to Mr Spratt, POA Area Chairman. The petition asked

that the POA meet Mr Lewis's legal costs for a judicial review initiated by him into charges brought against him by the Northern Ireland Prison Service under its Code of Conduct and Discipline (COCD). The introduction to the petition read as follows:

"This petition is in relation to Mr M Lewis (POA Chairman HMP Maghaberry)

We request that he is approved the same and equal representation as :- Mr D Waterworth Mr R Davison Mr M Mateer

Mr Spratt has had their charges dismissed and as yet Mr Lewis's have been left outstanding and unheard.

When Mr Lewis requested legal funding and representation from the trade union (which he has been proud to represent as Branch Chairman for 10 years) this was declined in writing by Mr F Spratt (NI Chairman) and Mrs J Robinson (Acting Area Secretary). So we the members request that the financial burden being placed on Mr Lewis is financially assisted by the trade union he has paid his dues faithfully for 26 years, and we the undersigned declare that all costs by Mr Lewis are incurred by the Prison Officers Association."

25. Mr Spratt had become aware several weeks previously that a petition was circulating at Maghaberry and had expressed concerns about it to Mr Duffy, who was a member of the Area Committee. Mr Duffy appeared not to be aware of the petition at that time. On receipt of the petition, however, Mr Spratt observed that Mr Duffy had signed it, as had Mr Brown, Ms Wilson and the Branch Treasurer, Mr A Jameson.
26. On 14 March Mr Spratt sent a message about the petition to the POA membership at Maghaberry. He said that the introduction to the petition might have misled the members who signed it, and asked that the organisers contact him to provide clarification that would enable him to respond. Mr T Moody replied by return, saying that he was one of the organisers, that in his opinion no-one had been misled into signing, that some members had refused to sign, and that those who signed did so in order to have Mr Lewis's legal costs met by the POA and for no other reason. He suggested that Mr Spratt might attend a Branch meeting and ask members for their views. Mr Spratt rejected this suggestion.
27. On 7 April 2005 Mr D Waterworth made an official complaint to the General Secretary against Mr Duffy and three other Maghaberry Committee members over the petition, which he described as unofficial and unsanctioned and as implying that he, Mr Davidson and Mr Mateer had received preferential treatment. The Committee members were supposed to be his representatives, he said, but were acting against his interests. Further,

"They signed the petition...in the full knowledge that the policy is that no

legal aid will be granted to deal with initial COCD charges."

He said that they were acting against the wider interest of the POA membership and asked that they be suspended from office pending a full investigation.

28. The petition was considered at a meeting of the NI Area Committee held on 7 April 2005. In the discussion Committee members confirmed that they understood POA policy on legal assistance for COCD charges and Mr Duffy agreed with a statement that all other POA members defended COCD charges internally and did not get financial help to employ solicitors. One Committee member reported that his Branch, having discussed the petition, had passed a motion of no confidence in the Area representative from Maghaberry, ie Mr Duffy. Mr Duffy, Mr Brown and Ms Wilson left the meeting at this point. The Committee then proceeded to endorse the Branch vote of no confidence in Mr Duffy, and to extend it to any Maghaberry Branch official who signed the petition. It also decided that Mr Spratt should write to the General Secretary to ask for an investigation by the Disciplinary Committee into what it believed were actions by the Maghaberry Committee against the interests of the Association and its members. Mr Spratt conveyed this information to Mr Duffy by letter of 14 April; and advised him also that he had been removed from any sub-groups that he sat on, until further notice.
29. Mr Duffy wrote to Mrs Robinson asking for a copy of the policy on legal representation for COCD charges. He was referred to rule 18.7, which allows the POA's Legal Aid Committee to impose conditions on, or withdraw, advice and assistance. Mr Duffy, Mr Brown, Mr Jameson and Ms Wilson co-signed a letter on 15 April in reply to Mr Spratt's of 14 April in which they said that they believed his actions to be unconstitutional and a breach or threatened breach of the POA rules, and that they had not been told what rules they had breached. They asked how adding their names to a petition that included a considerable number of other POA members could be construed as acting against members' interests. No reply was received and on 5 May Mr Duffy, Mr Brown and Ms Wilson together wrote in much the same terms to Mr Caton., who sent an acknowledgement the next day.
30. On 10 May Mr Spratt wrote a letter of complaint to Mr Caton, asking for an investigation and for suspension of the Maghaberry Committee members pending the outcome. He set out the background (including some previous incidents in which the Area Committee had had problems with the Maghaberry officials) and said that in the view of the Area Committee the Maghaberry officials were misleading their members and acting against the interests of the membership in Northern Ireland and against the national policies of the Association. He said that the Area Committee was not prepared to enter into conciliation on the matter.

31. On 10 August 2005 Mr Caton referred Mr Waterworth's and Mr Spratt's complaints to the Disciplinary Committee, and sent a copy to Mr Duffy. On the same day Mr Freeman notified Mr Duffy by recorded delivery mail that the disciplinary sub-committee mentioned at paragraph 22 above would visit Maghaberry on 1 September to investigate these complaints, which alleged breach of rule 24.1a, b, j and k. He said that all correspondence relating to the alleged breach was enclosed and that the mediation policy could not be applied. These complaints were designated "Disciplinary Case No 58(d)".

(ii) Alleged failure to provide information to a member

32. As mentioned, Mr Lewis sought a judicial review of a decision by the Northern Ireland Prison Service to bring disciplinary charges against him. He and Mr Waterworth both swore affidavits in the matter. Mr Lewis then swore a second affidavit in which he said, among other things:

"I believe Mr Waterworth has a personal interest in these proceedings as he had permitted his name to be put forward to substitute for me during the period of my suspension but he was unanimously rejected by the vote of the Prison Officers' Association membership at Maghaberry."

33. Mr Waterworth wrote to Mr Duffy on 29 April asking him to clarify when he had allegedly put himself forward, when the voting had taken place and whether the POA Maghaberry branch had organised it. Mr Duffy replied by writing on the bottom of Mr Waterworth's letter:

"Dessie, I understand that this is going through the courts at present and I know nothing about it."

Mr Waterworth rang Mr Duffy about this response and was advised that if he wanted anything in writing, he should get his legal people to request it. On 6 May, having sworn a second affidavit in which he rejected Mr Lewis's statement quoted above, Mr Waterworth wrote to Mr Duffy. He said he did not have legal people, but he was a member of Maghaberry Branch who had made a valid request, and he wanted an answer to his questions. He put this letter under the door of the Maghaberry Branch office. On 16 May, having had no reply, he sent a formal complaint to Mr Caton.

34. It appears that Mr Duffy did not receive Mr Waterworth's letter of 6 May. On being given a copy of it on 24 June he wrote a reply and delivered it personally to Mr Waterworth. The reply included the following:

"To clarify this matter and response to you I again confirm that I do not have any knowledge of you allegedly putting your name forward to substitute for Mr M Lewis during his period of absence. Furthermore this

matter was never raised on any local POA meeting or any other venue that I attended. Needless to say there was never any vote over this by the membership at HMP Maghaberry."

This response was not conveyed to POA HQ by Mr Waterworth.

35. On 9 August Mr Caton referred Mr Waterworth's complaint to the Disciplinary Committee, with a copy to Mr Duffy. On the same day Mr Freeman notified Mr Duffy by recorded delivery mail to his workplace that the disciplinary sub-committee would visit Maghaberry on 1 September to investigate the complaint, which alleged breach of rule 24.1 a and b. He said that all correspondence relating to the alleged breach was enclosed and that the mediation policy could not be applied. This complaint was designated Disciplinary Case No 58 (c).

(iii) Allegations of financial irregularity against Mr Spratt

36. In the course of a dispute with the Northern Ireland Prison Service, some POA members in Northern Ireland lost wages because they were deemed by the Prison Service to have taken industrial action when they stayed off work due to stress (this was known as "blue flu"). When the dispute was over, the Northern Ireland Area Committee asked the Prison Service to restore the lost wages, but this was refused. The Area Committee then asked POA National Executive Committee to make payments out of the union's relief fund to the members affected. The NEC discussed this at meetings on 16 and 17 February 2005, but rejected the request. Mr Spratt then used the Northern Ireland Area Fund, into which he first put a substantial sum of his own money, to reimburse the members, including some serving at Maghaberry. In March 2005 he and Mrs Robinson signed cheques for the amount lost by each member, and sent them to relevant Branch Secretaries for forwarding to the members. (In December 2005 the Prison Service decided to restore the lost wages and made a payment for this purpose into the Area Fund, from which in turn, with the approval of the Area Committee, Mr Spratt was reimbursed).
37. At the POA Conference in May 2005 Mr Spratt became aware that allegations of financial irregularity were being made in respect of the "blue flu" payments. It appeared that Mr Lewis and delegates from Maghaberry had approached NEC members and others at the Conference, alleging that the payments by Mr Spratt were contrary to the instructions of the NEC, showing photocopies of Area Fund cheques made out to Maghaberry members, and urging that an investigation be launched into misuse of union funds.
38. On 6 June 2005 Mr Spratt wrote to Mr Caton about this. He said that the Maghaberry members involved were Mr Duffy, Mr Brown and Mr Lewis and that their actions were an attack on his integrity and credibility. He

said that this was not yet a disciplinary matter, but that he was requesting that the NEC set up an investigation into the allegations, so that he could clear his name. A team of three NEC members was established, chaired by Mr P Hancox, the Finance Officer. On 15 June the team took evidence from three NEC members about events at the Conference. All of these stated that Mr Duffy had not spoken to them in relation to the financial allegations, though one of them, Mr Adams, mistakenly referred to Mr Duffy at several points when he meant to refer to Mr Lewis. On the same day (it is not clear whether before or after taking this evidence) Mr Hancox wrote to Mr Duffy asking him to attend an enquiry on 29 June at Northern Ireland Area HQ. This date did not suit the Maghaberry members and on 1 July a new date of 2 August was agreed (as well as, at the request of the Maghaberry members, a new venue). On 28 July Mr Duffy sent Mrs Robinson three applications to provide legal representation for himself, Mr Brown and Mr Lewis at the enquiry. They believed that the issues to be considered had the potential to involve the Police Service of Northern Ireland, and they had received advice that they should not attend unless accompanied by a solicitor. Mrs Robinson replied on the same day, saying that legal representation was not provided for internal POA investigations. Mr Duffy's reply of 29 July, copied to Mr Hancox, indicated that, in that case, they would not be attending on 2 August. It suggested that the investigation be handed over to the Certification Officer.

39. Mr Hancox telephoned Mr Duffy on 1 August but was told by him that none of the three members would attend on the following day. The enquiry team went ahead and visited Area HQ where they interviewed Mr Spratt and Mrs Robinson and examined accounting records. They concluded that the allegations were unfounded.
40. On 4 August Mr Hancox wrote to Mr Duffy to register his disappointment that for the second time Mr Duffy, Mr Brown and Mr Lewis had failed to attend a meeting with senior officials of the Association who were enquiring into serious allegations. He said he believed they were obstructing senior officials' efforts to determine whether a breach of rules had taken place. He instructed Mr Duffy to answer a number of questions and forward certain information to him.
41. On the same day Mr Hancox wrote to Mr Caton, describing the enquiry team's activity and setting out its conclusions. He said also that the team recommended

*"1 That the complaint from Mr Spratt to you dated 6th June 2005 be forwarded to the Disciplinary Committee as a matter of extreme urgency.
2 That the disciplinary committee be given 28 days to investigate the complaint and report back with their findings to the General Secretary".*

They considered this essential, he said, to protect the integrity of both Mr

Spratt and Mrs Robinson and the POA membership as a whole. On 5 August 2005 Mr Caton referred this to the Disciplinary Committee as a complaint from Mr Hancox, and copied it to Mr Duffy.

42. Mr Duffy replied to Mr Hancox on 8 August. On behalf of himself, Mr Brown and Mr Lewis he denied any intention to obstruct the enquiry, pointing out that the first date for meeting had been unsuitable because of court commitments and annual leave, and that on the second occasion they had refused to attend on the basis of legal advice they had received. He answered the questions posed in Mr Hancox's letter, saying that they had no knowledge of photocopied cheques and that as Branch Secretary he had raised no questions with the Area Committee about POA Northern Ireland finances, as he had had no complaints about these.
43. On 10 August Mr Freeman notified Mr Duffy by recorded delivery mail that the disciplinary sub-committee would visit Maghaberry on 1 September to investigate the complaint, which alleged breach of rule 24.1 a, b, j and k. He said that all correspondence relating to the alleged breach was enclosed and that the mediation policy could not be applied. This complaint was designated Disciplinary Case No 65.
44. On 11 August Mr Duffy wrote to Mr Caton stating that he had not received Mr Hancox's complaint along with his copy of Mr Caton's letter of 5 August to the Disciplinary Committee. He said that the rules of natural justice required that he should know what the complaint was, to enable him to prepare a defence. He asked that a copy now be sent. Mr Caton replied on 16 August to say that he had supplied Mr Duffy with all the correspondence that had been sent to the Disciplinary Committee, and to advise him to base his case on this. He reminded Mr Duffy of his duty as a Branch committee member under rule 23.3(b) to assist the NEC in all investigations and enquiries.
45. On 16 August Mr Spratt issued a message to the Northern Ireland POA membership about the allegations that he had misused union funds. This contained an attack on what it described as the anti-POA activities of Mr Duffy, Mr Brown and Mr Lewis, and questioned their own use of POA funds. Some days later he made a formal complaint to Mr Caton about the alleged anti-POA activities of Mr Duffy individually. (This complaint is not a subject of the applications under consideration here).

(3) The disciplinary investigation and subsequent decisions.

46. On 25 August Mr Duffy wrote to Mr Freeman about the notifications of disciplinary proceedings, which he said he had received, in a recorded delivery package, on 18 August at HMP Maghaberry. He dealt in some detail with each of the four cases, making the complaints about procedural failures that he later incorporated in his applications to me under Article

90A of the 1995 Order. He said that Mr Spratt's message to the Northern Ireland membership had made unsubstantiated accusations of fraud against him, with the authority and permission, he assumed, of the NEC. He concluded

"I now believe that there remains no possibility that I can have a fair adjudication.

In the above circumstances these proceedings bear no resemblance to a fair and reasonable tribunal.....

