

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

Mr J C Rea & Others

V

The Transport & General Workers Union

Date of decision:

5 September 2005

DECISION

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

1. I declare that on or about 11 and 12 November 2003 the Transport & General Workers Union breached rule 8.2 of its Rules (April 2000 edition) by failing to ensure the election of a representative of the transport sector to the Regional Committee of Region 3 (Ireland).
2. I do not consider it appropriate to make an enforcement order.

REASONS

1. By an application dated 22 April 2004 the applicants Mr J C Rea, Mr R Shields and Mr D Glover made an allegation of breach of rule against their Union, the Transport & General Workers Union ('the T&G' or 'the Union'). The rules referred to related to the election of persons to an office and the constitution or proceedings of an executive committee or decision-making meeting and therefore come within the jurisdiction of the Certification Officer, by virtue of Article 90A(2)(a) and (d) of the 1995 Order. The complaint was in the following terms:
'that the election of representatives to the Irish Regional Committee on 12 November 2003 breached rule 8.2 of the Union's rules. It is part of the case that the breach is ongoing from 12 November 2003'.
2. The alleged breach was investigated in correspondence. As required by Article 90B(2)(b) of the 1995 Order the parties were offered the opportunity of a hearing, which took place on 9 August 2005. The Union was represented by Mr R Collins, its Assistant General Secretary (Administration & Services), accompanied by Mr M O'Reilly Regional Secretary (Ireland), who gave evidence, and Ms I Dykes, assistant to Mr Collins. All of the applicants were in

attendance. They were represented by Mr J McCusker, a retired former T&G Regional Industrial Organiser. Mr B Condit, a retired former Senior Regional Industrial Organiser, gave evidence for the applicants. Two bundles of documents, which contained relevant correspondence, minutes of meetings and Union papers, were prepared for the hearing by my office. Additional documents were introduced by the Union and the applicants at the hearing. The Union's rules (April 2000 and May 2005 editions) were in evidence, as well as a Union document of November 1999 entitled "The Application of District Committee Structures and Proportionality in Region 3". (The Union produced a successor document in 2001 but as this was in all relevant respects the same as the 1999 document, reference throughout this decision is to the latter).

Findings of Fact

3. Having considered the documentation and the representations made to me I make the following findings of fact:
4. In November and December 2003, the six District Committees in Region 3 (Ireland) held elections to choose, from among their own members, representatives to the Regional Committee for the two year term 2004 / 2005. In these elections, no representative of the transport sector (one of four industrial sectors into which T&G membership is divided) was elected to the Regional Committee.
5. This outcome triggered complaints from some Union members employed in transport, who believed that under the rules all four industrial sectors (Manufacturing, Services, Transport and Food & Agriculture) were required to be represented on the Regional Committee, and that Districts should return representatives broadly in line with their sectoral make-up. The complaints came in particular from members in what were then the two Belfast Districts 'A' and 'B' (they have since been reunited in a single committee). Transport sector members made up between 25% and 30% of the Belfast Districts' membership and about 10% of total T&G membership in the Region. Around 90% of the total transport sector membership in the Region was in the Belfast Districts. Belfast 'A' and 'B' each had four seats on the Regional Committee, which comprised 24 members - 22 elected by the District Committees and one each from the Regional Women's Committee and the Regional Equalities Committee.
6. There was correspondence in late November and in December 2003 between the then Regional Secretary, Mr B Hodgers, and the co-ordinators of Belfast Districts 'A' and 'B' about the results of the elections. Though not all of this was in the papers provided to the hearing it was clear that there had been different interpretations of the Union's rules, leading to different opinions as to whether the results of the elections were to be regarded as valid or not. At a meeting held on 11 December 2003 the Regional Finance and General Purposes Committee ('F&GP Committee'), having reviewed the returns of the elections and considered the complaints, decided that the elections in both the

Belfast Districts should be re-run, as these Districts 'were key to ensuring the delivery of Transport Sector representatives'.

