

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

IN THE MATTER OF

CHRISTINE OZDEMIR, PATRICK LYNCH AND HUBERT MILNE

V

GMB

Upon the direction of the Certification Officer of Northern Ireland TAKE NOTICE that the complaints raised by the above named applicants against the above named respondent shall be further determined by the Certification Officer as per the directions set out herein:

Background

1. On 18th December 2012 my office received a Notice of Complaint to the Certification Officer from the applicants (albeit that the date signed by the applicants on the said form was 4th December).
2. One of the applicants, Mrs. Christine Ozdemir notified my office that she was pursuing a related case at the Industrial Tribunal against the defendant and all three applicants requested that these cases be held in abeyance until the outcome of Mrs Ozdemir's Tribunal case was known.
3. Mr P Kenny of the GMB Union was advised of these facts by letter dated the 31st March 2014 from the Assistant Certification Officer.
4. Mrs. Ozdemir notified this office that she had withdrawn her Industrial Tribunal proceedings and both she and the other two applicants now wished to proceed with these matters. Thus on 25th November 2014 a detailed complaint submission with particulars of all alleged breaches was finally agreed with the Assistant Certification Officer and once confirmed by all three applicants the particulars of complaint framed within the legislative provisions was served upon the respondent seeking their formal response on 6th February 2015.
5. A total of 32 complaints were raised with the respondent by the three applicants. Each of the three applicants raised eight complaints which were common case to all three of the applicants and which were brought under Article 90A of the 1995 Order. Mrs Ozdemir raised a further two complaints under Article 90A and one complaint under Article 37 of The Industrial Relations (NI) Order 1992. Mr. Milne and Mr. Lynch raised a further three complaints each under Article 90A of the 1995 Order.
6. On 6th March my office received a response from Messrs Francis Hanna & Co. Solicitors on behalf of the Union to each of the complaints raised. This was sent to the applicants for comment.

7. On 30th April the applicants provided a response to the comments of the Union which was sent to the Union for further comment if desired and a notification was given to all parties at this juncture that, if no further submissions were received or information submitted by Friday 29th May, the Certification Officer would deliberate on the case made to date and issue directions for further progress of the case.

8. At the date of this Decision, no further submissions have been received by my Office.

Prevailing Legislation Article 90A and 90B of the 1995 Order

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;
- (e) such other matters as may be specified in an order made by the Department.

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

(4) A person may not apply under paragraph (1) in relation to a claim if he is entitled to apply under Article 55 in relation to the claim.

(5) No application may be made regarding—

- (a) the dismissal of an employee of the union;
- (b) disciplinary proceedings against an employee of the union.

(6) An application must be made—

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in paragraph (7).

(7) Those days are—

- (a) the day on which the procedure is concluded, and
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

(8) The reference in paragraph (1) to the rules of a union includes references to the rules of any branch or section of the union.

(9) In paragraph (2)(c) “industrial action” means a strike or other industrial action by persons employed under contracts of employment.

(10) For the purposes of paragraph (2) (d) a committee is an executive committee if—

(a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,

(b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or

(c) it is a sub-committee of a committee falling within sub-paragraph (a) or (b).

(11) For the purposes of paragraph (2)(d) a decision-making meeting is—

(a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or

(b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.

(12) For the purposes of paragraphs (10) and (11), in relation to the trade union concerned—

(a) a constituent body is any body which forms part of the union, including a branch, group, section or region;

(b) a major constituent body is such a body which has more than 1,000 members.

(13) No order shall be made under paragraph (2) (e) unless a draft of it has been laid before and approved by resolution of the Assembly.

(14) If a person applies to the Certification Officer under this Article in relation to an alleged breach or threatened breach he may not apply to the High Court in relation to the breach or threatened breach; but nothing in this paragraph shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.

(15) If—

(a) a person applies to the High Court in relation to an alleged breach or threatened breach, and

(b) the breach or threatened breach is one in relation to which he could have made an application to the Certification Officer under this Article,

he may not apply to the Certification Officer under this Article in relation to the breach or threatened breach.

Declarations and orders

90B.—(1) The Certification Officer may refuse to accept an application under Article 90A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

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

(a) shall make such enquiries as he thinks fit,

(b) shall give the applicant and the union an opportunity to be heard,

(c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(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.