In all the circumstances there appears to be little point in the Disciplinary Committee travelling to Northern Ireland."

47. This letter was received at POA's London HQ on 30 August 2005 and was probably faxed that day or the next to the disciplinary sub-committee, which was already in Northern Ireland for its investigation of the four cases. The POA had obtained permission from the Prison Governor for Mr Duffy (and the other Maghaberry members involved) to have time off to attend meetings with the sub-committee. Contact was made with Mr Duffy and the others on 1 September to ask them to meet the sub-committee, but they all refused. The sub-committee proceeded to consider the complaints on the basis of the documentary evidence and the information provided in their interviews with the complainants. In respect of each alleged rule breach in each of the four cases their (undated) reports recommended that the complaints against Mr Duffy be upheld, and that he be expelled from the POA.
48. The Disciplinary Committee considered the sub-committee's reports on 15 September 2005 and determined, in each of the four cases, that Mr Duffy be expelled. Mr D Keys, an Assistant Secretary of the POA, conveyed these decisions to Mr Duffy by letters dated 20 September 2005, which he signed for and on behalf of the Disciplinary Committee.. The letters advised Mr Duffy of his right to appeal within 14 days and said that if he needed more time he must request it from the Disciplinary Committee.
49. Mr Duffy wrote to Mr Keys on 24 September to say that he had not received *"a copy of the Disciplinary Committee's findings in relation to the above case"* [58(c)], and to ask that it be sent to him. He also disputed Mr Keys's authority to write to him on these matters because under the rules the Disciplinary Committee should write directly to him and so far as he was aware Mr Keys was not a member of the Committee. On 29 September he wrote to Mr Caton giving notice that he was appealing the decisions of the Disciplinary Committee. On 6 October he wrote again to Mr Keys asking for a copy of the Disciplinary Committee's findings, documentary proof that Mr Keys was a member of the Disciplinary Committee, and, in addition, *"the interview reports that the Disciplinary Committee intend to consider from their witness interviews in relation to the allegations against me"*. Mr Caton replied to this on 11 October by

sending Mr Duffy a copy of the sub-committee's report on case 58(c)

50. By letter of 7 October Mr Caton asked three POA members to form the Appeals Committee and said he would welcome the appeal process being concluded before the end of December. He copied this letter to Mr Duffy.
51. On 18 October Mr Duffy wrote to Mr Caton. He said that, on grounds of cost to himself, he would expect the appeal hearing to take place in Northern Ireland and he asked for copies of all the sub-committee reports and of the interviews with witnesses, to enable him to make proper representation. He continued

"As to deny me this information is contrary to law and it seems you are denying me my Human Rights to a fair trial I would ask that all the paperwork is sent to me in good time."

He asked also whether he was allowed to call and cross-examine witnesses under the appeal process and whether pending the appeal he was still a full member of the Association.

52. Mr Caton replied on 21 October, confirming that Mr Duffy remained a member. He also advised Mr Duffy that the Disciplinary Committee had determined under rule 27.1 that he be removed from local office and, "because of his previous disruptive behaviour", debarred from attending branch meetings. He did not address Mr Duffy's points about the venue of the appeal, witnesses or the provision of information. In a reply of 28 October, Mr Duffy pointed out that the information he had asked for had not been supplied, and at the same time he registered an appeal against the decision to debar him from branch meetings, asking for all evidence on which the Disciplinary Committee had based its decision. This letter appears to have gone unanswered.
53. The Appeal Committee met in October and November. They decided that they had sufficient information to proceed without calling Mr Duffy. They raised questions with Mr Caton, Mr Freeman, Mr Hancox, Mr Spratt, Mrs Robinson and the three members of the disciplinary sub-committee. In their report dated 29 November 2005 they declared themselves satisfied that the disciplinary procedures had been correctly applied and that the sub-committee had carried out its investigations in a fair and reasonable manner. They dismissed Mr Duffy's appeals.
54. Mr Caton advised Mr Duffy of this decision by letter on 5 January 2006 and informed him of his right to request that it be reviewed by Conference. Mr Duffy exercised this right on 10 January. However, Mr Moses wrote to him on 19 January to say that he had concerns that the make up of the Appeal panel had not been in accordance with the rules because it did not consist of the right number of members. It could be argued that this

procedural deficiency rendered the decision null and void. He had therefore decided that the only solution was to convene a new panel to consider the matter afresh. He said that Mr Duffy would be advised of the date on which the Appeal panel would sit to consider his appeal, and of its decision. Following the decision, if it proved necessary and Mr Duffy wished it, the POA would facilitate a review by Conference in May 2006.

55. A seven member Appeal Committee was appointed and met during February 2006. Mr Duffy was not informed of the dates of these meetings, as promised by Mr Moses. The new Committee included the three members of the original Committee. It looked at the disciplinary sub-committee's reports and other documentation, but not at the report of the original Appeal Committee. In a report dated 28 February 2006 it found that the disciplinary procedures had been correctly adhered to and that the actions and decisions of the Disciplinary Committee had been fair and reasonable. It dismissed Mr Duffy's appeals. Mr Freeman sent the report to Mr Duffy on 2 March.
56. Mr Duffy wrote on 3 March in response to Mr Moses's letter of 19 January. He was not aware that the Appeal Committee had already sat, and he had not yet received Mr Freeman's letter of 2 March. His letter said that selecting a new Appeal Committee (which he assumed would not include the members of the original panel) would not remedy the breaches of rule and the lack of natural justice that had characterized the entire disciplinary process. The (3-man) Appeal Committee had met without notifying him and had accepted the Disciplinary Committee's findings without giving him an opportunity to answer the charges. He quoted a number of judicial pronouncements on natural justice and ended by saying that the POA had denied him his right to be heard and by the calling on Mr Moses to dismiss the disciplinary cases forthwith.
57. On 8 March Mr Duffy requested a Conference review of the Appeal Committee's decision. He was asked by Mr Caton to submit, by 31 March, any written representations he wished to place before Conference. On 27 March he submitted a bundle of some 395 pages, containing correspondence and other evidential documentation. Mr Caton replied on 5 April that in the view of the NEC this was not written representation as defined by the rules: what was wanted was Mr Duffy's arguments as to why he believed the decision of the Appeal Panel was faulty. He said that Mr Moses and he had agreed to extend the deadline for submission to 20 April and asked Mr Duffy to limit his written representations to four sides of A4 paper (though he invited Mr Duffy to discuss this limit with him if he thought it inadequate). He added that, though this was not required by the rules, Mr Moses and he had agreed that six copies of the original 395-page bundle would be made available at the Conference for delegates who might wish to read them before the motion on the review.

58. Mr Duffy responded on 18 April that this was a mere excuse to censor his appeal, withhold the evidence and hide the conduct of some in the union from the scrutiny of the ordinary members. Every page was highly relevant and necessary, and branches should be able to study them in advance so as to instruct their delegates how to vote. He rejected a point about cost made by Mr Caton, saying that the total cost of copying the pages and posting them to the 142 Great Britain branches would be about £350. He offered to e-mail them himself to every branch if provided with the addresses and said he would submit a précis of his appeal that would be considerably longer than the purely arbitrary four-page limit. He did not take up Mr Caton's invitation to discuss the page limit. His précis proved to run to 13 pages.
59. In his reply of 21 April, Mr Caton said that because of time constraints, and despite Mr Duffy not having discussed the page limit with him, he would circulate all 13 pages with the Conference agenda. He would still make copies of the original bundle available as previously indicated. He said that he could not provide branch e-mail addresses since they were at HM Prisons, but would supply address labels if required. Mr Duffy's reply of 8 May said that he could find no POA rule which stated that the Association was not obliged to circulate his full submission. He repeated his view that both the bundle and the précis were relevant to his appeal and that the action of Mr Caton and Mr Moses was an attempt to censor him. Mr Caton replied that he had not judged the bundle to be a relevant submission under rule 27.9 (a) (iv) and it was being made available at Conference as a concession, not as an obligation of the Union.
60. At the annual Conference in May 2006 Mr Caton moved motions seeking ratification of the Appeal Committee's decisions to uphold the expulsions of Mr Brown, Mr Lewis, Mr Duffy and Mr Jameson. Mr Duffy and some of the others had travelled to the Conference venue, but were refused entry to the Conference hall.
61. The motion relating to Mr Lewis was moved first. Five delegates from Northern Ireland addressed Conference in support of the motion, three of them at some length and without at times confining their comments to Mr Lewis's case but including Mr Duffy and the others as well. A delegate sought to raise a point of order from the floor, to the effect that the accused were not being allowed to put their side of the story; the chairman ruled out the point of order and the delegate then challenged the chair "*in the interest of natural justice*" but did not receive the required support from the other delegates. Mr Spratt also attempted to speak, but after a delegate pointed out that it was Conference's duty to review Appeal Committee decisions, not to conduct "*a pseudo appeal*" itself, the motion was put to Conference and carried by a show of hands. The motions relating to the expulsion of Mr Brown, Mr Duffy and Mr Jameson were put

to Conference in that order and each was carried without further intervention by delegates.

The Relevant Statutory Provisions

62. The provisions of the 1995 Order that are most relevant to these applications are set out in Annex 1.

The Relevant Union Rules

63. The Union rules that are most relevant to these applications are set out in Annex 2.

Preliminary statement by Mr Duffy.

64. In correspondence with my office between April and June 2007, Mr Duffy requested that I recuse myself from hearing his complaints because he believed I would not do so fairly. He based this opinion on my hearing in November 2005 of complaints made by Mr Lewis against the POA (D/15-18/2005) and on a telephone conversation between me and the Director - General of the Northern Ireland Prison Service the day before that hearing. I examined Mr Duffy's arguments but I did not accept that an impartial observer, knowing the facts, would conclude that there was a real possibility of bias on my part in hearing Mr Duffy's complaints, and accordingly I rejected his request. I agreed however that Mr Duffy might make a brief statement at the beginning of the hearing, to register his concerns for the record. Mr Dickson made such a statement on behalf of Mr Duffy. It was to the effect that I was a personal friend of the Director-General of the Northern Ireland Prison Service, a person who had an interest in the outcome of Mr Duffy's complaints.

Preliminary issues raised by the Union.

65. Re Complaint 5: Mr Marriott, for the Union, argued that this complaint (that Mr Caton's letters referring Mr Duffy to the Disciplinary Committee did not constitute a report under the rules) was identical to one of Mr Lewis's which I had rejected in decision D/15-18/2005, and was therefore a settled matter which should not be heard again. Mr Dickson, representing Mr Duffy, argued that that decision did not bind me, as there now was new information which contradicted evidence given by Mr Caton in the Lewis case. The information was correspondence between members of the Maghaberry branch committee and Mr Caton, in which the latter said he believed that a complaint by the members against Mr Spratt should not go ahead because of delay in reporting the incident concerned. Mr Dickson said that this showed that Mr Caton, contrary to his previous evidence, did not simply act as a conduit for complaints, but did sift them and express views on them, as Mr Dickson contended he ought to do, if his submission

of them to the Disciplinary Committee was to be considered a report under the rules.

Decision

66. I concluded that my decision on Mr Lewis's complaint did apply to Mr Duffy's complaint, for the following reasons. First, my primary criterion for judging that Mr Caton's letter referring Mr Lewis to the Disciplinary Committee was a report was that it and its attachments provided the Committee with what they needed to decide whether or not there was a case to answer. Mr Dickson did not contend that Mr Caton's referral of Mr Duffy to the Disciplinary Committee had failed to meet this test. Second, I did not find Mr Dickson's new information on the subsidiary matter of the sifting of complaints convincing. In essence Mr Dickson's point was that the General Secretary's referrals to the Disciplinary Committee ought to provide some evaluation of the complaints; but the letter he called in evidence did not do so; it mentioned a procedural issue, not one going to the merits of the case. Moreover, this letter was addressed to Maghaberry, not to the Disciplinary Committee (though it was copied to the latter), and in any case it shows that Mr Caton had already forwarded the complaint to the Disciplinary Committee, which I believe he is most likely to have done by means of the standard, neutral, letter. For these reasons I decided that I would not hear Complaint 5.
67. Re Complaint 11: Mr Marriot said that this complaint was not within the jurisdiction of the Certification Officer, which was to be viewed restrictively and confined to breaches of rule. This complaint claimed that the General Secretary and the Finance Officer had not adhered to Annex D of the POA rules ("Tackling Unacceptable Behaviour") in handling the allegation of financial irregularity. But Annex D was a policy, not a rule. Rule 24.1 (k) and (l) made a distinction between rules and policies and showed that Annexes to the rules were to be regarded as policies. He argued further that Annex D was about employees, not members, and that this fact also placed it beyond the jurisdiction of the Certification Officer, by virtue of Article 90A(5) of the 1995 Order. Mr Dickson did not accept that the Certification Officer's jurisdiction was restricted in the way claimed by the union because, if it were, the Certification Officer would be unable to address the sort of mischief that had brought about the present case. He said that it was for breach of a policy that Mr Duffy had been expelled from the union, which showed that policies were not distinguishable from rules for this purpose. Annex D mentioned both members and employees of the union and applied to both; it was semantics to suggest otherwise.

Decision

68. I found Annex D to be not a well drafted document. It states that its aims are "to provide a safe healthy place of work for all employees, providers and their employees when representing the Association", "to prevent acts of violence, threats, harassment, abuse or bullying" and "to ensure that

every employee is treated with dignity and respect." So far it reads like a policy for the protection of employees in the workplace. However, when it comes to describe the process of complaint, mediation and, if necessary, determination, it indicates that a member may make and be the subject of a complaint, and it gives the role of determining complaints to the Disciplinary Committee, which seems a body more suited to dealing with members' issues than employees' issues. It perhaps envisages that a POA member may need to be disciplined for behaving abusively towards an employee, or that that a POA member may complain about abuse of an employee by another member or another employee. And employees of the Union may also be members of it (rule 4.1(b)). The document is therefore somewhat confusing as to scope.