7. On 22 December 2003 Mr Hodggers wrote to the co-ordinators of Belfast Districts 'A' and 'B' inviting them to attend a meeting on 7 January 2004. He stated that the outcome of the District elections did not reflect the General Executive Council's principle that the Regional Committee should be broadly reflective of the industrial sectors and said that he would advise how this outcome was to be achieved. On 7 January 2004, after their meeting with Mr Hodggers, the two co-ordinators wrote to the members of the Belfast 'A' and 'B' Committees calling them to meetings on 20 and 21 January respectively, for the purpose of electing representatives to the Regional Committee to represent the transport sector.
8. On receipt of these invitations, several members of Belfast 'A' and 'B' Committees who had been successful in the November 2003 Regional Committee elections wrote to Mr T Woodley, T&G General Secretary. They each made a number of points, but the common themes were that they had been democratically elected in elections properly carried out in accordance with the rules and practices of the Union, and that the proposal to re-run the elections in order to elect a transport representative was an unconstitutional attempt to remove them from their positions.
9. Mr Collins, T&G Assistant Secretary, replied to these members on 15 January 2004. He said that it was clear from the letters and from the officials responsible that the elections had been conducted in accordance with the rules, and he stated that the General Secretary and he were both satisfied that the Union would be vulnerable to challenge if the results were ignored. He said that he had advised Mr Hodggers that the representatives of Belfast 'A' and 'B' had been properly elected, and had instructed him to confirm this to all the members and all the officers concerned. Mr Collins sent copies of these letters to Mr Hodggers by e-mail on 16 January 2004. He had already conveyed the instruction to him in an e-mail of 14 January.
10. By letter of 19 January Mr Hodggers told Mr Collins that in his view this decision required the establishment of a Regional Committee that was contrary to Rule 8.2, not being composed of representatives of the four industrial sectors. He added that the F&GP Committee had authority under the document entitled 'The Application of District Committee Structures and Proportionality in Region 3' ('the 1999 document') to re-run some or all elections in circumstances where a proportional outcome was not achieved, and had directed Belfast 'A' and 'B' accordingly at its meeting on 11 December 2003. He declined to carry out Mr Collins' instruction until the latter demonstrated to him that it was compatible with Rule.
11. The meetings of Belfast 'A' and 'B' went ahead as scheduled on 20 and 21 January 2004. The minutes of the Belfast 'A' meeting were contained in the bundles. The Co-ordinator explained that the purpose of the meeting was to elect transport representatives to the Regional Committee. He read out Mr Collins' correspondence of 15 January declaring the November 2003 elections

to be in compliance with the rules. Three of the members who had been successful in those elections (the fourth was not present) said that they would not stand aside to facilitate new elections, as they had been constitutionally elected. The meeting was addressed by Mr D Henderson, the Regional Organiser, who discussed Rule 8.2 and the relevant parts of the 1999 document and explained that the F&GP Committee had authorised the re-run of the elections to ensure that the Regional Committee was representative of the four industrial sectors. He said that only the Belfast Committees could facilitate the representation of the transport sector on the Regional Committee. The difference of views was not resolved and the meeting closed without new elections being held. There was a similar outcome to the meeting of Belfast 'B' the next evening. In light of these events, Mr Hodgers proposed to postpone the first meeting of the new Regional Committee until this issue was settled, but on instruction from Mr Woodley and Mr Collins convened it as scheduled on 26 and 27 January. This meeting discussed the issue of transport sector representation but made no decision on how to resolve it.

12. On 29 January 2004 Mr Rea wrote to Mr Hodgers. Mr Rea was secretary of a transport branch which he represented on Belfast District Committee 'B'. He had been unable to attend the November meeting of Belfast 'B', but he had been present at its meeting on 21 January. In his letter to Mr Hodgers he complained that the composition of the Regional Committee, of which he had become aware on 21 January, breached Rule 8.2 and that consequently the Committee could not operate in a constitutional manner. It is not clear from the evidence whether Mr Rea received a reply. On 14 March, on the instruction of his branch, he wrote to Mr Collins making similar points and asking that the election of members to the Regional Committee be declared null and void. No reply was received and Mr Rea brought the matter to the Certification Office. Subsequent letters from Mr Rea to T&G headquarters also received no reply.