(5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(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 and was a member 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.

(9) An order under Article 90A (2) (e) may provide that, in relation to an application under Article 90A with regard to a prescribed matter, the preceding provisions of this Article shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under Article 90A (2) (e) as is prescribed under this paragraph.

Preliminary Considerations

The three applicants in this matter are connected and have made several complaints against the same Union, some of which are common case to all three applicants. Some of the complaints are specific to the individual complainant.

I have considered the complaints in the terms in which they have been made to me together with all evidence lodged and submissions made by all parties. My deliberations were in the context of the prevailing legislation and I have considered, firstly, whether each complaint has been made within the statutory time limit. Secondly, I must consider whether a complaint falls within the jurisdiction of the Certification Officer. Thirdly, if the complaint has been made within my jurisdiction, I must consider the issue of whether a sufficient case to answer has been made in order to warrant a hearing for further consideration of the issues that have been raised.

If any complaint is found in my judgment to be outside the jurisdiction of the Certification Officer I intend to move to strike out the complaint on the grounds that it is outside the jurisdiction of the Certification Officer, and is therefore misconceived pursuant to Article 70ZA (1) (a) of the Industrial Relations (Northern Ireland) Order 1992, as amended by the Employment Relations (Northern Ireland) Order 2004.

If the complaint is found to come within my jurisdiction but I find that in my judgment that there is insufficient evidence on which to base a reasonable case for the respondent to answer then I will move the strike out the complaint on the grounds that it has little or no prospect of success pursuant to Article 70ZA (1) (a) of the Industrial Relations (Northern Ireland) Order 1992, as amended by the Employment Relations (Northern Ireland) Order 2004.

It must be noted that the Certification Officer has no powers of Discovery to order the furnishing or evidence that may support a case for either applicant or the respondent.

If I find that a complaint is within jurisdiction and that a sufficient case to answer has been made, I will consider the issue further and if deemed necessary by me I may list the complaint for hearing before making a ruling or I may make a request for further explanation or information from the Union.

However, even before I can make any of the assessments set out above I must consider the issue of time limits as a preliminary issue:

TIME LIMITS

Under Article 90A of the 1995 Order (6) An application must be made—

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
- (b) (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in paragraph (7).

(7) Those days are—

- (a) the day on which the procedure is concluded, and
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

The Applicants lodged a Notice of Complaint with my office on the 18th December 2012. Many of the events complained of are significantly historical events going back in some cases to January 2000. Therefore there will be some events and issues that I cannot consider as they are not within the statutory time limits.

In the case of an event that is viewed as being outside rule by the applicant and where a formal complaint was not invoked the basic 6 month time limit will apply.

In the case of an event that is viewed as being outside rule by the applicant and where a formal internal complaints process was invoked, the time limit shall run from the date of the process being invoked internally until six months from the date of conclusion of that internal process or in the event that the internal process is not concluded the time limit shall run from 12 months since the date the procedure was invoked.

Further information and explanation of the applicable time limits is contained in Appendix 1 to this Decision.

Unlike an Industrial Tribunal hearing, the Certification Officer has no discretion to vary the statutory time limits.

It must also be noted that there is a duty on the applicants to exhaust all internal processes available before invoking the statutory complaints process with the Certification Officer.

Some of the internal letters and emails lodged by the applicants as substantiating evidence in this case are very difficult to decipher. Some letters are undated and some communication is not clear as to whether an internal complaint had been formally raised for each and every complaint now brought before me and if it was the subject of a formal internal complaint, the date on which such a process was invoked cannot be verified.

If I cannot find evidence of an internal process having been invoked by the applicant in the case of any of the complaints then the simple six month time limit will apply as it will be found that no internal complaints process was invoked. This means that the applicant was required to lodge the statutory Notification of Complaint to the Certification Officer at the very latest date of 6 months after the alleged breach allegedly occurred.