69. Despite the lack of clarity in places, it seemed to me that the general tenor of Annex D indicates that it is intended by the union to be a policy that protects its own employees (and those of providers of services in prisons) against abuse in the workplace, not one that protects POA members. That being so, I find that it is not relevant to Mr Duffy's complaint against the General Secretary and the Finance Officer in their handling of the financial irregularity allegation. This view of the purpose of Annex D is reinforced by the consideration that a specific POA policy to protect its members is hardly necessary: they are protected against abuse in their own workplace by the Prison Service's procedures, have recourse to rule 24.1(b) if abused by other POA members, and can presumably complain to POA line management if POA employees behave abusively towards them. I also considered that, even if it were to be allowed that Annex D applies to members, there was still a major problem for Mr Duffy, in that he was not able to specify in what way the General Secretary and the Finance Officer had not adhered to it, and his complaint therefore lacked substance in my view. For these reasons I decided that I would not hear Complaint 11
70. Having reached my decision on the grounds given, I do not need to decide whether Annex D is to be regarded as a rule of the union or not, but had I needed to do so, I would have decided that it is not.
71. Re Complaint 12: Mr Marriot said that this was a complaint that the Disciplinary Committee did not write "direct" (i.e. itself, not through a union administrator) to Mr Duffy. It was the same as the first element of Complaint 8 and should not be heard separately. Mr Dickson responded that "direct" here meant "to Mr Duffy's home address" (rather than his work address) and pointed out that Complaint 12 also raised an issue about retrospective application of a POA circular which was not in Complaint 8.

Decision

72. It was agreed that as Complaints 8 and 12 revolved around the same set of facts, they could be taken together, with all elements of both being considered.

73. Complaints 13 to 16: Mr Marriott made a number of arguments about these complaints. (i) They were complaints of "unfair expulsion" and must be considered as complaints under Articles 31 or 38 of the 1995 Order, which cover "unjustifiable discipline" and "the right not to be expelled from a trade union". However, the Order gives jurisdiction of such complaints exclusively to the Industrial Tribunals. Therefore the Certification Officer could not hear Complaints 13 to 16, and they should be dismissed. Alternatively, even if I considered these complaints to fall under Article 90A of the 1995 Order, I should still not hear them, because Mr Duffy had made a complaint about the same matters to the Industrial Tribunal under Article 38 and he could not have the same complaint adjudicated twice.
74. (ii) There was a large degree of duplication between Complaints 3 to 10 and Complaints 13 to 16, and to the extent that this was so, the latter brought nothing extra to the case. Complaints 13 to 16 were repetitious between themselves, raising the same points in regard to each of the four disciplinary cases taken against Mr Duffy (cases 58(c), 58(d), 64 and 65, see above). There was no need to look at each separately.
75. (iii) These complaints had not been notified to the union until very close to the hearing and they introduced new issues not previously notified. The union had not expected these to be considered at this hearing and had not had time to make proper preparation to deal with them. They should be set aside as never having been part of the complaints and as having been introduced too late.
76. Mr Dickson said that this case was all about Mr Duffy's expulsion and the POA's treatment of him and its breach of its own rules during the process leading to his expulsion. The union had known this all along and it was nonsense for it to claim otherwise now. Mr Duffy had complained in writing to the union about rule breaches as they happened throughout the process, but he had been hampered in making some of his complaints to the Certification Officer because the union had withheld necessary information from him.

Decision

77. As regards (i) above, I took the view that Complaints 13 to 16 did fall under Article 90A of the 1995 Order. In these complaints Mr Duffy had not used the Article 31 expression "unjustifiably disciplined" or claimed that he had been expelled for a reason prohibited by Article 38. He had used the words "unfair expulsion" at the head of these complaints, but he had then proceeded to list alleged rule breaches and infringements of natural justice, and it was these which were the actual substance of his complaints. He was in fact seeking to demonstrate that the union's disciplinary process as applied to him was flawed, that the flaws consisted of breaches of rule and of natural justice (which is "implied into" the rules),

and that his expulsion was invalid because it was the outcome of this flawed process. I concluded that the complaints fell within my jurisdiction under Article 90A(2)(b). As to Mr Duffy's complaint to the Industrial Tribunal under Article 38, it seemed to me, in light of the above, that he was asking the Tribunal a different question from those he was asking me, though many or most of the facts involved might be the same.

78. As regards (ii), I agreed with Mr Marriott that there was extensive duplication between Complaints 13 to 16 and the others and between Complaints 13 to 16 themselves. As all the complaints were validly made, I said that in my decision I would make a finding on each of them: but for efficient management of the hearing it was clearly undesirable to cover the same ground under different complaints. When the parties were making their submissions on Complaints 3 to 10, they would also be covering most of the matters in Complaints 13 to 16, and there would be no need to address these again.
79. As regards (iii), it appeared that the union was not aware until close to the hearing that Complaints 13 to 16 were to be included. My office gave the union copies of Mr Duffy's forms notifying Complaints 13 to 16 in January 2007. It understood from later correspondence that the union wished to have all Mr Duffy's complaints, including Complaints 13 to 16, disposed of at a single hearing. There was clearly a miscommunication, which was regrettable. However, as most of the issues in Complaints 13 to 16 were also in Complaints 3 to 10 and the new matters introduced were few and did not appear to be of a specialised nature, I asked the Union whether, despite the short notice, it might feel able to deal with the new matters at this hearing, given that the alternative of convening another hearing at a later date to deal with them would be burdensome on all concerned. The Union agreed to proceed with them at the present hearing.

Submissions and Conclusions.

Summary of submissions on Complaints 1 and 2

80. Mr Dickson's submission on these two complaints consisted of a close examination of the documents and the events relating to the nomination process for the two posts on the Maghaberry Branch committee. He sought to show that Mr Duffy had complied fully with rule 23.3, that the instruction to re-run the process was unjustified and that there was a hidden motive behind the union's actions, namely that the union did not want Mr Lewis as Chairman of the Maghaberry Branch. In pursuit of this last claim, he said that in his belief no-one had tried to nominate Mr Stewart on 1 January 2005; that Mr Stewart had never named his alleged proposer and seconder; that as a long-term POA member he would have known that there were elections every January and would have had himself nominated much earlier had he really been interested in standing

(he did not put himself forward for chairman when the re-run took place); and he had even got the location of the nomination sheet wrong. As for Mr Blundell, he had waited two months to make his complaint; he complained (having got the first day of posting wrong) that the notice was posted for two hours too few, though the rules did not speak of hours, only days; and though he had never been a member of PRU, he complained that PRU had been excluded from the election. The purpose of Mr Blundell's complaint, Mr Dickson argued, was to bolster Mr Stewart's weak complaint. Mr Dickson said that Mr Davidson (also a long -term POA member and aware of the regular January elections) had not made his complaint about the absence of a notice in the PRU until almost three months later; that the complaint was anyway untenable, since the union had never required such arrangements to be made for other outposted staff or for staff on sick leave, who were much more numerous than the PRU staff; that PRU staff visited Maghaberry every day and would have seen the nomination sheet, since, like all other staff , they had to pass through the staff search area; and that Mr Davidson's statement that the PRU staff only found out that there had been an election when the result was announced could not be true, since both the notice of the election in December and the announcement of the result in January had been conveyed by the same means (e-mail). Mr Dickson said that Mr Smyth had taken until March to rule on Mr Stewart's complaint, made on 10 January. He had first asked only that the nomination for chairman be re-run, then realised that the committee member post should have been included and engineered a complaint relating to the latter (from Mr Blundell). He had not been able to specify what the "clear interference" mentioned in letter of 15 March 2004 actually was (and Mr Caton had also failed to deal with that question). On the basis of a calendar marked up by Mr Smyth and sent by him to Mr Caton, Mr Dickson said that both Mr Smyth and Mr Caton had apparently not realised that the notice had been displayed on 1 January 2005, and therefore that it had been up for the 17 days required by the rules. In any case, the meaning of "for 17 days" was a matter of interpretation of rule 23.3(a) and Mr Caton did not have authority to interpret the rules on his own, as he had done on this occasion: under rule 28.4, the authority was vested in the General Secretary and the Chairman acting together.

81. Mr Dickson's conclusion from the above was that although Mr Duffy had complied with the rules, the union had engineered the complaints against him in order to void Mr Lewis's election. A disciplinary case was then brought against Mr Duffy for his justified refusal to re-run the nominations, and it resulted in his expulsion.
82. Mr Marriott said that Mr Duffy had failed to comply with the rules in two respects. First, the nomination sheet had not been up for 17 days, as required by rule 23.3(a). A day meant a period of 24 hours, so that a notice put up at midday on 16 December 2004 should have stayed up until

midday on 2 January 2005. The meaning of the rule was explained to Mr Duffy and was set out in writing by Mr Caton in his letter of 5 April 2005, but Mr Duffy did not accept this and continued to ignore an instruction which Mr Caton, as General Secretary, was empowered to give him under rule 9. When it was finally agreed to re-run the nominations, the Branch again proposed a period that was one day short and Mr Caton had to intervene again to secure compliance with the rule. Second, the object of rule 23 was to ensure that elections were fair and inclusive of all members, but POA members at the PRU had been excluded because they did not know the election was taking place and were not told how to nominate or put themselves forward for election. Even if, which was not accepted, all PRU staff had access to e-mail in December 2004, that would not have been an acceptable substitute for displaying the notice there. In both respects, therefore, the union had acted to secure compliance with the rules and Mr Duffy's complaints against it must fail.

Conclusions on Complaints 1 and 2

83. Complaint 1 alleges that the union breached rule 19.6 by ordering the re-run of the nominations without investigation of the original process.
84. Rule 19.6 is a rule about the timing, frequency and method of Branch committee elections. The investigation of complaints about elections is not enjoined by this rule and therefore lack of such an investigation is not a breach of it. I take Mr Duffy's point to be, however, that Mr Smyth's and Mr Caton's conclusion that there must be a re-run of the nominations was unreasonable because it rested on no proper grounds, and there had been no investigation to establish any grounds. Mr Smyth, however, said that he had "looked at the paperwork", which showed him that the notice had not been displayed for the required length of time, and that that was the ground for his conclusion. It is clear that Mr Smyth would have needed to do very little by way of investigation to determine the period for which the notice had been displayed. (Contrary to Mr Dickson's assertion, he acted promptly: Mr Stewart forwarded his complaint to him on 11 March and he wrote to Mr Duffy on 15 March). He did the necessary investigation and he did have an arguable ground for his conclusion, which was therefore not unreasonable. Mr Caton's agreement with Mr Smyth's conclusion was likewise not unreasonable. Even on this wider view of Complaint 1, therefore, I consider that it fails, and accordingly I refuse to make the declaration sought in Complaint 1.
85. Complaint 2 is that the union breached rule 23.3 by voiding a process that had been properly carried out in accordance with the rules.
86. If I were to find that the union had no grounds whatever for instructing Mr Duffy to re-run the nominations for the Maghaberry committee posts, I would be obliged to consider the many assertions made by Mr Dickson

which tended, in his view, to show that there was an undeclared and illicit reason for that instruction. I may say in passing that it seems to me that many of these assertions are not well founded. However, I do not need to discuss them in detail, because in my judgement the union did have good grounds for the instruction, namely that the nomination sheet was displayed for 16 days, and not "for at least 17 days" as required by rule 23.3(a). It was displayed on 17 days, but not for 17 days. In other words, I agree with the union's view that in this rule "day" bears the meaning of "a period of 24 hours" and that the sheet should have remained in place until around midday on 2 January at least. I feel certain from the evidence he gave that Mr Duffy sincerely thought that he had complied with the rule and also that he was genuinely concerned about his own position if he were to re-run the nominations and then face action from aggrieved members or even the Certification Officer. But he was in fact mistaken about the meaning of "for 17 days" in the rule, and the union was justified in ordering a re-run that would comply with the rule.

87. I do not accept Mr Dickson's argument that Mr Caton's view of the 17 day rule was an unauthorised interpretation under rule 28.4. Mr Caton said in evidence that the rule was clear and specific and no interpretation was involved. He said he gave instructions based on the rules virtually on a daily basis, under the authority to manage the Association that is vested in him by rule 9. He was the custodian of the rules and acted on behalf of the NEC. He had personally ordered the re-run of a number of elections in recent years where it was clear that rules had not been complied with. He had informed the Chairman of his instruction to re-run the Maghaberry nominations but had not consulted him on it, and the Chairman had agreed that he had acted correctly. I find Mr Caton's arguments persuasive. It is clear that the General Secretary has a general power under rule 9.1 and 9.3 to manage the affairs of the Union and this must include the power to settle day-to-day questions about the meaning of the rules. As the Union's Chief Executive he must be assumed to know and understand the rules and to be able to give prompt instructions based on them without formal consultation on every occasion with the Chairman (and still less with the NEC at its monthly meetings or with annual Conference, the ultimate authority under rule 28.4). I would suppose that only in cases where the General Secretary is uncertain (e.g. because a rule is unclear, or there is no precedent, or the rules are silent) would he be expected to consult with the Chairman or refer the matter to the NEC. The question whether out-posted members may make nominations at elections in their "host" Branch is an example, see paragraph 20 above. Mr Dickson's contention seems to me to require rule 28.4 to be construed literally and precisely rather than to be given a reasonable interpretation which accords with what must have been intended by the drafters. (*British Actors' Equity Association v Goring, Harvey* Vol. 6 M10442).
88. The use of the phrase "clear interference" by Mr Smyth led Mr Duffy to

believe that he was being accused of deliberate malpractice. Mr Smyth said in evidence that he had meant no more than that the removal of the nomination sheet one day too soon was interference with the process set down in the rules. It was, however, an unhappy choice of words and it seems clear that it influenced Mr Duffy's refusal to follow the instruction to re-run.

89. On the failure to display a nomination sheet at PRU, I point out first that, given my finding above, the union does not need to establish that this was a breach of rule in order to defeat Complaint 2. One valid reason for ordering the re-run is enough to do that. Considering the issue nevertheless, I note that rule 23.3(b) - which seems to have been formulated with branches consisting of a single work location in mind - does not on the face of it require notice to be posted in more than one place, and Mr Dickson gave reason to believe that the common practice of the Union does not require this either. Mr Duffy in fact did more than was strictly demanded of him when he sent an e-mail to Maghaberry Branch members advising them of the forthcoming election and of the location of the nomination sheet. It would no doubt have been desirable for there to be a sheet at the PRU (and possibly also in other places mentioned by Mr Dickson where its absence does not seem to have troubled the Union), in order to maximise awareness and to make it easier for staff there to propose candidates, but this does not amount to a breach of rule.
90. In light of the above I refuse to make the declaration sought in Complaint 2.