13. It became clear at the hearing that following the resignation of a Belfast District member of the Regional Committee, one of the applicants, Mr Glover, was elected to the Regional Committee in January 2005, to represent transport.

The Relevant Statutory Provisions

14. 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;

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

Declarations and orders

90B. –

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

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

The Union Rules (April 2000 edition)

15. The Union rules that are relevant to this application are:

Rule 3

CONSTITUTION AND GOVERNMENT

6. The membership shall be divided into National Industrial Sectors according to the employment of members of the Union. The National Industrial Sectors shall be as follows:-

- (a) Manufacturing
- (b) Services
- (c) Transport
- (d) Food and Agriculture

Each of the National Industrial Sectors shall be divided into national trade groups and sections including craft and occupational sections as may from time to time be determined by the General Executive Council.

Until the end of the Biennial period concluding December 2001 the National Industrial Sectors shall be divided into national trade groups or sections as follows:

- (a) Manufacturing -
 - Vehicle Building & Automotive
 - Power & Engineering
 - Chemical Oil and Rubber
 - Textiles
- (b) Services -
 - Administrative, Clerical, Technical and Supervisory Staffs
 - Public Services
 - Building and Construction (including Building Crafts)
 - General Workers
- (c) Transport -
 - Civil Air Transport
 - Road Transport (Commercial)
 - Passenger
 - Docks & Waterways
- (d) Food and Agriculture -
 - Agricultural and Allied Workers
 - Food, Drink & Tobacco

7. Each National Industrial Sector shall, where practicable, be divided into Regional Industrial Sector Committees in accordance with the territorial regions. Regional Industrial Sector Committees, and regional trade groups, sections or district committees shall be divided into branches to one of which every member of the Union shall belong. The territorial area over which each Branch shall exercise jurisdiction, shall be decided by the General Executive Council, on the recommendation of the Regional Committee concerned.

Rule 8

REGIONAL COMMITTEES

1. *For the purpose of locally administering the general business of the Union there shall be a Regional Committee for each region which shall hold office for the same period as the General Executive Council as provided in Rule 6, Clauses 3 to 6.*
2. *Regional Committees shall be composed of representatives of each of the Regional Industrial Sector Committees. The members of the Regional Industrial Sector Committees shall elect in manner laid down by the General Executive Council delegates to serve on the Regional Committee. Women's representation shall be proportionate to the respective membership of the Regional Trade Group or District. By the end of the biennial period 2002/2003 Black and Asian ethnic minority representation shall be proportionate to the respective membership of the regional Trade Group or District.*
6. *The Regional Committee shall have power to appoint one or more sub-committees from among its members and, except where otherwise determined by the General Executive Council, shall have the power to delegate to any such sub-committee all or any of its powers including therein the conduct of hearings, appeals, inquiries, investigations or any other proceedings or functions whatever which it is authorised by these Rules to undertake.*

Rule 9

REGIONAL INDUSTRIAL SECTOR, TRADE GROUP AND DISTRICT COMMITTEES

1. *For the purpose of conducting the industrial business of the Union there shall be Regional Industrial Sector Committee for each of the industrial sectors in each region which shall hold office of the same period as the General Executive Council as provided in Rule 6, Clauses 3 to 6.*
2. *Each Regional Industrial Sector Committee shall be composed of one or more members from each Regional Trade Group or District as specified in Rule 3, Clause 6.*
3. *The size of the Regional Industrial Sector Committee shall be determined by the General Executive Council after consultation with the Regional Committee. Women's representation shall be proportionate to the respective membership of the Regional Industrial Sector. By the end of the biennial period 2003/2003 black and Asian ethnic minority representation shall be proportionate to the respective membership of the Regional Industrial Sector.*
7. *For the purpose of conducting the trade group business of the Union there shall be a Regional Trade Group or District Committee for each of the trade groups in each region which shall hold office for the same period as the General Executive Council as provided in Rule 6, Clauses 3 to 6.*
8. *For the Regional Trade Group or District Committee the method of election shall be organised and conducted in accordance with the directions from time to time of the General Executive Council.*
9. *The size of the Regional Trade Group or District Committee shall be determined by the General Executive Council after consultation with the Regional committee. Women's representation shall be proportionate to the respective membership of the Regional Trade Group or District. By the end of the biennial period 2002/2003 black and Asian ethnic minority representation shall be proportionate to the respective membership of the Regional Trade Group or District.*

Extracts from the 1999 Document

The Application of District Committee Structures and Proportionality in Region 3.