If I can find evidence of the instigation of an internal complaint or grievance process about the event complained of, then the time limit shall run from the date of the conclusion of that internal process if that date can be discerned and if it the process was in fact concluded. In the alternative, if the formal process was invoked but not concluded within 12 months of the date when the complaint was raised, the time limit will run from six months after the date of the expiration of 12 months since the date the process was invoked by the applicant (in reality this time limit is wholly dependant on the evidence of the date on which an internal process was commenced but at the absolute maximum can never be more than 24 months since the date of the event which is the subject of an internal challenge and complaint)

The Complaints

As Complaints 1 - 8 are common case for all three applicants and I shall deal with them collectively:

Complaint 1

That between January 2000 and May 2014 GMB failed to ensure Branch 242 held any elections, thereby breaching rule 35 (7) and rule 35 (17) and rule 35(1) of its rules.

For evidence see letter from myself to Eamonn Coy dated 21/2/2011, letter to Paul McCarthy 28/3/2011, letter to Paul Kenny from Patrick Lynch and Hubert Milne 14/11/2012, 2nd letter to Paul Kenny from Patrick Lynch, Hubert Milne dated 23/11/2012, e-mail from Patrick Lynch 14/12/2012. Letter from 3 branch secs to Paul Kenny 5/7/2012, correspondence from Mary Gavin re list of committee members, letter to Peter McMurray 15/12/2012 his reply 20/12/2014 and statements from 4 members who attended the supposed election on 05/03/2011.

The relevant rule book is that which was in use in 2011/2012.

Rule Book 2012 appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (a) election of Officials and category (d) constitution of a meeting.

Findings

I find that this complaint is partially within my jurisdiction. I cannot consider historical matters which are out of time under the prevailing legislation. Given that the Notice of Complaint was originally filed with my office on 18th December, the time limit as set by the legislation is six months. In the absence of evidence of an internal complaints process having been invoked about each and every election that was allegedly not held, the complaint can only be considered for the period of six months prior to the submission of the application.

There is one issue in this complaint which is that Branch 242 Union failed to hold required elections. I do not believe that the Union's response of 6th March 2015 has fully addressed this issue. I agree with the Union's submission that it is not necessary for the Union to look at historical issues beyond the legislative time limit, but there is no reason why they cannot deal with the issue in the context of the recent times which falls within the time limit of these proceedings.

Therefore, before I decide whether this issue should be listed for consideration at a hearing, I **DIRECT** the Union to give a full written explanation in response to this allegation. The Union is therefore directed to address me in written correspondence on the issue of whether branch elections were held in accordance with Union Rules during the period commencing 18th June 2012, and if not, why not.

If no such elections were held then I would intend to uphold this complaint but I do not consider that it would be appropriate to make any order to remedy such a breach.

Complaint 2

The election held on 5/3/2011 breached rule 35(7) which states that nominations for election are to be held at the meeting in June every four years. Also rule 36 (1) states that the branch president will chair every meeting. The meeting on 5/3/2011 was chaired by Eamonn Coy, a senior officer of the GMB which contravenes these rules.

Despite my requests for information regarding my branch committee members (see correes between Eamonn coy and myself) none was forthcoming and no previous committee members of branch 242 were present on 5/3/2011. No minutes of the meeting were taken as Trevor Franklin was nominated to take minutes but was unable to take anything down as he was shocked at how the meeting progressed. As I had officially requested a copy of the minutes at the meeting he had to explain why none were forthcoming. Peter Mc Murray provided a note of his recollection of what happened at that meeting which were submitted as official minutes of branch meeting B90 on 5/3/2011 under the process of discovery as part of my application to The Industrial Tribunal, which also contravenes the rule quoted above.

The same rules apply to the meeting on 19/11/2012 chaired by John Dawson, a full time officer of the GMB, despite both presidents of the branches to be amalgamated being present i.e. Angela Vincent and Hubert Milne.

Hubert Milne lodged his objection to the meeting as all of his members had not been consulted with regard to the proposed amalgamation but was overruled by John Dawson who stated he was instructed by the regional secretary to push ahead with the election. This again contravenes the above rules and also rule 37(1) and rule 37(10) as no minutes were kept of either meeting and the meetings were not run according to the rule book. Also as per Peter Mc Murray's letter of 22/11/2012 two days following the amalgamation of the branches four committee members were

selected without any election - Chris Wilson as equality officer , auditors Colin Mallon and Trevor Franklin and finally Neil Irvine as youth officer. In fact Neil Irvine is not a member of any branch of education which contravenes the rule 35(20) but is employed by a council which would be a completely different branch altogether and therefore could not be a committee member of another branch even if he was on secondment to recruitment at the time.