Summary of submissions on Complaint 3.

91. Complaint 3 (like the remaining complaints) arises from the disciplinary cases that the POA brought against Mr Duffy. It is that the union breached rules 24 .1 (a), (b), (e), (g), (j) and (k), by charging him with breaching those rules but failing to give him any explanation or evidence as to how he had done so; and that it withheld from him information necessary for his defence, thus infringing the rules of natural justice.
92. Mr Dickson said that the Union's letters to Mr Duffy about the disciplinary cases (from Mr Moses, Mr Caton and Mr Freeman) had only told him which rules he was alleged to have breached, and not how he had breached them. The complaints should have been enclosed, but were not. He doubted indeed that Mr Caton had ever made a written complaint, since the union had been unable to produce it in evidence. In his letter of 25 August 2005 to Mr Freeman, Mr Duffy had set out in detail the information that was lacking, but he received a reply only after the disciplinary sub-committee's visit to Northern Ireland, and even this left him as much in the dark as before. Faced with a lack of any reasonable particulars, Mr Duffy was forced to reserve his case until he should receive

the report of the sub-committee and could then, knowing the charges against him, defend himself at the Disciplinary Committee proper. But the Disciplinary Committee made its decisions on the basis of the sub-committee's report, without giving him that opportunity. He was expelled before he saw three of the complaints against him. Mr Waterworth's complaint (58c) was the only one he received in advance.

93. Mr Marriott said that the union had followed the disciplinary procedures set out in rule 27. The requirements of 27.2 (appointment of sub-committee, visit to branch etc) had been met. There was a question about part of rule 27.3, since Mr Duffy claimed that the complaints against him and other relevant correspondence had not been attached to the letters notifying him of the disciplinary cases: but Mr Marriott said that each of the letters stated that all relevant correspondence was enclosed, as was standard POA practice; and Mr Caton in his witness statement affirmed that it was enclosed, and listed the items. Mr Marriott said that all the other addressees of the letters had received the enclosures and the Union was confident they had been attached to Mr Duffy's copies too.

Conclusion on Complaint 3

94. The issue that I have to decide in Complaint 3 is one of fact: did Mr Duffy receive the information that he needed in order to understand why he was subject to disciplinary investigation under rules 24.1 (a), (b), (e), (g), (j) and (k)? I consider that the answer to this question will also decide the associated complaint of denial of natural justice, since the information concerned is the same in both cases.
95. Mr Duffy's evidence at the hearing on what information he had received from the union, and when, was unclear and on occasion contradictory. I consider that Mr Duffy's letter of 25 August 2005 to Mr Freeman is a significant piece of evidence. In it he acknowledged receiving from Mr Freeman a package of material about the disciplinary cases, and showed that he knew what each of the four cases was about. Mr Freeman's letters, which were in a standardised form, gave no information about the substance of the four cases, which they identified by case number only. Mr Caton and Mr Moses had also sent letters to Mr Duffy to notify him that he was being referred to the Disciplinary Committee. Only one of these (there were four) gave an indication about the substance of the complaint (in its heading: "Unofficial Unsanctioned Petition"), and two of the others Mr Duffy said he never received in any case. How then did Mr Duffy know what each of the cases was about? The probable answer in my judgement is that the package from Mr Freeman did contain the attachments to the letters. Further, in his 25 August letter Mr Duffy says in regard to two of the cases (Mr Caton's and Mr Hancox's) that he notes that Mr Freeman has been "selective in the information supplied to the Disciplinary Committee". It would seem that Mr Duffy must have seen

information supplied in those cases, since he was able to make a judgement about its lack of completeness. I conclude on the balance of probabilities that Mr Duffy was provided, in August 2005, with complaints and correspondence about the complaints, and I refuse to make the declaration sought in Complaint 3.

Summary of submissions on Complaint 4

96. This is a complaint that the Disciplinary Committee consisted of nine members, not seven as required by rule 24.2
97. Mr Dickson referred to a number of letters from the General Secretary and the Deputy General Secretary to the Disciplinary Committee which were sent to "Disciplinary Committee x 9". This showed that the Committee had nine members, which breached rule 24.2.
98. Mr Marriott said that the union had faced problems over the availability of Disciplinary Committee members. The NEC addressed the matter and a circular was sent to POA members on 22 July 2005 setting out new arrangements. Among these was the appointment of two reserve members who could serve on the Committee if others were unavailable, The general management powers under rule 9 entitled the NEC to make such arrangements, the aim of which was to ensure that the Committee's business was carried out fairly and effectively. The Disciplinary Committee which had considered Mr Duffy's cases consisted of seven members, as the minutes of its meeting of 15 September 2005 showed.

Conclusion on Complaint 4

99. In my judgement there is nothing in the rules to prevent the union making a pragmatic arrangement of the kind in question here, and rule 9 positively enables it to do so. The existing arrangement was not working acceptably and the purpose of the new one was to provide a better service to members. It would, I believe, be a breach of rule 24.2 if a case were to be determined by a Disciplinary Committee consisting of more than seven members, but there is no breach in appointing reserves or copying Committee papers to them as well as to the "core" members (my expression). Mr Dickson said he believed the Disciplinary Committee minutes of 15 September 2005 provided in evidence by the Union were not genuine: Mr Duffy had repeatedly asked the POA for them, but the Union had not produced them until this hearing, because they had not existed until then. I did not find this argument persuasive. I refuse to make the declaration sought in Complaint 4.
100. Complaint 5 was not heard, for the reasons set out in paragraph 66 above. It is dismissed on the same grounds as the similar complaint in Lewis v POA (D/15-18/2005).

Summary of submissions on Complaint 6

101. This is a complaint that the General Secretary did not seek a solution to the complaints against Mr Duffy through mediation, as he was required to do under rule 24.5 ; and that the Union treated a complaint against Mr Spratt more favourably than one against Mr Duffy.
102. Mr Dickson said that Mr Duffy should have been offered mediation. Instead, Mr Freeman's letters notifying him of the four disciplinary cases against him had simply informed him that the mediation policy could not be applied. But the Union could not have known this to be so, for there were no papers showing that the General Secretary had ever put the question about mediation to Mr Waterworth, Mr Hancox, Mr Stewart, Mr Blundell or Mr Davidson. By contrast, in the matter of the Maghaberry Branch Committee's complaint against Mr Spratt, the papers showed that the General Secretary wrote to the committee asking them to indicate in writing whether they were willing to accept mediation, and received a written reply. Mr Dickson also referred me to a decision of 16 November 2007 by the Great Britain Certification Officer (Darken v POA (No2), D/32-34/2007). He said it was clear from this that when Mr Darken complained against other POA members it was those members who were asked whether they the were prepared to go to mediation, not the complainant. The opposite was true in Mr Duffy's case.
103. Mr Marriott said that it was the nature of mediation that both parties had to be willing to engage in it. If one party refused, there was no point in approaching the other. Mr Caton approached the complainants to see if they would accept mediation, but found that they would not. He did not approach Mr Duffy because, in the words of rule 24.5, "all parties did not agree" and mediation had "proved to be unachievable". He had, however, made the attempt to apply the policy, as the rule required.

Conclusion on Complaint 6

104. Mr Stewart, Mr Blundell and Mr Davidson were not complainants in the four disciplinary cases brought against Mr Duffy and the question of mediation does not arise in respect of them. The complainants were Mr Waterworth, Mr Spratt, Mr Caton and Mr Hancox. Mr Spratt indicated in his letter of 10 May 2005 that mediation was not acceptable. Mr Caton said in evidence that, with regard to his own complaint, he had been offered mediation by the Chairman and had rejected it. He affirmed that he had contacted Mr Waterworth by telephone and had met Mr Hancox, and both had told him that they would not accept mediation. There appeared to have been no written offer of mediation in these cases.
105. I must accept Mr Caton's evidence that there were oral offers of mediation

- in the case of himself, Mr Waterworth and Mr Hancox. Mr Dickson denied
106. that there were, but was not in a position to know, as Mr Caton of course was. Does it then satisfy the rule to make an offer of mediation orally rather than in writing? Rule 24.5 says that the General Secretary is to seek a resolution "through the Association's Mediation Policy". That policy does not lay down that an offer of mediation is to be made in writing. (Indeed, the one reference to the "offer" stage of the process says that the General Secretary will offer mediation "on request from Branch officials or members"). I conclude that it was acceptable for Mr Caton and Mr Moses to make the offers orally. The required result was achieved - the question whether mediation was possible or not was answered. There remains the question whether Mr Caton and Mr Moses should have offered mediation to Mr Duffy. Rule 24.5 says nothing about the method of determining whether mediation is possible. The written mediation policy, as noted, appears, if anything, to put the onus on members to seek mediation through the General Secretary. However, it is still legitimate to ask whether it was reasonable not to speak to Mr Duffy about mediation once the complainants had refused it. Mr Duffy's perception may well have been that mediation had not been sought (since it had not been offered to him), and Mr Freeman's letters to him had simply said, somewhat obscurely, "We understand that the Association's Mediation Policy cannot be applied in this case". It would have been clearer and less likely to be misconstrued if the letters had said that the complainants had been offered mediation under rule 24.5 but rejected it, and therefore mediation was not possible. That, however, is a criticism of presentation; as to the substance, there was no point, as Mr Marriott said, in putting the question to Mr Duffy when the complainants had refused: whether he answered yes or no, there could be no mediation. Mr Caton's and Mr Moses's procedure was reasonable in my view.
 107. As regards the Darken case, I note that the offer of mediation was not a matter for decision by the Certification Officer and was mentioned only in his findings of fact. From the limited information given there it is not possible to safely draw the conclusion that Mr Dickson drew; it is not clear, for example, that Mr Darken did not indicate first that he would accept mediation. But in any case this is academic since, as noted, neither the rule nor the written mediation policy lays down any specific requirements about the order or the method of offers of mediation.
 108. On the remaining part of Complaint 6 (the allegation that the Union treated a complaint against Mr Spratt more favourably than one against Mr Duffy), I was offered no evidence beyond the assertion that the complaint against Mr Spratt was never followed through by the Union. I am not able to say whether this is true or, if it is, whether there was a good reason for it. My interest in such a matter would not be in determining whether there was discrimination between individuals per se, but rather in seeing whether the

different treatment revealed a breach of rule or of custom and practice in one or other of the cases. I had no information relevant to this. I reject the complaint.

109. In light of the above, I refuse to make the declarations sought in Complaint 6.

Complaint 7

110. This complaint is that the union breached rule 27.2(c) in that the sub-committee did not consider the disciplinary complaints in accordance with all rules, and also rule 27.2(g) in that the sub-committee did not provide a copy of its report to Mr Duffy before the Disciplinary Committee took a final decision.
111. The first part of this complaint concerns rule 27.2(c), which is a rule enjoining compliance with other rules. The sub-committee could only breach rule 27.2(c) by not complying with some other rule, and a complaint under it must identify that other rule. A breach of rule 27.2(c) is merely a logical consequence of breach another rule, not a separate matter.
112. Mr Dickson did not address the first part of Complaint 7 at the hearing, or identify any other rule which the sub-committee had failed to comply with (except rule 27.2(g), which is being addressed separately, as the second part of Complaint 7). In Complaints 13 to 16, however, it is alleged that the sub-committee breached rule 27.2(e), because its investigation of the complaints against Mr Duffy was inadequate. This is the only other relevant allegation in all of Mr Duffy's complaints. I have therefore taken this to be the other rule involved in the alleged breach of rule 27.2(c).
113. My jurisdiction in regard to breaches or threatened breaches of trade union rules is essentially concerned with process. If there were evidence that the sub-committee's investigation had failed to meet basic standards of competence or fairness, I would be obliged to consider it, since this failure might have damaged the process, perhaps fatally. No such evidence was offered to me in the hearing, and from the written evidence before me I do not consider that such a claim is sustainable. The sub-committee members were provided with relevant papers, which they read; they travelled to Maghaberry where they stayed for two days; they interviewed all parties who were willing to be interviewed; and having thus familiarised themselves with the matters at issue so far as they were able, they made a written report on their findings. There was no failure in this and I do not find a breach of rule 27.2(e) or, consequently, of rule 27.2(c)

Summary of submissions on the second part of Complaint 7.

114. Addressing the second part of Complaint 7, Mr Dickson said that Mr Duffy had not received the reports by the time that Mr Keys sent him the decisions of the Disciplinary Committee itself (20 September 2005). He had not even been told that the Disciplinary Committee was sitting. He had intended to make his case at the Disciplinary Committee meeting, based on the information in the sub-committee's reports. But the first thing he received was Mr Keys's letters telling him that the Disciplinary Committee had met and that its decision in each of the four cases was that he was expelled.
115. Mr Marriott said the union admitted that it could find no letter sending the reports to Mr Duffy. He pointed out that Mr Duffy had responded to Mr Keys's letter on one of the cases (58(c)), saying that he had received the cover sheet of the report, but not the report itself. The union believed it had sent the report to Mr Duffy, but if it had not, the fact that the cover sheet had been sent showed that this was an administrative error, not a deliberate withholding of the information. Mr Pike said in his witness statement and in evidence that the subcommittee had sent its reports to POA HQ for distribution to the rest of the Disciplinary Committee and Mr Duffy. All the Disciplinary Committee members had received their copies.

Conclusion on the second part of Complaint 7

116. Rule 27.2(g) is not explicit about when the sub-committee report should be sent to a member who has been subject to investigation. Mr Duffy did at some point get the reports on all his cases, but his evidence as to when was not clear; he did, however, deny that they came with Keys's letters of 20 September 2005, and appeared to imply that he received them a good deal later. The Union claimed that they were sent with Mr Keys's letters, though it accepted that these did not mention enclosures and that there were no records of any other letters of transmission. In such circumstances, I must decide, on the balance of probabilities, what the evidence supports. Mr Duffy said in evidence that he had received all four of Mr Keys's letters and that none of them had a report enclosed, though the one concerning case no.58(c) did contain the cover sheet of the report. I note first that Mr Duffy wrote to Mr Keys on 24 September about the absence of the report on this case only. If he was missing all four reports, this seems odd. I also note the following from Mr Duffy's letter to Mr Keys:

"...I never received a copy of the Disciplinary Committee's findings in relation to the above case. All I received was the cover sheet, therefore will you please forward me a copy of their findings as soon as possible.