“District Committee Structure

Each Committee will be made up of a number of delegates elected from the various Branches and Sections attached to the District. Each Branch shall have at least 1 delegate for a membership of a Branch or section not exceeding 700. The following is the table of representation for Branches with more than 700 members:

701 – 999	2 additional delegates
1000 – 1499	3 additional delegates
1500+	4 additional delegates

Each Branch or section must appoint delegates in proportion to the gender split within the Branch/Section.

The Regional Sub-Committee will check and allocate the prescribed number of seats on each District Committee for women to be nominated by each Branch/Section.

Each District Committee at its first meeting is encouraged to give consideration to the need for representation from under represented groups.

Regional Committee Representation

Each District Committee will elect, at its first meeting, in any electoral period its appropriate number of representatives to the Regional Committee.

Each District will elect at least one woman from its delegates to serve on the Regional Committee.

The level of representation for each of the Districts is as follows:-

Belfast – 8 Regional Committee members.

Dublin – 4 Regional Committee members.

Southern Area District Committee – 2 Regional Committee members.

Drogheda/South Down – 2 Regional Committee members.

North West Ulster – 3 Regional Committee members.

Mid and West Ulster – 3 Regional Committee members.

Regional Women’s Committee and Regional Equality Committee will elect 1 Regional Committee member each.

Regional Industrial Sectors – Representation on Regional Committee

Each District must make provision to ensure that it returns regional committee representatives who broadly reflect the industrial sectoral realities in the District.

The four Industrial Sectors will therefore be represented on the Regional Committee broadly in line with their proportion of the regional membership.

*Because of the need to set aside a proportion of seats for women **this might cause some unavoidable distortion.***

Regional Sub Committee

The Regional Sub Committee will be elected by the Regional Committee in its first meeting in any electoral period. The Sub Committee must also reflect the proportionality of women within the region.

The Regional Sub Committee will monitor returns from the districts on an Industrial basis and is authorised to seek to have some or all elections re-run to ensure a fairer representational base. They will hear and determine on inappropriate representation.

Regional Industrial Sector Committees

There will be established Regional Industrial Sector Committees within the Region which will be made up of members of the Regional Committee. These Regional Industrial Sector Committees will make proposals in respect of representation to the National Trade Groups and National Industrial Sector Committees.”

Summary of Submissions

16. For the applicants, Mr McCusker argued that rule 8.2 and the 1999 document had to be taken together. Rule 8.2 could not be applied literally in Region 3 because the organisational structures which it presupposed (Regional Industrial Sector Committees) did not exist in the Region. The 1999 document (which the General Executive Council (GEC) had endorsed) had been designed to allow the spirit and intent of rule 8.2 to be given effect in the Region in the absence of these structures. The intent was that the Regional Committee should be composed of representatives of all four industrial sectors and, to achieve this, the document instructed the District Committees to return representatives to the Regional Committee who broadly reflected the industrial sectoral make-up of their District. This had not happened and thus there was a breach of rule.
17. Mr Condit gave evidence that he and Mr Henderson, the Regional Organiser, had passed the 1999 document to the co-ordinators of Belfast 'A' and 'B' before the November 2003 elections and advised them it was the responsibility of the Committees to elect representatives of each industrial sector to the Regional Committee (though they did not attempt to prescribe a method of election). The Belfast Committees had, however, failed to do this. The Regional Secretary, the Regional Organiser and the F&GP Committee had all considered that the results of the Belfast elections were not compliant with rule and the F&GP Committee had ordered them to be re-run, as it was authorised to do under the document. The Belfast Committees had refused to carry out this instruction. In doing so they relied on statements from Union headquarters that the November elections were valid.
18. The applicants accepted that it was impossible for some of the District Committees in Region 3 to return a representative of each sector to the Regional Committee or to return representatives in proportion to the sectoral breakdown of the membership in the District: some had only two or three places on the Regional Committee. Belfast, however, was in a prime position to meet the requirement of rule 8.2 and the 1999 document. As the District which contained some 90% of the Region's transport membership, it should not have failed to return a transport representative. It had two opportunities to comply with rule and had not taken them.
19. Mr McCusker said that the Regional Committee was unconstitutionally formed and its acts and decisions were therefore unconstitutional. If I found in favour of the applicants, I should make an enforcement order to the effect that these acts and decisions, at least up to the point where Mr Glover had taken his seat, should be reviewed.
20. For the Union, Mr Collins put forward a number of arguments. The elections in November 2003 had been properly run, with due notice, nominations, voting by only those entitled to vote etc. No one had suggested that there was anything wrong with the process; the applicants' complaint was solely about the outcome, that the elections had not produced the desired result. The