Rule Book 2012 appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (d) constitution of a meeting.

Findings

This Complaint is **out of time** as the election occurred on 5th March 2011, pre-dating the maximum time limit. As there is no evidence of a formal process of internal complaint and indeed it is a requirement of the legislation that the applicant exhaust all internal processes available before bringing a complaint to me, I find that there is no evidence of the instigation of a formal internal complaint by the applicants and the six month time limit applies.

This complaint cannot legally be considered by me on the grounds that it is out of time but in the interests of allowing the applicants some further insight as to how this complaint might have been dealt with if it were within time, I have set out below what my opinion on what my decision would have been had the complaint fallen within the statutory time limit.

Dealing firstly with the Chair of the meeting. It is not clear from the applicant's evidence if it can be substantiated that this meeting was chaired by a person other than the Chair. The applicants make the case that an Eamonn McCoy chaired the meeting. The Union maintains that the evidence on this point is contradictory and that the meeting was chaired by a Trevor Franklin, according to a statement of Trevor Franklin and also that a statement of the late William Baird suggests that he was asked to chair this meeting. I am not convinced that a hearing would add anything to the issue of the identity of the Chair of the meeting, which in any event, in my judgement, is not a material issue. The rules may state that only the President should chair a meeting but in the interests of procedural efficiency and for many other legitimate reasons, someone other than the usual chair may need to step in.

I would not be able to find this element of the complaint to have any prospect of success because there are no minutes of this meeting which can confirm who was formally chairing the meeting or who was secretary etc. To debate these issues would be to engage in conjecture and speculation about who acted in what capacity and why. Therefore this element of the claim would not have been accepted as having made a case to answer and would have moved to strike out on the grounds of having little or no prospect of success pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I) Order 1992

In addition, as to the fact of whether this meeting of 5th March 2011 was within rule in terms of its constitution and proceedings, the applicants have confirmed in their submission that no minutes were taken of this meeting and it is described as a somewhat chaotic and disorganized affair. In the absence of a formal record of the proceedings, I would not have been inclined to engage in conjecture and speculation about the protocols which were observed or indeed not observed at this meeting. It is not a matter for the Certification Officer to make judgements concerning the style of leadership in a meeting, the conflict and disagreements between participants or the nature of the

issues debated. My role is strictly limited by the legislation which requires me to intervene only where a procedural flaw or an abuse of the Union's stated process can be clearly evidenced.

It would simply not be possible to make any legal findings on the process of this meeting without a contemporaneous record of the meeting to which I can refer. The fact that the meeting was not formally minuted and recorded is undoubtedly unacceptable to participants. However, the matter of a lack of recording the meeting of itself is not an issue for me to judge. In the absence of that formal record I do not believe it would have been possible for me to make any informed and balanced conclusions about the legitimacy of the processes employed at that meeting and in my judgment even if the complaint had been brought within time, I would have move to strike out the entirety of this on the grounds of having little or no prospect of success pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 3

Preceding the meeting of the 19 November 2012 to amalgamate my branch 242 with branch 284 I did not receive any notification of this meeting which thereby breached rule 35 (17). See letter from John Dawson to Patrick Lynch dated 12 October 2012 and 26 October 2012 and 2 November 2012 none of which were received by me.

Rule Book 2012 appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (d) constitution of a meeting.

The complaint is within time.

The applicants allege that they were not notified of this meeting. Rule 35 (17) states

Before the first branch meeting in each year, the branch secretary must give the members of the branch a schedule for when meetings will be held in that year. The schedule will give the date, time and place of each meeting, together with the main business that the branch secretary expects to be dealt with at each meeting...'

Findings

This complaint is not sufficiently linked to alleged rule breach. A meeting allegedly took place without notice to the applicants. Thus it is argued that any meetings which take place without giving notice to members are in breach of rule and are constituted as a decision making meeting outside the prevailing union rules. However, Rule 35(17) merely requires the Branch Secretary to supply a schedule of planned meetings. The rule is silent on the notification process that must be employed in the case of meetings other than scheduled meetings which are tabled for the first branch meeting of the year. This rule is therefore not linked to the event which allegedly occurred, which was the convening of an amalgamation meeting outside the usual business of scheduled regular branch meetings. If the applicants were not notified, this would establish nothing more than the fact that a meeting took place without their knowledge. Such an occurrence, in my judgement, has not been appropriately linked by the applicants to a rule breach which deals with such an event. There is no evidence to suggest that this meeting was constituted outside rule or that the proceedings of the meeting were in breach of rule. The complaint is in my judgment misconceived and I intend to strike out this complaint pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 4

That between January 2000 and the present date of May 2014 GMB failed to ensure that Branch 242 had nine properly elected officers, thereby breaching rule 37(3) of its rules.