It is good of the Prison Officers Association to at last specify what the allegations are against me, despite requests I note it is not until a decision is made to expel me that they decided to extend this basic right to me."

117. It is difficult to see what the second paragraph above can mean if not that Mr Duffy has at last been given what up to now has been withheld from him, namely specifics of the allegations against him. Yet on Mr Duffy's own showing it is not clear where these came from. Mr Keys's four letters of 20 September did not specify the allegations. They gave no indication at all about the nature of the cases; they were of a standardized form, distinguished from each other only by case number. The cover sheet of the report on case 58(c) likewise contained no information beyond the case number, the name of the accused and the names of the members of the sub-committee. Where then had Mr Duffy seen the specifics he mentioned? From the evidence before me it that would seem that there was no plausible source except the sub-committee reports. I therefore consider it probable that he did indeed have copies of the reports on three of the cases and that he received them with Mr Keys's letters of 20 September. He received the fourth, on case no. 58(c), when Mr Caton forwarded it on 11 October 2005, in response to Mr Duffy's second request. The report of the first Appeal Committee dated 29 November 2005 asserted that copies of all the sub-committee's reports had been sent to Mr Duffy.

118. Rule 27.2(g) requires the disciplinary sub-committee, having investigated a complaint and reported to the Disciplinary Committee to

“provide copies of its report to the member, the complainant, the member's branch and the General Secretary by written communication.”

Rules 27.4 and 27.5 require the Disciplinary Committee to consider the report as soon as reasonably practicable, make a decision and convey the decision to the member.

119. Nothing is said in these rules about when the subcommittee is to send its report to the member it has investigated. Mr Duffy's complaint assumes that this should be done before the Disciplinary Committee reaches its decision in the case. On this view, the purpose of sending the report to the member would be to give the member an opportunity to make representations in person or in writing to the Disciplinary Committee about the findings of the report and so to influence the decision. Mr Duffy said in evidence that he had been expecting to do just this. The Union denied that this is the way the process is intended to work. On its view, the sub-committee investigation is the stage of the process at which the member has the opportunity to make his/her case; the Disciplinary Committee then uses the report of that investigation as the basis for its decision. If that is so, then the time of sending the sub-committee report to the member does not have the significance attributed to it by Mr Duffy.

120. It is right in such circumstances to consider the probable purpose of the

rule. By Mr Duffy's account the purpose is to enable the member to make representations to the Disciplinary Committee; but it could equally well be to enable the member to prepare an appeal for consideration by the Appeal Committee, and on the Union's evidence, it may be more likely that this was the intention of the drafters. I am not confident that Mr Duffy's view of the matter is the correct one and accordingly I cannot accept the conclusion regarding breach of rule that he draws from it.

121. I therefore refuse to make the declaration sought under the second part of Complaint 7, namely that the Union breached rule 27.2(g) by not providing Mr Duffy with copies of the sub-committee reports before the Disciplinary Committee reached its decision.

Summary of submissions on Complaint 8 and Complaint 12

122. These two complaints may be dealt with together (see paragraph 72 above). Complaint 8 alleges that the union had breached rule 27.3 in that the Disciplinary Committee did not communicate with Mr Duffy direct (ie itself) but through Mr Freeman, did not give him at least 21 days notice and did not send the notice to his home address; and also rule 27.3(a) in that it did not state briefly why he was subject to disciplinary action and provided no names or documentation to support the charges. (The matter of documentation has already been considered under Complaint 3 and is not addressed again here). Complaint 12 adds that the union retrospectively applied to Mr Duffy's cases a circular (POA 72/2005 of 22 July 2005) allowing administration of the Disciplinary Committee to be carried by the General Secretary and the Deputy General Secretary.
123. Mr Dickson said that Mr Freeman's letters of 9 and 10 August 2005 (informing Mr Duffy of the disciplinary complaints, the sub-committee meeting etc) were sent to HMP Maghaberry, though rule 27.3 required them to be sent to Mr Duffy's home address. As a result Mr Duffy did not receive them until 18 August and did not have the required 21 days notice of the sub-committee meeting, which was set for 1 September. Furthermore, under the rule the Disciplinary Committee itself, not a union official like Mr Freeman, should give the notice. As regards circular POA 72/2005, Mr Dickson said that as Mr Duffy's alleged offences had taken place before this was introduced, it could not apply to the handling of his cases. He believed that the union had introduced it especially for Mr Duffy (it had never been incorporated in the POA rules, though there were opportunities to do so at annual Conferences since); it allowed those at the top of the POA to interfere with the Disciplinary Committee, to the extent that they Mr Caton, Mr Freeman and Mr Keys wrote to Mr Duffy on its behalf. Mr Dickson again drew my attention to the case of Darken v POA mentioned above. He said that a letter from Mr Freeman to Mr Darken, quoted by the Certification Officer, showed that the Union had, as required by rule 27.3, "stated briefly" why Mr Darken was subject to

- disciplinary action. No such statement had appeared in the corresponding letters to Mr Duffy, who had never been told what charges he was facing.
124. Mr Marriott said that POA HQ London would not necessarily have known Mr Duffy's home address; the membership register and the voting register, which the administration would consult for members' addresses, had HMP Maghaberry as Mr Duffy's contact point. In any case, the "Troubles" had made it necessary for the Union to put in place special arrangements for communication with Northern Ireland members, so that their security was not compromised, and it had become established practice to communicate with them at their place of work. As to the 21 days notice, Mr Freeman's letters were sent by recorded delivery on 9 and 10 August and should have arrived at HMP Maghaberry the following day. Mr Duffy did not receive them until 18 August because he did not return to duty until then. In his letter of 25 August to Mr Freeman, however, he did not ask for a postponement of the sub-committee meeting because of this, and if he had attended that meeting and requested a postponement, that would have been agreed. The purpose of the rule was to give members a reasonable time to prepare before meeting the sub-committee and Mr Duffy did have a reasonable time. On POA 72/2005, Mr Marriott said that, far from being introduced especially for Mr Duffy, it had been used for every disciplinary case since.
125. On rule 27.3(a), Mr Caton, cross-examined by Mr Dickson, said that it was the Union's practice not to provide brief statements of reasons for disciplinary action against a member.. The Disciplinary Committee had taken the line that the complaint itself should be sent to the accused member. It was concerned that a statement from the General Secretary might seem to be an accusation by the Union, presuming the member's guilt and pre-empting the work of the sub-committee. At this stage of the disciplinary procedure, there was only an *allegation* of a rule breach; there was no *charge* to that effect, and there would be none unless the sub-committee so recommended after its investigation. If Mr Freeman had given Mr Darken a brief statement, that was a mistake, a departure from the Union's practice.

Conclusions on Complaints 8 and 12

126. The claim that rule 27.3 requires the Disciplinary Committee itself to write to members does not seem to me tenable. The Committee is composed of POA lay members who are located in different parts of the country. They clearly need administrative assistance to perform their role, and that would include having staff write on their behalf to members against whom a complaint has been made. They could hardly function effectively without such assistance. It is an over-literal reading of the rule which asserts that they must write themselves. I consider that, irrespective of the relevant sentence in POA 72/2005 (*"The administration of the Disciplinary*

Committee will be carried out by the General Secretary and the Deputy General Secretary in accordance with the Rules and Constitution"), and whether or not the Disciplinary Committee actually did its own administration before then (I had no evidence on this point), the rules are not a bar to having HQ staff do it on their behalf. Mr Duffy's claim regarding retrospection (Complaint 12) therefore also falls.

127. Rule 27.3 requires the Disciplinary Committee to write to the member's home address, and only if that is unknown, to his/her workplace. The assertion that because of security concerns it is the established practice of the POA to write to Northern Ireland members at their workplace was not disputed in the hearing (though it was challenged before me on a previous occasion) and Mr Duffy confirmed that he was accustomed to receiving POA mail at Maghaberry. Mr Duffy said in evidence that POA HQ London would have known his home address, or in any case could have got it from POA HQ Northern Ireland. From the evidence given to me, I cannot determine whether or not POA London had or could have had Mr Duffy's home address at the relevant time (before 9 August 2005). But if it is assumed that it did or could have done, its action was in breach of the terms of the rule and it is then necessary to ask whether the established practice of the POA had so modified the rule that there was in fact no breach. It is an accepted principle that custom and practice can modify a rule provided it is reasonable, precise and well-known. I believe the practice in question here can satisfy these three criteria. It is precise, since it is a clear arrangement applying to a specific, geographically defined, group of POA members facing conditions not faced by POA members in other parts of the UK: it can be presumed to be well-known since the fact that it is established was not disputed; and it is also reasonable, to say the least, since its aim is to avoid putting members' security - potentially their lives - at risk by inadvertently revealing their home address. The "blue flu" episode (see paragraph 36), which was a dispute about the provision of adequate security measures at their homes, shows that Northern Ireland prison officers rightly take security concerns very seriously.
128. The question may be thought to arise as to whether the POA could not make arrangements which would both preserve the terms of the rule by allowing communications to be sent to members' home addresses in Northern Ireland, and preserve members' security - for example, by using plain envelopes, without POA stamps, that would not identify the recipient as a prison officer. Such an arrangement may be thought to be inherently less secure, in that it would be liable to human error, such as a member of staff in London forgetting on some occasion that there were special arrangements for letters to Northern Ireland members. However, it is not for me to adjudicate such matters. Rule 27.3 was not formulated with a Northern Ireland-type situation in mind, and the Union had an indisputably cogent reason for putting a different arrangement, which was clear and

well known, in place for Northern Ireland. I therefore conclude that custom and practice had modified the rule in respect of Northern Ireland members and that the POA did not breach the rule by sending notice to Mr Duffy at his workplace. I note that Mr Keys's letters of 20 September were sent to Mr Duffy at his home address, which Mr Duffy had provided in his letter of 25 August to Mr Freeman. This does not seem to me to invalidate my conclusions above: it is a reasonable assumption that Mr Keys wrote to Mr Duffy at home because of his complaints in the 25 August letter about this not being done.

129. As regards the requirement to give at least 21 days notice, it appears that Mr Freeman's letters of 9 and 10 August 2005 were dispatched by recorded delivery mail on the latter date. I take it that the date from which the 21 days notice should run is the date on which the letters were delivered to HMP Maghaberry. That date is not known. Letters posted by first class mail are normally deemed to be delivered in the ordinary course of the post, which means on the second day after posting. Delivery times are the same for recorded delivery mail as for ordinary mail (the service only provides the extra certainty of "signed -for" collection and delivery, not extra speed). Therefore the delivery date of Mr Freeman's letters may be deemed to be 12 August, from which there are 20 days to 1 September, the date for the sub-committee's meetings with Mr Duffy (excluding 1 September itself). That did not give Mr Duffy the minimum time required by the rule, which was therefore breached.
130. Mr Duffy's letter of 25 August in reply to Mr Freeman said that he was not on duty around the time of delivery and only received the letters on his return to duty on 18 August. (I note, however, that on 11 August and 15 August he signed letters, on Maghaberry Branch headed paper, to Mr Caton and Mr Spratt). This amounts to a claim that, effectively, he had 14 days notice. But, as mentioned, the period of notice runs from the date of delivery, not from the date on which Mr Duffy picked up his post, and the Union therefore gave him 20 days.
131. Mr Duffy said twice in his 25 August letter that he had not been given 21 days notice. He did not ask for a postponement of the sub-committee meetings then or later, but it might nevertheless be argued that the Union itself should have taken the initiative to postpone them, purely on grounds of fairness, once it understood that the period of notice had effectively been curtailed, because of Mr Duffy's absence from his workplace. This is perhaps not unreasonable, but it would be more compelling had Mr Duffy shown an intention to co-operate with the disciplinary inquiry, rather than indicating, as he did in unmistakable terms at this time, that he was rejecting the sub-committee and the process generally.
132. In light of the above I declare that the Union breached rule 27.3 of its rules

by failing to give Mr Duffy 21 days notice of the sub-committee meeting.

133. As regards the requirement under rule 27.3(a) that the Disciplinary Committee "state briefly" the reasons why Mr Duffy was subject to disciplinary action, it is clear that there was no such statement in Mr Freeman's letters of 9 and 10 August 2005. Those letters listed the rules that Mr Duffy was alleged to have breached and enclosed "all correspondence" alleging the breaches. On the face of it, rule 27.3(a) demands more than this - namely a brief description by the Disciplinary Committee of the alleged offence. Mr Caton's gave evidence that it was the Union's practice not to provide such a statement but, in the Darken case, one was in fact provided: the Certification Officer's decision quotes Mr Freeman's letter as identifying the alleged rules breaches in the following terms: "*Filing a complaint with the Prison Service without exhausting the POA's internal mechanisms. Contrary to 25.1(a) and (b)*". However, it is not safe for me, in the absence of full information on the circumstances of that case, and in particular whether they differed in any material way from those of Mr Duffy's case, to draw the conclusion that this contradicts Mr Caton's evidence. (For example, the Certification Officer's decision appears to show that the NEC decided, at a meeting, to instigate disciplinary proceedings against Mr Darken; there may then have been no letter of complaint that could have been forwarded to Mr Darken, which would account for the inclusion of the above statement by Mr Freeman. Or, as Mr Caton said, Mr Freeman may simply have made a mistake). I therefore accept Mr Caton's evidence as to the Union's practice.
134. The question remains, however, whether that practice is justified. As discussed above, a practice may modify a rule under certain conditions. Two of those conditions are that the practice is reasonable and well-known. The Union offered me no evidence that this practice was well-known to members and I have no reason to believe it was. As to reasonableness, I consider that the practice fails this test. Although in my view Mr Duffy knew the substance of the cases against him, I believe he was put at some disadvantage by the absence of a succinct statement of the allegations in at least two of the cases. According to Mr Caton's witness statement, his own complaint was not among the papers sent to Mr Duffy by Mr Freeman on case no.64 (indeed it is not clear that it was ever put in writing: the Union was not able to provide a copy of it). If that is so, then Mr Duffy did not have sight of the complainant's own words. According to the same statement the papers on case no.64 included a letter from Mr Hancox which alleged that Mr Duffy was deliberately obstructing the investigation into alleged financial irregularities. This had nothing to do with case no.64, and its inclusion in the papers may have caused Mr Duffy some confusion. Mr Hancox's complaint (case no.65) consisted of a memorandum from Mr Hancox to Mr Caton reporting on the

findings of the financial irregularity investigation and recommending that an earlier letter of Mr Spratt's (which made allegations against Mr Duffy and others, but was, explicitly, not a formal complaint) be sent to the Disciplinary Committee for urgent action. Mr Duffy did not seem to have understood that the memorandum and Mr Spratt's letter actually constituted Mr Hancox's complaint, and I have some sympathy with him. In case nos. 64 and 65 at any rate the inclusion of a brief statement under rule 27.3(a) would, at the least, have made matters clearer to Mr Duffy and facilitated him in addressing the allegations against him. Its absence made Mr Duffy's task more difficult than it should have been (The papers sent to him were quite numerous - according to Mr Caton's statement, 15 for case no. 64, and 29 in total for the four cases together).