Union could not have ignored the results unless it had the consent of those who had been elected, which was not forthcoming. The Union had recognised at once that having a sector unrepresented was an unsatisfactory state of affairs and had indicated that it would look at ways to resolve it, but it was not able simply to 'deselect' properly elected representatives.

21. Mr Collins argued that the Union's rules on Regional Committee elections had never applied in Region 3 since the Region came into existence in 1922. Until 2000, under the Union's rules, election to the Regional Committee in other regions had been through regional trade group committees or district committees, but in Region 3, where these structures did not exist, the branches had directly elected Regional Committee members. It was custom and practice that Region 3 had its own processes. He referred to the case of *Heatons Transport (St Helens) Ltd -v- Transport & General Workers' Union* [1972] 3 All ER 101 as authority for the proposition that trade union government did not rely solely on what was written down in the rule book but could also depend on custom and practice, provided this was reasonable, well known and precise. By custom and practice the rule on elections to Regional Committee did not apply in Region 3 and therefore it could not be breached.
22. He said that few Districts in Region 3 had been able to elect representatives exactly reflecting their sectoral make-up, as laid down in the 1999 document. For some it was impossible, particularly as there were other conflicting requirements, e.g. the need for women's representation, and in fact the document had recognised that these could cause unavoidable distortion. There had been no complaints about other Districts, however. The applicants were wrong in claiming that Belfast had to return transport representatives; the document did not say that any given district was to return representatives of a particular sector. In the light of all this, the statement in the 1999 document that the Districts were to return representatives broadly reflecting their sectoral make-up was an aspiration or a wish, not a requirement.
23. Mr Collins said that the 1999 document did not lay down for the District Committees any specific method for electing Regional Committee representatives; it merely indicated the outcome to be aimed at. The Districts ran the elections in the normal way i.e. the candidates who got most votes were elected. This was what the Districts would naturally do in the absence of any special instructions. In the elections for the biennial periods 2000/2001 and 2002/2003 the same method had been used and had delivered a Regional Committee that was properly representative. But in the November 2003 election it did not do so, at least partly because in that year the Belfast District had been split into 'A' and 'B' Committees, increasing the difficulty of achieving balanced representation. The document's approach of re-running elections to 'correct' a result that was not the one desired was unsatisfactory and undemocratic, and was bound to lead to conflict.
24. If rule 8.2 were to be held to apply in Region 3, Mr Collins argued, then there was a prior and more serious breach of rule than that raised by the applicants: namely that the Region had failed to establish Regional Industrial

Sector Committees ('RISCs') as required by the rule. It was this failure that had allowed the present conflict to arise. The GEC had accepted that it would take some time for Region 3 to develop new structures, and the 1999 document, which was in intention a transitional document, had indicated a means by which RISCs could be created in the Region. But although the GEC had pressed the Region hard on many occasions since 2000 to put RISCs in place, this had never been done. Now they had been overtaken by events - the rules had changed by the July 2004 Rules Conference, RISCs had been abolished and the pre-2000 structures of Regional Trade Group Committees or District Committees had been reinstated.