Rule Book 2012 35(3) appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (a) election to Office.

Findings

This complaint is historical and in terms of time limits it is similar to Complaint 1. There was no internal complaints process invoked by the applicants after the material time when each and every election was allegedly not held. The simple 6 month time limit therefore applies as per complaint 1 and thus I can only look at the matter from 18th June 2012.

It is alleged that within the period, the Union maintained inadequate elected membership to enable it to hold quorate meetings. The complaint is potentially within jurisdiction in that a failure to maintain a required quorum of elected officers will potentially impact upon the legality of the constitution of individual decision making meetings.

However, on balance I find that this complaint is a general and vague allegation without specifics on any alleged inquorate decision making meetings. I cannot simply make the general sweeping presumption that all meetings were illegally constituted. Some meetings may have taken place without quorum but that of itself may not be material if no decisions were taken at such a meeting. I cannot make such presumptions based on this very wide and sweeping allegation. More allegations about deficiencies in quorum at individual decision making meetings are contained in Complaints 5 and 7 below.

It is the potential illegality of decision making meetings which actually took place which are relevant under Article 90(A) (d) of the Trade Union and Labour Relations (N.I.) Order 1995. and this will be discussed more at Complaint 5 and 7 below. This complaint as presented is too vague for me to make any findings or indeed to offer any material remedy and therefore I find that there is an insufficient case to answer. The complaint has little or no prospect of success and I shall move to strike out the complaint in accordance with Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 5

That between January 2000 and present date GMB allowed Branch 242 to hold meetings consisting of four unelected officers instead of nine elected officers thereby breaching rule 37(3) of its rules.

In my correspondence to Eamonn Coy I have never received any notification of any branch meetings prior to Peter McMurray's letter of the 22 November 2012 of meetings that were to take place in 2013.

Regarding the minutes of the branch meeting of 5 March 2011, 7 April 2011 and 5 May 2011 as far as my recollection goes there were only two people present at two of these meetings and three at one - Peter Mc Murray at all three , Trevor Franklin at all three and Colin Mallon at once. As per rule 35(3) all four committee members president, secretary equality officer and youth officer are

committee members but there needs to be nine members on the branch committee of which five must be present to make a quorum on any decision. This did not happen on any of these occasions.

Rule Book 2012 35 (3) appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (d) constitution of a meeting.

Findings

Again the six month time limit must apply and I can only look at this complaint from the period of 18th June 2012. The complaint is within jurisdiction and is very similar to Complaint 7 which makes the case that without the required number of officers the meetings were inquorate as well as in breach of rule.

It should be noted that the examples of meetings referred to in this complaint occurred outside the time limit and so I cannot consider this evidence.

On balance I find that for the period from 18th June 2012 that these are general and vague allegations without specific evidence. Therefore I find that there is an insufficient case to answer. Further reasons for my findings on this issue of elected officers/quorum at meetings are given under Complaint 7 below. This complaint has little or no prospect of success and I shall move to strike out the complaint in accordance with Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 6

That between January 2000 until May 2014 GMB failed to ensure Branch 242 had set out a recruitment plan thereby breaching rule 36 (b).

Rule Book 2011 appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (a) election of officials and (c) the balloting of members.

Findings

This complaint is outside the jurisdiction of the Certification Officer and not appropriately linked to the categories under Article 90A. I therefore find that it is misconceived. I shall move to strike out this complaint in accordance with Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 7

That between January 2000 and May 2014 all of the meetings of Branch 242 were inquorate as they consisted of unelected officers instead of five elected officers thereby breaching rule 37 (3) of GMB's rules.

Rule Book 2011 36 (3) appears to apply.