135. I therefore declare that the union breached rule 27.3(a) in that it did not state briefly why it was alleged in each case that Mr Duffy was subject to action under rule 24.1.

Summary of submissions on Complaint 9

136. Mr Dickson said that the Disciplinary Committee had breached rule 27.5 in that Mr Keys's letters of 20 September 2005 were inadequate as they did not provide details of how the rules had been applied by the Committee to Mr Duffy's alleged behaviour. He said that when Mr Duffy received Mr Keys's letters, he had not yet had copies of the sub-committee's reports and so did not know why he was being expelled
137. Mr Marriott said that rule 27.5 laid down that the Disciplinary Committee must give the member written notice of the outcome of the enquiry and any sanction imposed. Mr Keys's letters had done all that was required. They informed Mr Duffy that the Disciplinary Committee had met, considered the sub-committee's reports, upheld the complaints against him and decided to expel him from the POA.

Conclusion on Complaint 9

138. I find that Mr Keys's letters of 20 September 2005 did tell Mr Duffy the outcome of the inquiry and the sanction imposed and therefore fulfilled the requirements of rule 27.5. I have already found under Complaint 7 that, on the balance of probabilities, Mr Duffy did at this time have copies of three of the four sub-committee reports. I refuse to make the declaration sought in Complaint 9.

Summary of submissions on Complaint 10

139. This is a complaint that the Union breached rule 27.8(a), in that the Appeal Committee consisted of three members instead of seven.

140. Mr Dickson made no submission on this complaint, saying that he agreed with the Union's own conclusion that the Appeal Committee was wrongly constituted.
141. Mr Marriott said that the Union had accepted that there had been a mistake and had on its own initiative declared the original Appeal Committee's decision void and set up a new Committee of seven members. It was perfectly acceptable for it to re-run the appeal correctly in the interest of fairness, which is what it did.

Conclusion on Complaint 10

142. The Union accepts that it breached the rule by setting up an Appeal Committee of only three members. It took remedial action when the mistake was recognized, by declaring the decision of the Appeal Committee null and void and establishing another Appeal Committee with the correct number of members. I therefore declare that the Union breached rule 27.8(a) by setting up the original Appeal Committee with three members. I do not consider it appropriate to make an order, since the Union remedied the breach of its own accord. The question whether the three original members ought to have been on the new Appeal Committee is considered under Complaints 13 to 16 below.
143. Complaints 11 and 12 have already been determined (paragraphs 69 and 125 above)

Complaints 13 to 16.

144. These four complaints were that the Union breached a number of rules and the requirements of natural justice in handling the four disciplinary complaints against Mr Duffy, each of which resulted in a decision to expel him from the Union. The alleged breaches were the same for each of the four complaints; therefore a decision on one of them is a decision on all. Most of the breaches alleged are the same as those already dealt with in Complaints 1 to 10 above. I now proceed to consider the additional issues raised in Complaints 13 to 16.
- (a) That the Union should not have appointed the three members of the original Appeal Committee to the reconstituted Committee.

Summary of submissions

145. There is no relevant union rule and the complaint is one of infringement of the rules of natural justice. Mr Dickson argued that the three original members had already decided Mr Duffy's guilt and the new Committee was therefore biased against him. It was of no significance that the new Committee had not looked at the original Committee's report, since the

authors of that report were among its members. An entirely new appeal committee should have been appointed. Mr Marriott said there was no reason to believe that the original three members would be biased against Mr Duffy in the second Appeal Committee, and no evidence to show that they had been.

Conclusion

146. Mr Dickson's argument has some force, but in the end I am not persuaded by it. The three members of the original Appeal Committee were clear that they were not "retrying" the cases. They looked at adherence to procedures and at whether the sub-committee had carried out its investigation in a "fair and reasonable" manner. In their minds they were not deciding on Mr Duffy's guilt and I believe it is wrong to claim that they had done so. (Whether in the particular circumstances of this case they should have asked Mr Duffy to appear before them is another matter; see paragraphs 146ff). It may indeed have been difficult for them to look with fresh eyes at the procedural evidence the second time. But if their first decision was not biased (Mr Dickson did not claim that it was), it cannot reasonably be accounted bias that they came to the same decision again. It may be argued that their presence would have influenced the other four members of the new Committee and prevented them from coming to the appeal with an open mind. The Union would certainly have pre-empted such suspicions, and been procedurally safer, if it had appointed seven new members. But I see no reason to doubt that the reconstituted Committee approached its task in a fair-minded way. Their decision not to look at the report of the three-man Committee shows that they recognized there was an issue of fairness here, which they were seeking to manage. I therefore reject this complaint
- (b) That Mr Duffy was not allowed to attend the Appeal Committee.

Summary of submissions

147. Mr Dickson said that the first Appeal Committee had acted unfairly in that it had put procedural questions to several of the complainants, but had not spoken to Mr Duffy. Referring to a POA document headed "Disciplinary Appeals Committee", he pointed out that it said that Appeal Committee should consider "the report of the Disciplinary Committee" but in Mr Duffy's cases it had instead considered the reports of the sub-committee. The document said also that the Committee should consider the member's written appeal and envisaged the member attending the Committee's meeting and being represented at it. Mr Duffy had not been invited to submit a written appeal or to attend the meeting. He was not told when either of the Appeal Committees was sitting, despite Mr Moses's promise to tell him the date of the second Committee's meeting. He did not even know that his appeal was being considered until after it had failed. Mr

Dickson drew attention again to the case of Darken v POA (No.2), where the Certification Officer's decision showed that Mr Darken had attended the full Disciplinary Committee and cross-examined witnesses at it.

148. Mr Marriott said that the rules gave members no right to attend an Appeal Committee meeting; it was for the Committee to decide whether it wanted the member or any witnesses to be called. Mr Duffy had in fact, on 29 September 2005, submitted a written appeal to the General Secretary as provided for in rule 27.6, but it was simply a two-line notice that he was appealing the decision and said nothing more. As regards the reference in the Union document to a report of the Disciplinary Committee, this had been misunderstood. The Disciplinary Committee did not do a separate report; once the sub-committee's report was adopted by the full Committee, it became the full Committee's report.

Conclusion

149. The relevant rules (27.6 and 27.8) do not give a member an explicit right to attend Appeal Committee hearings. The Union document referred to by Mr Dickson is in effect a set of guidelines for the Appeal Committee and while it indicates that an appellant member may be called, it is not a document that confers rights. There is no reference in rule 27 to a "report of the Disciplinary Committee" and I attach no particular weight to the use of that phrase in the guidelines document. Where the Disciplinary Committee accepts the report of the sub-committee without itself taking any new evidence, one would expect it simply to note that fact and attach the sub-committee report. I find no breach of an express rule in the proceedings of the Appeal Committee.
150. Mr Duffy informed the Union that he was appealing the Disciplinary Committee's decision to expel him. His letter of 24 September 2005 conveyed this mere fact, without making any representations that he wished the Appeal Committee to take into account. However, in a letter of 18 October 2005 to Mr Caton, he said that he expected the appeal hearing to be held in Northern Ireland, asked for certain details of the process and for information to enable him to prepare his defence. Mr Caton wrote to Mr Duffy on 21 October, apparently in reply to this letter, but he made no reference to these matters. It appeared from Mr Duffy's letter that, unlike in August, he was now intending, even if somewhat truculently, to take part in the process; and it was clear that he was under a misapprehension about the process, in that he was simply taking it for granted that there would be a hearing and that he would have the opportunity to make representations in person at it. Mr Caton did not correct this misapprehension. He could have told Mr Duffy that it was for the Appeal Committee to decide whether it wanted to call him, and advised him on what he should do if he wanted to be heard in person by the Committee,
151. or to make representations in writing to it. I consider that by not correcting

Mr Duffy's misapprehension, the union deprived him of an important opportunity to influence the Appeal Committee. (He would have been able to point out, for example, on case no.58(c), that he had replied fully to Mr Waterworth's questions on 24 June 2005, before that case had been formally initiated by the Union). The first Appeal Committee made a positive decision not to call Mr Duffy, because they felt they already had enough information on which to proceed. The second Appeal Committee, to judge by their report, do not seem to have considered the possibility of calling Mr Duffy.

152. Given that Mr Duffy had refused to attend the sub-committee meetings, and had not had an opportunity to make an input into the Disciplinary Committee's deliberations, his side had not been heard at all up to this point. It was all the more necessary then for him to be afforded any remaining opportunity to put his case, and for any misconception of his that might deny him that opportunity to be removed. He was, moreover, facing the Union's ultimate sanction, expulsion, and the consequence of his misconception was therefore potentially very serious. The setting aside of the first Appeal Committee provided another chance for Mr Duffy to influence the outcome, but his misconception was allowed to persist. Mr Moses's letter of 19 January 2006 told Mr Duffy that he would be informed of the date when the new Appeal committee would sit, which may indeed have seemed to Mr Duffy to confirm that he would be able to attend. In fact, Mr Moses did not inform him as promised and the next information he received was that his appeal had been rejected by the new Appeal Committee.
153. In light of the above I find that Mr Duffy did not have a proper opportunity to put his case and that both of the Appeal Committees neglected an opportunity to "hear the other side". Since natural justice is implied into the rules of trade unions, I declare that in failing to give Mr Duffy an opportunity to make representations at the Appeal Committee stage, the Union breached rule 27.8 of its rules.

(c) That Mr Duffy's entire appeal was not distributed to Conference.

Summary of submissions

154. Mr Dickson said that under rule 27.7(a) the General Secretary is required to distribute to Conference delegates any relevant written representations of a member who has asked for Conference to review a disciplinary decision. Mr Duffy had provided documents, but Mr Caton had refused to circulate them because on his interpretation they were not what the rule intended. He then told Mr Duffy to make his representations on four sides of A4 paper, an arbitrary and wholly inadequate limit. He also advanced an argument about the cost of circulating the documents, which was

irrelevant.

155. Mr Marriott said that the documents supplied by Mr Duffy were correspondence and other evidential papers amounting to nearly 400 pages. This was not what was intended by the rule. “Relevant written representations” meant a summary of the essential points on which the member relied in his appeal. Conference’s role after all was to review the Appeal Committee’s decision, not to re-hear the case. Mr Caton would say in evidence that he had consulted with the NEC and it had confirmed the decision not to distribute the 400 pages. The Union had facilitated Mr Duffy by extending the deadline for receipt of his representations, by accepting 13 pages instead of the four it had asked for, and by making copies of the 400-page bundle available at Conference for delegates who wished to consult it. There was no obligation on the Union to do the latter, but it had done so as a concession to Mr Duffy.

Conclusion

156. This complaint turns on how the expression “relevant written representations” is to be understood. The Concise Oxford English Dictionary defines representations as “*statements made to an authority to communicate an opinion or register a protest*”. Simply submitting all the correspondence and papers generated by a dispute is not to make a statement communicating an opinion or a protest. Making written representations here would be likely to involve succinctly marshalling the evidence and setting out the conclusions, favourable to his case, that the member wishes Conference to draw from it: something of the kind that Mr Duffy did in fact later provide in his 13-page document.
157. Turning to practical considerations, it is clear that a trade union’s annual conference, with hundreds of delegates and large numbers of motions, is not a forum in which all the details of the incidents underlying disciplinary cases can be examined, nor is it realistic to expect conference delegates to be able to go into such details. In my judgment the drafters of the rule cannot have intended that they should. I therefore conclude that rule 27.7(a) did not require the General Secretary to distribute Mr Duffy’s 400-page bundle and accordingly I refuse to make the declaration sought.

(d) That Mr Duffy’s accusers were allowed to speak at Conference, while he was not.

Summary of submissions

158. Mr Dickson said that the then current Chairman of Maghaberry, Mr Fair, had been given a mandate to ask Conference to uphold Mr Duffy’s appeal, but had in fact opposed it, thereby breaching rule 12.7(d) (“*No delegate may speak or vote in contravention of his/her Branch mandate*”). In

addressing Conference he had made allegations which had nothing to do with Mr Duffy's disciplinary cases and so had misled delegates. Other Northern Ireland delegates had also misled delegates by raising matters not relevant to Mr Duffy's cases. Although Mr Duffy was berated in this way in front of the delegates, he was not allowed to reply. In fact he was not even allowed into the hall. One delegate who, appealing to natural justice, tried to assert Mr Duffy's right to be heard, was overruled. In the case of Darken v POA (No.2), on the other hand, the Certification Officer's decision recorded that Mr Darken was allowed into the hall when Conference was reviewing his case and a representative was allowed to speak on his behalf. These rights were not extended to Mr Duffy. In his case the procedure of Conference had been a denial of natural justice.

159. Mr Marriott said that the claim that Mr Fair spoke against his mandate, if true, was a matter for the Branch to deal with in the first instance. He examined rule 12, which he said governed Conference procedures and identified those allowed to speak to motions (delegates only), laid down time limits for speakers etc. He rejected an argument of Mr Duffy's to the effect that, under rule 27.9, motions on reviews of appeals should be conducted by a simple yes/no vote without discussion; the rules did not distinguish review motions from other motions; they were ordinary motions and delegates were allowed to speak to them. Mr Duffy had not been entitled to speak because he was not a delegate. Mr Darken had been refused permission to speak on his appeal review at Conference for the same reason; the two situations were entirely analogous. Mr Marriott added that formally the motion on Mr Duffy was correct in all respects, being properly proposed by the NEC under rule 12.5(c) and properly moved by the General Secretary under rule 27.9(c).