25. Finally, Mr Collins said that the General Secretary had attempted to address the unsatisfactory situation that had arisen from the November 2003 elections. He had advised Mr Hodgers, in October 2004, to make a proposal to the GEC for additional seats on the Regional Committee, which would be taken up by transport representatives. Before that was done a vacancy arose on the Regional Committee, a member from the Belfast District having resigned. The Belfast District (now reunited in a single Committee) was instructed by the Mr E McGlone, Deputy Regional Secretary, in a letter dated 20 January 2005, to elect a transport representative to the vacant seat and Mr Glover was elected in January 2005, attending his first Regional Committee meeting in April.
26. Mr Collins said that he contended first that there had been no breach of rule, but if I should decide that there had been, then he contended that there was no need for an enforcement order. The Union had remedied the matter complained of and an order to review the decisions of the Regional Committee as sought by the applicants would cause the Union great difficulties and would not change what had happened.

Conclusion

27. It is common ground that rule 8.2 could not be directly applied in Region 3, as it presupposed the existence of RISCs, which had not actually been established in the Region. It is clear that a main purpose of the 1999 document was to deal with this structural problem and to allow the spirit and intent of rule 8.2 to be given effect in Region 3 in the absence of RISCs. The document was drafted in Region 3, with inputs from T&G headquarters, and, importantly, was endorsed by the GEC. I was not given evidence about the precise status of the 1999 document in the eyes of the Union, but I share the view of the applicants that it and rule 8.2 must be read in conjunction one with the other. The aim was to achieve in Region 3 what rule 8.2 on its own achieved in the other regions, that is, that all the industrial sectors should have a part in the governance of the Union at regional level. I believe this is the common sense view of the situation.
28. The RISC structure in the other regions guaranteed the required outcome: each sector had its RISC and each RISC sent forward members to the Regional Committee. In the absence of RISCs in Region 3, the 1999 document gave the District Committees the role of electing Regional

Committee members. But whereas RISCs were composed of members of one sector only, District Committees contain members of all sectors, or at any rate more than one. So while in a RISC a simple 'first past the post' election must necessarily produce a representative of the given sector, in a District Committee there could be no certainty that such an election would return a representative of any particular sector. The 1999 document did not lay down for the District Committees any specific method of election of Regional committee members, but it did say: 'Each District must make provision to ensure that it returns regional committee members who broadly reflect the industrial sectoral realities in the District' (my emphasis). It added that: 'The four industrial sectors will therefore be represented on the Regional Committee broadly in line with their proportion of the regional membership.'

29. The words emphasised above must mean that the District Committees were not to leave it to chance that their Regional Committee elections would return representatives who broadly reflected the sectoral make-up of the District. Rather, they were actively to make arrangements, to adopt a form of election, which would ensure that this result was achieved. They would have had to look at the breakdown of the District membership and decide what form of election would be appropriate to make sure that the aim of the 1999 document was met. I saw no evidence as to whether the other Districts did this, but it was clear that the Belfast Committees did not. Mr Condit gave uncontested evidence that before the November 2003 elections he and Mr Henderson had explained the implications of the 1999 document to the co-ordinators of Belfast 'A' and 'B'. For reasons that were not explained, the Committees did not take this advice on board; they held 'first past the post' elections, and effectively left the outcome, in sector terms, to chance. There is no suggestion that the elections were not in themselves properly conducted or that they were suspect in any way; but they were not of an appropriate form to deliver the outcome required by the 1999 document.
30. In light of the above, I do not accept Mr Collins' argument that the 1999 document's call for representation broadly reflecting the sectoral make-up of the Districts was merely a wish or an aspiration. Nor do I find convincing the argument that because the document does not say that any District was to return representatives of a particular sector, the results in Belfast were compliant with it. If the Belfast Committees had examined the sectoral breakdown of their memberships, as I believe they were required to do in order to make sense of the document, they should have concluded that they needed a form of election that would ensure the representation of all four sectors, including transport.
31. I also reject the view that the Union could not overturn the results of the November 2003 elections without the consent of the successful candidates. The F&GP Committee had the authority to have elections re-run in just such circumstances as had occurred. This was how the Regional Secretary, the Regional Organiser, the Senior Regional Industrial Organiser and the F&GP Committee itself understood the 1999 document's phrase 'is authorised to seek to have some or all elections re-run to ensure a fairer representational base'. I believe their understanding was correct and would have been shared

by ordinary T&G members. Since I also take the view that the Committees had held elections of an inappropriate form I am bound to conclude that fact this too, and not only the outcome as such, was a ground for considering them invalid and re-running them.