Unelected branch officers were Trevor Franklin, Colin Mallon, Chris Wilson, Neil Irvine, Angela Vincent, Peter Mc Murray as these are the only ones I am aware of not having received any information prior to Peter Mc Murray's letter of 22/11/2012.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (d) constitution of a meeting.

Findings

Individual Inquorate Branch meetings have been challenged in this complaint due to alleged quorum deficiencies caused by the inadequate number of elected officers required by rule to be present and the allegation is that unelected branch officers were present at branch meetings. Again the six month time limit applies and limits this complaint to the period dating from 18th June 2012. I find that this complaint is within jurisdiction.

This complaint is linked to the allegations made in Complaints 4 and 5. The generalized nature of complaints 4 and 5 and the limited evidence available has led me to find that those complaints are too vague in order to make a sufficient case to answer.

I find that there is little or no evidence to substantiate these allegations as I would need to be satisfied about the proceedings of specific and individual meetings. Some evidence may arguably be available to substantiate the general allegation that there were deficiencies in maintaining sufficient elections of people in order to populate a branch meeting with the authorised elected officers, as alleged in Complaint 1. However, the difficulty with all of these complaints is that the evidence is not sufficient to establish a case with a reasonable prospect of success. The best case that can be made for the applicants is that some meetings MAY have taken place with quorum deficiencies due to the alleged shortage of the required number of duly elected authorized officials which is required to run these meetings.

Without the specifics of each and every meeting that was held and documented evidence to show that a particular meeting was inquorate and thus illegally constituted, it will be impossible for me to make any legal findings on this complaint. The applicants believe that inquorate meetings were held and thus they believe that decisions were taken illegally and outside the prescribed processes of Union rules. However, I cannot make this leap of judgement without the details of minutes of such meetings which would enable me to scrutinize not only the constitution of any meeting but also the decisions, if any, which were taken at those meetings.

The Certification Officer has no power to order discovery and if this evidence is not available to the applicants, I cannot make any order to the Union to disclose such records should they be available. Therefore the burden of establishing a sufficient case to answer lies wholly with the applicant and the evidence that the applicant can produce. Therefore, on balance, I find that the complaint has no prospect of successfully establishing evidence for each and every decision taken with a deficiency in quorum and thus I cannot determine any specific Branch decisions to be illegal. I intend to strike out this complaint on the grounds that it has no reasonable prospect of success pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 8

*That between January 2000 and May 2014 GMB failed to ensure quarterly meetings of Branch 242 were held on the last meeting night previous to the last Saturday in March, June, September and December thereby breaching 37 (17) of its rules.
See letter to Eamonn Coy 21/2/2011.*

Rule Book 2011 36 (17) or Rule Book 2012 35 (17) appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (d) constitution of a meeting.

Findings

Again the six month time limit applies bringing the date of the commencement of the period under consideration to 18th June 2012.

This complaint is within jurisdiction. I note that this complaint is distinguished from Complaint 5 and 7 in that the applicants allege that there were never any Quarterly Branch meetings held as opposed to the regular branch meetings which they say were held but were outside rule requirements with the number of elected officers present and which were as a consequence, inquorate.

There is no evidence other than the assertions of the applicants to confirm that branch meetings were not held. However, neither has evidence been provided to me by the Union to confirm that Branch Quarterly meetings were indeed held. It would seem that this is a case where the applicants maintain that such meetings were never held and the Union have no information to confirm that meetings were held or not held or indeed held but without the required quorum.

Again, I find that this allegation is simply too vague on which to make any legal finding and as I have no powers of discovery there is no method for me to inspect any records still existing that may shed light on this disputed issue. A hearing would be of little benefit to determine such a dispute and any order under Article 90B of the Trade Unions and Labour Relations (N.I.) Order 1995 would have little or no relevance or serve any constructive purpose.

Therefore I must find that this allegation has little or no prospect of success and I would intend to strike out the complaint pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaints 9-11 of the cases are slightly different for each applicant

Mrs. C Ozdemir

Complaint 9

That on the 28 March 2011, I lodged a grievance which has never been heard and breaches rule 6 of the GMB rulebook. See letter to Paul McCarthy 28 March 2011. The Union did not comply with its own rules in respect of processing a grievance of a member.

Rule Book 2012 appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 90A (1) category (b) disciplinary proceedings.