Conclusion

160. Mr Fair's interpretation of his mandate is not a matter which forms part of Mr Duffy's complaints to me and I do not address it. As regards review motions I agree with Mr Marriott that these are not a special class of motion, and I find nothing in the POA rules to support Mr Duffy's belief that delegates should not speak to them. From the evidence before me, I consider that the Union met all the express requirements of the rules on Conference appeal reviews. The documents specified in rule 27.9, including Mr Duffy's 13-page written representations, were distributed to delegates in advance with the Conference agenda. The motion, also distributed with the agenda, was formed, put to Conference and voted on in accordance with the rules. There is no rule giving an appellant member an explicit right to address Conference either personally or through a representative.
161. If, as I believe, I am right in concluding that the Union met all the explicit requirements of the rules, I still have to answer the question whether it

also met the implied requirements of natural justice. I have to consider whether the way Conference dealt with the motion on his appeal amounted to a denial of natural justice to Mr Duffy.

162. I note that the only appeal review motion on which delegates spoke at Conference was in fact that relating to Mr Lewis, not Mr Duffy. However, the three delegates who spoke at some length, while they spoke mostly of Mr Lewis, referred several times to “these individuals” or “these people”, by which they meant all the Maghaberry members, including Mr Duffy, whose appeals were under review. One of them referred to Mr Duffy by name twice (once favourably). This may have been somewhat confusing for some delegates, but I am not convinced that it could have had a decisive effect on Conference’s vote on Mr Duffy when that came up shortly afterwards. Some of the delegates will have had mandates from their Branch instructing them how to vote, irrespective of what might be said at Conference. I have to assume that delegates generally will have read the papers supplied to them, including the sub-committee reports and Mr Duffy’s representations, and will not have been easily misled as to the grounds on which he had been expelled. In my judgment this aspect of events at Conference was not an infringement of natural justice and did not materially affect the outcome of Mr Duffy’s review.
163. The remaining question is whether it was a breach of natural justice that Mr Duffy was not allowed to address Conference in person. In *Darken v POA (No.2)*, the Certification Officer found that “*there is no term implied into Rule 28.7(b), whether by reason of natural justice or otherwise, which gave the Claimant the further right to address Conference personally.*” The corresponding rule in Mr Duffy’s case, under the 2004 rules, is rule 27.9(c). The Certification Officer had regard to the disciplinary process as a whole in making his finding. Mr Darken attended a sub-committee hearing and the Disciplinary meeting (there was no appeal committee stage, because the rules lay down that appeals by NEC members such as Mr Darken go directly to Conference); and at Conference he was present in the hall for his appeal review and a delegate who had acted as his representative during the entire disciplinary process spoke on his behalf. Mr Duffy’s situation was rather different. He had a much lesser engagement with the disciplinary process; up to the time of Conference he had not personally put his case at any stage (partly at least by his own choice); he was facing the ultimate sanction, expulsion (Mr Darken was facing debarment from office); and for reasons not explained to me he was not allowed into the Conference hall. In these circumstances it may seem a reasonable contention that it was a denial of natural justice not to allow Mr Duffy to address Conference. On the other side of the matter are the facts that Mr Duffy’s very comprehensive representations were circulated to delegates in advance; six copies of a large bundle of evidential documents were made available to delegates at Conference; any delegate who wished could have spoken on Mr Duffy’s behalf and although none

did, none was prevented from doing so; and the rules allow only delegates to address Conference and would therefore have had to be changed in advance, or breached, to enable Mr Duffy to speak. All things considered, I find that, in the Great Britain Certification Officer's formulation, there is no implied term in rule 27.9(c), by reason of natural justice or otherwise, that gave Mr Duffy the right to address Conference in person. I also make the pragmatic point that the chances of a three-minute address by Mr Duffy – the limit laid down in rule 12 - changing Conference's vote must have been extremely small; it would have been likely to be little more than a gesture. I note that the Union has since changed its rules so that decisions of the Appeal Committee are no longer able to be reviewed by Conference.

164. I therefore refuse to make the declaration sought, namely that the Union, in not allowing Mr Duffy to speak to his appeal review motion at Conference, breached a right implied in rule 27.9.

Enforcement Order

165. I have made declarations that the Union breached rules 27.3 and 27.3 (a) (Complaint 8) and rule 27.8 (Complaint 13). Where I make a declaration I am required by Article 90B (3) of the 1995 Order to make an enforcement order unless I consider that to do so would be inappropriate. The enforcement order sought by Mr Duffy is his reinstatement as a member of the Union. Mr Marriott argued that I should not make an order. He said that the Union had done everything it could to carry out the disciplinary proceedings in a fair and proper manner. If, however, I were to find that it had strayed in some particular, then I must ask myself whether this had resulted in an injustice being done. In attempting to answer that question, I should bear in mind that Mr Duffy had had plenty of opportunity to request postponement of the proceedings or to ask for clarification about any aspect of it; he could have met the sub-committee or made submissions to it or the Disciplinary Committee. He chose not to do any of these things and thereby had been the author of his own misfortune. He had made himself difficult throughout, ignoring the instructions of those responsible for running the Union and his own obligations as a member to assist its legitimate enquiries. He had broken the rules and no disciplinary process could have dismissed the complaints against him. Mr Pike had said in evidence that, having heard what Mr Duffy had to say during this hearing, he would not have changed his view about the strength of the cases against him.
166. There is considerable force in Mr Marriott's submission. Mr Duffy deliberately rejected opportunities to put his side (the financial enquiry team and the disciplinary sub-committee) and neglected others to influence the course or the pace of the disciplinary process. I have found that when called to the sub-committee meetings he had substantial

information about the cases against him and I believe his decision not to attend was ill-advised and his allegation that he could not expect a fair hearing unfounded. However, although I agree generally with Mr Marriott that the Union did make significant efforts to be fair to Mr Duffy, I am not persuaded that, at important moments, it was as helpful as it ought to have been. Mr Duffy's questions to Mr Caton about the appeal process (see paragraphs 51 and 148 above) were not answered and he was left under a misapprehension which cost him his last opportunity present his case in person. Neither of the Appeal Committees offered him this opportunity of their own accord. It may be that the Appeal Committees would still have dismissed Mr Duffy's appeal if he had been able to make representations to them in person. Yet, as I have mentioned, in one of the cases (no.58 (c), refusal of information to Mr Waterworth), he would have been able to point out that he had actually provided the information sought; and in another (no. 65), he might have been able to raise doubt whether there was a case to answer, since the NEC members who gave evidence to the enquiry team said that it was not he, but Mr Lewis, who had made allegations of financial irregularity against Mr Spratt at the 2005 Conference. He might possibly have been able to say something on the other cases that would have swayed the Appeal Committees to some extent. I cannot be confident that it would have made no difference to the findings of the Appeal Committees if Mr Duffy had been able to put his case in person.

167. For these reasons I consider that it is appropriate for me to make an enforcement order. Each of the three breaches I have found disadvantaged Mr Duffy to varying degrees and I consider it an appropriate remedy for the three together that I make the enforcement order he has requested. I therefore order that the Union shall forthwith treat as void the decisions of its Disciplinary Committee of 20 September 2005 that Mr J Duffy be expelled from the POA.

Postscript

168. On 30 November 2007, after the hearing, Mr Dickson sent to my office a document which he said was relevant to the disciplinary case – 58(d) – concerning Mr Duffy's signing of a petition that was allegedly against Union policy. The document was a decision on an application by the Union for leave to apply for judicial review of a proposal by the Northern Ireland Prison service to take disciplinary action against seven POA members. At the request of my office Mr Dickson provided further information on 20 December. He said that this was an example of the POA providing legal assistance to members in initial COCD proceedings – the very thing that the Union claimed was against its policy when it was requested for Mr Lewis through the petition. There clearly was no such policy, Mr Dickson said: the Union had expelled Mr Duffy for undermining a policy that did not exist.

169. Initially I refused to take this material into account, as having been submitted too late, but following a request by Mr Dickson on 8 January 2008, I reconsidered my position. I asked the Union for comment, which I received on 28 January.
170. On consideration I have concluded that this information is not relevant to my decisions and would not have affected them if it had been raised at the hearing. I make two observations in passing. First, that it is not possible to draw from this judicial review document the conclusion that Mr Dickson has drawn: it may be, for example, that the Union does have such a policy, but that the NEC has made a decision to depart from it on this occasion because it believes there is some important principle at stake which it is in the interest of all the members to defend. Second, that policy was only one part of the complaint over the petition; the other was that it implied that Mr Spratt and Mrs Robinson gave preferential treatment to Mr Waterworth and others over Mr Lewis. . Be that as it may, the matter is not relevant because it is not my concern in the complaints before me (in particular Complaint 14, which has the petition as its point of departure) to decide whether or not the Union was justified in bringing the complaints it did against Mr Duffy. As indicated in paragraph 77 above, I decided that I would hear Mr Duffy's complaints 13 to 16 because in my view these were complaints about breaches of rule and not, despite their somewhat misleading preamble, complaints about unjustifiable discipline. Had I concluded that they were complaints of unjustifiable discipline, I would not have heard them, since they would then have been matters for the Industrial Tribunals rather than the Certification Officer. Therefore the question whether or not the Union had a policy of no legal assistance for initial COCD proceedings is not relevant to my decisions, which are decisions about the Union's compliance or otherwise with its disciplinary rules, not about its justification for bringing disciplinary proceedings.

R Gamble
Certification Officer for Northern Ireland

Annex 1

The Relevant Statutory Provisions

The Provisions of the 1995 Order that are relevant to this application are:

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) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;

Declarations and Orders

90B. –

(2) If he accepts an application under Article 90A the Certification Officer –

- (d) may make or refuse the declaration asked for, and
- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing

(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.
- (4) The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (3) (a) specify the period within which the union is to comply with the requirement.
- (6) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.
- (7) Where an enforcement order has been made, any person who is a member of the union at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.
- (8) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

Right not to be unjustifiably disciplined

31. –

- (1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.
- (2) For this purpose an individual is “disciplined” by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that -
 - (a) he should be expelled from the union or a branch or section of the union,
 - (b) He should pay a sum to the union, to a branch or section of the union or to any other person;
 - (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,
 - (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
 - (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or
 - (f) he should be subjected to some other detriment;

and whether an individual is “unjustifiably disciplined” shall be determined in accordance with Article 32.

(3) Where a determination made in infringement of an individual’s right under this Article requires the payment of a sum or the performance of an obligation, no person is entitled in any proceedings to rely on that determination for the purpose of recovering the sum or enforcing the obligation.

(4) Subject to that, the remedies for infringement of the right conferred by this Article are as provided by Articles 33 and 34, and not otherwise.

(5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this Article; and, subject to Article 33(4), nothing in this Article or Articles 32 to 34 affects any remedy for infringement of any such right.

Right not to be expelled from union

38. –

(1) An individual shall not be expelled from a trade union unless the expulsion is permitted by this Article.

(2) The expulsion of an individual from a trade union is permitted by this Article if (and only if) –

- (a) he does not satisfy, or no longer satisfied, an enforceable membership requirement contained in the rules of the union,
- (b) he does not qualify, or no longer qualifies, for membership of the union by reason of the union operating only in a particular part or particular parts of Northern Ireland,
- (c) in the case of a union whose purpose is the regulation of relations between its members and one particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or
- (d) the expulsion is entirely attributable to his conduct.

(3) A requirement in relation to membership of a union is “enforceable” for the purposes of paragraph (2) (a) if it restricts membership solely by reference to one or more of the following criteria-

- (a) employment in a specified trade, industry or profession,

- (b) occupational description (including grade, level or category of appointment),

and
 - (c) possession of specified trade, industrial or professional qualifications or work experience.
- (4) For the purposes of paragraph (2) (d) “conduct”, in relation to an individual, does not include -
- (a) his being or ceasing to be, or having been or ceased to be –
 - (i) a member of another trade union,
 - (ii) employed by a particular employer or at a particular place, or
 - (iii) a member of a political party, or
 - (b) conduct to which Article 32 (conduct for which an individual may not be disciplined by a trade union) applies or would apply if the reference in that Article to the trade union which is relevant for the purposes of that Article were references to any trade union.
- (5) An individual who claims that he has been expelled from a trade union in contravention of this Article may present a complaint to an industrial tribunal.

- (b) *the Deputy General Secretary to exercise the powers of the General Secretary in cases of emergency or if the General Secretary is not available for more than 14 days.*

Other Officials

Rule 9.5

The National Executive Committee will appoint such Assistant Secretaries as may be determined from time to time by Conference.

Rule 9.6

In addition the National Executive Committee may appoint part-time advisers, but:

- (a) *the General Secretary must notify branches of any such appointment; and*
- (b) *details must be included in the National Executive Committee's finance report to Annual Conference.*

Rule 9.7

Each employee of the Association will have an individual contract and pension scheme, the terms of which will be disclosed to any member on request.