32. I accept that the need to return a women's representative and the splitting of the Belfast District into two smaller Committees increased the difficulty of achieving balanced representation. However, I do not find this a compelling consideration, for the difficulties were by no means insuperable and as a matter of fact the Belfast Committees did not attempt to address them. I appreciate also that T&G headquarters was concerned from an early stage about weaknesses in the 1999 document - a critique of an earlier version which was in the papers makes this clear - and would have much preferred Region 3 to establish RISCs like the other regions, either from the outset or after a transitional period. Mr Collins clearly felt that headquarters had acquiesced in the different arrangement to accommodate the wishes of Region 3 and that it was ironic that it should now find itself defending a complaint about the arrangement. This feeling may be understandable to a degree, but in the last analysis the 1999 document was the Union's document and the Union is answerable for it.
33. Mr Collins referred to the 'Heatons Transport' judgement and argued that it was custom and practice that Region 3 had always conducted Regional Committee elections in its own way, which was not that laid down in rule 8.2. Whatever the merits of that argument, it cannot be applied in these circumstances, where custom and practice, if it did operate previously, must have ceased to operate when the system for electing the Regional Committee in Region 3 changed after 1999 (from election by Branches to election by District Committees). Moreover, while it is well established that custom and practice can modify or clarify written rules or have effect in matters where the rules are silent, it would not operate to override or set aside a written document, endorsed by the GEC, that aims to interpret a rule in the special circumstances of a particular region. This seems to me to be all the more the case when the custom and practice appealed to is as imprecise as it is in this case, where its content seems to be no more than that Region 3 did things differently.
34. Mr Collins said that if the rules applied, then there had been a prior and more important breach than the one complained of - the Region's failure to establish RISCs under either rule 9.1 or the 1999 document. It is clear that this failure did indeed make a problem of the kind that arose in the Belfast Districts much more likely to occur. No complaint has been made to me on that matter and I am not required to make any finding on it. But if it was a breach of rule, it was a failure of the Union as a whole and not of the Region alone. Although I have some sympathy with the Union's prolonged but unrewarded efforts to get the Region to act on RISCs, Mr Collins' point cannot affect my finding on the applicants' complaint. The Union cannot properly invoke one breach of its rules, which is not moreover the subject of a complaint, as a justification for or exculpation of another breach, which is.

35. In the circumstances therefore I declare that on or about 11/12 November 2003 the Union breached rule 8.2 of its rules by failing to ensure the election of a transport sector representative to the Regional Committee of Region 3.
36. The applicants told me that if I found in their favour, I should make an enforcement order requiring the Regional Committee to review any close or tied decisions between January 2004 and Mr Glover's first attendance in April 2005. Under Article 90B (3) of the 1995 Order any order I make must be such as to require the Union to remedy the breach and/or secure that a breach of the same or a similar kind does not occur in future. The order proposed by the applicants would not in my view achieve either of these objects. The remedy for the present is to provide a place or places on the Regional Committee for transport sector representatives. As mentioned above, this has already been done, following an express instruction to the Belfast District Committee by the Deputy Regional Secretary. Had it not been, I would have made an order requiring it.
37. For the future the issue is for the Union to provide clearer guidance to District Committees on how they are to conduct their Regional Committee elections, so that henceforth the risk of similar problems arising will be eliminated or minimised. At the hearing Mr Collins and Mr O'Reilly gave an undertaking on behalf of the Union that they would now do this without the need for an order from me. They cited the instructions given to the Belfast District committee in January 2005 as evidence of good faith in this. I accept this undertaking and in the circumstances I do not consider it appropriate to make an enforcement order.



Signed: _____
Roy Gamble
Certification Officer for Northern Ireland