RULE 12 CONFERENCE

Preparations

Rule 12.5

The only motions to be discussed at Conference are those proposed by a Branch:

- (c) *in writing, signed and certified on the approved Annual (and special) Conference Motion Standard Form by the Branch Chairman or Secretary, that it has been passed at a duly convened meeting of the Branch.*
- and those proposed by the National Executive Committee.*

Conference Proceedings

Rule 12.7

Each branch may send 2 delegates to Conference and:

- (a) *unless the Branch determines differently, the delegates will be the Chairman and Secretary of the Branch;*
- (b) *only the 2 delegates representing the Branch may speak for the Branch on any matter at Conference, if any observer speaks in place of a delegate, this will be dealt with as a breach of the Rules and Constitution;*
- (c) *the delegates must be mandated by a Branch Meeting on all matters – to support them, to oppose them or to exercise their own judgement;*
- (d) *no delegate may speak or vote in contravention of his/her Branch mandate.*

Rule 12.9

The chairman of Conference:

- (a) will be the Chairman, or one of the Vice Chairman authorised by the Chairman;*
- (b) will not speak for or against any motion;*
- (c) will not vote unless there would otherwise be an equal number of votes on each side, when the chairman will have a casting vote;*
- (d) may make rulings on procedure or points of order which are binding unless challenged;*
- (e) may exclude any delegate who causes a disturbance and refuses to obey a ruling which is not challenged or is upheld until that delegate makes a suitable apology.*
- (f) The Chairman may allow invited guest to address Annual Conference.*

RULE 18 LEGAL ADVICE AND ASSISTANCE

Advice and Assistance

Rule 18.7

The Legal Aid Committee may:

- (a) impose conditions (either of general application or relating to a particular case) on the provision of advice or assistance; and*
- (b) withdraw advice or assistance when it considers appropriate.*

RULE 19 BRANCH ORGANISATION

Branch Committee Elections

Rule 19.6

The members of the Branch Committee:

- (a) will be elected in January;*
- (b) by secret workplace ballot of the Branch full members under Rule 23;*
- (c) for 3 years (subject to Rule 19.8); and*
- (d) are eligible for re-election.*

RULE 20 NATIONAL COMMITTEE FOR SPECIAL HOSPITALS

Functions

Rule 20.3

The National Committee for Secure Health Care Services will hold:

- (b) four other meetings each year;*

RULE 23 SECRET WORKPLACE BALLOTS

Procedure

Rule 23.3

The Committee will ensure that:

- (a) an election notice is posted in the relevant Branch(es) continuously for at least 17 days up to (and including) the closing date for nominations;*
- (b) the notice is posted in a prominent place accessible to, and where it is likely to be seen by, the members;*
- (c) the notice states the closing date for nominations and the date of the first day of the election; and*
- (d) the notice invites nominations to be made in writing on the notice board, identifying the nominated candidate with a proposer and seconder.*

RULE 24 DISCIPLINE

Breaches of Discipline

Rule 24.1

Subject to any statutory restrictions in force at the time, any member may be disciplined who:

- (a) acts against the interests of the Association's membership locally or nationally;*
- (b) behaves in a manner which can be construed as unacceptable – by word, act or omission;*
- (e) falsifies, withholds or tampers with any forms, papers or returns used in any vote, election or ballot of the Association or any Branch;*
- (g) does anything which is likely to invalidate any vote, election or ballot of the Association or any Branch;*
- (i) becomes 2 months or more in arrears with the payment of any membership subscription which is due;*
- (j) disobeys any properly made and communicated directive or sanction of the member's Branch, the National Executive Committee or the Disciplinary Committee; or*
- (k) breaks any lawful Rule of the Association or the member's Branch.*

Disciplinary Committee

Rule 24.2

The Association will have a Disciplinary Committee consisting of 7 full members of the Association selected or re-selected every three years:

- (a) from candidates nominated by Branches in writing to the General Secretary at least 3 months before the start of the Annual Conference;*
- (b) by the General Secretary and the Chairman so as to secure, as far as practicable, a reasonable geographical spread.*

Rule 24.3

The Disciplinary Committee may act on:

- (a) a report from the National Executive Committee;*
- (b) a report from the General Secretary; or*
- (c) a recommendation from a Branch under Rule 24.*

Report by General Secretary

Rule 24.5

If the General Secretary (or, in the General Secretary's absence, his or her Deputy) becomes aware of an alleged breach of Rule 24.1 he/she will seek through the Association's Mediation Policy a satisfactory resolution of any complaint. Where this proves to be unachievable or where all parties do not agree, then he/she will report it in writing to the Disciplinary Committee.

RULE 25 SANCTIONS BY BREANHES

Powers

Rule 25.1

If a member (who is not a member of a Branch Committee or the National Executive Committee) is subject to action under Rule 24.1 the member's Branch has power to do one or more of the following recommended to the Branch by the Branch Committee:

- (a) censure the member*
- (b) ban the member from holding any local office for up to 3 years;*

Branch Committee

Rule 25.2

Before making a recommendation under Rule 25.1 the Branch Committee must give at least 10 days written notice to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known), stating:

- (a) briefly why it is alleged that the member is subject to action under Rule 24.1 and any Rule(s) it is alleged that the member has breached;*
- (b) the time, date and place of the Branch Committee meeting at which disciplinary sanctions against the member are to be considered;*
- (c) the member's rights; to be present at the meeting; to make representations during its course; to call and cross-examine witnesses; and to be represented throughout by a friend who is a member of the Association.*

RULE 27 SANCTIONS BY DISCIPLINARY COMMITTEE

Powers

Rule 27.1

If a member (including a member of a Branch Committee or the National Executive Committee) is subject to action under Rule 24.1 the Disciplinary Committee has power to do one or more of the following:

- (a) censure the member;*
 - (b) ban the member from holding any local office in the Association for up to 5 years;*
 - (c) ban the member from holding any national office in the Association for up to 5 years;*
 - (d) deprive the member temporarily of some or all of the rights and facilities of membership for a time and extent fixed by the Disciplinary Committee;*
 - (e) suspend the member for up to 2 years;*
 - (f) expel the member;*
- as it thinks fit.*

Proceedings

Rule 27.2

Before taking any final decision under Rule 27.1 the Disciplinary Committee must appoint a sub-committee comprising at least:

- (c) consider the complaint in accordance with all Rules;*
- (e) investigate the allegations;*
- (f) report in writing to the Disciplinary Committee;*
- (g) provide copies of it's report to the member, the complainant, the members branch and the General Secretary by written communication.*

Rule 27.3

The Disciplinary Committee will give at least 21 days written notice to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known), stating:

- (a) briefly why it is alleged that the member is subject to action under Rule 24.1 and any Rule(s) it is alleged that the member has breached (if this has not already been done);*
- (b) the time, date and place of the meeting of the sub-committee of the Disciplinary Committee at the member's Branch at which disciplinary sanctions against the member are to be considered;*
- (c) the member's rights: to present written submissions in advance of the meeting; to make representations to the sub-committee before and during the meeting; to call and cross examine witnesses; and to be represented throughout by a friend who is a member of the Association.*

Rule 27.5

The Disciplinary Committee must be give written notice of the outcome of the inquiry and of any sanction imposed:

- (a) to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known);*
- (b) to the member's Branch*
- (c) to the General Secretary*
- (d) to the National Chairman*
- (e) to the complainant*

Appeal

Rule 27.6

The member who has been sanctioned the complainant or the National Chairman may appeal in writing to the General Secretary within 14 days of receiving the notice of the decision of the Disciplinary Committee (or such longer period as the Disciplinary Committee determines on proof of special circumstances) in which case:

- (c) in all other cases, the appeal will be determined by an appeal committee.*

The National Chairman shall only exercise his right of appeal under this Rule and Rule 27.8 if he believes that the decision is contrary to law or a policy ordered to be annexed to the Rules by Conference.

Rule 27.7

On appeals to conference under Rule 27.6 (b):

- (a) the General Secretary will distribute with the final Conference Agenda:
 - (i) the report of the sub-committee of the Disciplinary Committee;*
 - (ii) the findings by the Disciplinary Committee; and*
 - (iii) any relevant written representations of the member or complainant*
 - (iv) the National Chairman's reasons for believing that the decision is contrary to law or a policy ordered to be annexed to the Rules by Conference.**
- (b) the Conference will decide, by a simple majority based on a specific motion put by the General Secretary, whether or not to ratify the decision of the Disciplinary Committee.*

Rule 27.8

On appeals under Rule 27.6(c):

- (a) the appeal committee will comprise of 7 members selected by the General Secretary and the Chairman to hear that appeal;*
- (b) as far as practicable, the appeal committee will include a reasonable geographical spread and a majority of members who are holders of the Cronin Clasp;*

- (c) *the member who has been sanctioned or the National Chairman may apply in writing to the General Secretary within 14 days of receiving the notice of the decision of the appeal committee for the decision to be reviewed by Conference.*

Rule 27.9

On reviews by Conference under Rule 27.8:

- (a) *the General Secretary will distribute with the final Conference agenda:*
 - (i) *the report of the sub-committee of the Disciplinary Committee;*
 - (ii) *the findings by the Disciplinary Committee*
 - (iii) *the findings by the appeal committee;*
 - (iv) *any relevant written representations of the member;*
 - (v) *the National Chairman's reasons for believing that the decision is contrary to law or a policy ordered to be annexed to the Rules by Conference.*
- (c) *the conference will decide, by a simple majority based on a specific motion put by the General Secretary, whether or not to ratify the decision of the appeal committee.*

RULE 28 CONSTITUTION

Interpretation of Rules

Rule 28.4

The interpretation of these Rules is vested in:

- (a) *Conference when it is in session;*
- (b) *the National Executive Committee when it is in session and Conference is not; and*
- (c) *the Chairman and General Secretary (acting together) when neither Conference nor the National Executive Committee is in session.*

ANNEX D

TACKLING UNACCEPTABLE BEHAVIOUR

Introduction

All Employees have a legal right to work in an environment that is safe, healthy and to be protected from all forms of abuse, violence and harassment. The Association will tackle unacceptable behaviour, to ensure that all our Employee's, our providers and their Employee's work in an environment, which is safe so far as is reasonably practicable. Nothing is more menacing or so sapping of self-esteem than the threat of violence, intimidation or harassment. Our employee's and those of our providers may face these threats on a daily basis along with an array of other pressures, whilst representing the Association.

Aim

To provide a safe, healthy place of work, so far as is reasonably practicable for all employee's, providers and their employees when representing the Association. To prevent unwanted acts of violence, threats, harassment, abuse or bullying. To ensure that every employee is treated with dignity and respect.

Definitions

Violence, most people accept that physical force against an individual is an example of violence, but it can and often does take other forms.

- Verbal abuse and threats (with or without a weapon) whilst using the telephone or by written communication
- Rude gestures – innuendoes
- Sexual or racial harassment

The Association accept that people may have a different perception about behaviour, which they find threatening, or offensive, or that, which causes distress rather than simple annoyance.

What is Harassment

Harassment is behaviour, which is inappropriate, offensive and demeaning, is unwanted by the recipient, causes insult or injury, and creates an unpleasant or intimidating working environment. All forms of harassment are unacceptable for whatever reason. Sexual harassment is “unwanted conduct of a sexual nature” or other conducts based on sex, affecting the dignity of men and woman at work. Racial harassment is unacceptable; it is rooted in racism, ignorance, prejudice and is offensive and threatening to the recipient. It is humiliating and degrading and there can be no degree of acceptability.

What is Bullying

Bullying is unacceptable behaviour; it may concern elements of violence, threats or harassment and is totally unacceptable.

Effects of Unacceptable Behaviour

The effects of unacceptable behaviour in any form can often lead to staff sickness, loss of performance or interest in work, expressions of anger, guilt and other emotions. It can also lead to expensive costs, if formal complaints are made.

Management

This policy will be managed by the General Secretary of the Association, or in his absence a designated deputy. Any complaint by a member, employee or provider (including their employees) will be dealt with by the General secretary or his designated representative.

Mediation

Following a complaint and prior to any investigation the General Secretary will attempt to arrange mediation between both parties in accordance with Conference Policy of 2001 in an attempt to resolve the matter as quickly as possible.

Sanctions

Any complaint of unacceptable behaviour will be referred to the Associations Disciplinary Committee in accordance with the Rules and Constitution, if mediation has failed to resolve the matter. If any member is found guilty, they may be declared from any of the benefits or entitlements as a member of the Association, including debarred legal aid.

EXPLANTORY UNION DOCUMENT ON DISCIPLINARY APPEALS

DISCIPLINARY APPEALS COMMITTEE

RULES AND CONSTITUTION PROVISION (RULE 27.6 (c))

In establishing a Disciplinary Appeals Committee the Association further ensures that the work of the Disciplinary Committee remains independent of the National Executive Committee. By this means appellants will know that their appeal is being heard by experienced members who are widely respected within the Association as being holders of the “**Honorary Life Membership**”.

Therefore, a Committee of “**Honorary Life Members**” will be established from whom they will select a Chair-person. In the event of an appeal being lodged three members of the Appeals Committee will sit and consider the case.

THE APPEALS COMMITTEE WILL NOT RETRY THE CASE.

Their guiding principles will be to consider whether the Disciplinary Committee’s decision/s and action/s was “**fair**” and **reasonable**”.

1. ADMINISTRATIVE PROCEDURES

Where an appeal is lodged by a member the General Secretary’s Office shall notify the Appeals Committee of its receipt.

The General Secretary will provide the necessary facilities at Cronin House or Linden House for the three Appeals Committee members to sit and conduct the appeal.

Prior to such a meeting the Appeals Committee will be provided with the following:

- (a) The report of the Disciplinary Committee containing all the facts and circumstances, including the Judgement and Award.

- (b) The written appeal from the member.
- (c) The Appeals Committee will establish any witness to be called and notify the General Secretary's Office to ensure that these witnesses are provided with every opportunity to attend on the date set by the Appeals Committee.

In the event of potential witnesses declining to attend the Appeals Committee will continue with their work to reach a conclusion to the Appeal.

- (d) The appellant may be accompanied and assisted by a friend from within the membership.

2. TESTING THE DISCIPLINARY COMMITTEE DECISION

The Appeal Committee will take into account four elements when testing the fairness of the Disciplinary Committee's decision. They mirror those of the Civil Service Appeal Board.

(i) Procedures

Have the Disciplinary Committee adhered to the rules of the Association.

(ii) Consistency

Have the Disciplinary Committee treated similar cases in the same way.

(iii) Substantive Issue

Have the Disciplinary Committee acted "fairly" or "unfairly".

(iv) Proportionality

Is the award merited in relation to the offence.

3. APPEALS COMMITTEE ACTION

The Appeals Committee shall provide the General Secretary with a written report of their findings within fourteen days of the hearing of the appeal.

4. GENERAL SECRETARY'S ACTION

The General Secretary shall forward to the Appellant a copy of the Appeal Committee's Judgement

Where appropriate, the General Secretary shall inform the members' Branch of the decision of the Appeals Committee and make a report to the National Executive Committee.

Where appropriate, the General Secretary shall inform the National Executive Committee of the decision of the Appeals Committee and inform the membership by a POA Circular.