Findings

Mrs. Ozdemir alleges that a Grievance Process was not completed in accordance with the requirements of Union rules. This complaint is **out of time** as it is based on an internal process having been invoked on 28th March 2011. The process was not completed and so the 12 month time limit began on 28th March 2011. The applicant had six months from the 28th March 2012 to lodge her complaint with my office meaning the complaint must have been lodged with my office by 28th September 2012.

However, even if the complaint was within time there is no specific act of rule breach identified to support the case that the internal process was frustrated by a breach of rule on the part of the Union. The matter could therefore not fall within the remit of Article 90A of the Trade Union and Labour Relations (N.I.) Order 1995 even if it had passed the time limit test, as no act or omission constituting a rule breach has been identified. The matter would therefore have been found as being outside within the jurisdiction of Article 90A and would have to be struck out on the grounds of it being misconceived, even if it had been made within the time limit.

Complaint 10

That since 15 December 2012 I have been denied the right to inspect the books and accounts of Branch 242 thereby breaching rule 32. See e-mails to and from Peter McMurray dated 15 December 2012 and reply 20 December 2012.

Rule Book 2012 appears to apply.

The applicant alleges that such alleged rule breaches relate to Article 37 of the Industrial Relations (NI) Order 1992, failure to permit a trade union member access to its accounting records.

Findings

The Applicant was allegedly denied Right to Inspect the Accounting Records of the Union, which is a complaint pursuant to Article 37 of the Industrial Relations Order 1992. This is a complaint which is outside the jurisdiction of the Certification Officer. Article 37(7) refers:

(7) Any person who claims that a trade union has failed in any respect to comply with a request made by that person under paragraph (2) may apply to the High Court for an order under this Article; and where, on such an application, the court is satisfied that a trade union has failed to comply with any such request, the court shall make such order as it considers appropriate for ensuring that that person—

- (a) is allowed to inspect the records which are the subject matter of the request;
- (b) is allowed to be accompanied by an accountant when making an inspection of those records; and
- (c) is allowed to take, or is supplied with, such copies of, or of extracts from, those records as he may require.

Whilst the Union have in fact evidenced an offer for inspection dated 20th December 2012 in their official response to this complaint, wherein it was stated in correspondence to the applicant that 'branch accounts are available at branch meetings for inspection by branch members,' it is clear from the legislation that this complaint is misconceived as it is outside the jurisdiction of the Certification Officer and falls within the jurisdiction of the High Court. I have no power to consider this complaint.

I intend to strike out this complaint on the grounds that it is misconceived pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 11

That on the 28 January 2011, I was illegally terminated from my position as a full time secondee at a meeting which denied me the right of accompaniment which breached Article 12 of the Employment Relations (Northern Ireland) Order 1999.

The applicant alleges that the termination of her tenure was in breach of union rules and that such alleged rule breaches relate to Article 90A (1) category (a) appointment/removal from office.

Findings

This is a matter governed not by Union rules but by the contractual arrangements between the applicant, the Union and the employer of the applicant. This issue was the subject of legal proceedings in another jurisdiction and it is a matter which falls under Employment Law and Contract Law. These are matters which are wholly outside the remit of the Certification Officer. I intend to strike out the complaint on the basis that it is misconceived pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Patrick Lynch

Complaint 9

That on the 21 April 2011 and on the 23 November 2012, I lodged grievances which were never heard in breach of rule 6 of the GMB rulebook. The Union did not comply with its own rules in respect of processing a grievance of a Member.

Rule Book 2012 appears to apply.

Findings

Mr. Lynch alleges that a Grievance Process instigated on 21 April 2011 and another on 23 November 2012 was not completed in accordance with the requirements of Union rules.

The first part of this complaint is **out of time** as it is based on an internal process having been invoked on 21st April 2011. The process was not completed and so the 12 month time limit began to run on 21st April 2011. The applicant had six months from the 22nd April 2012 within which to lodge his complaint with my office meaning the complaint must have been lodged by 22nd October 2012.

The incomplete grievance process invoked on 23 November 2012 is within time. However, there is no evidence of the process having been frustrated by the Union or any departure from the stated processes of Rule 6 on the part of Union officials. There is a duty on the applicant to comply with Rule 6 and raise the grievance through the appropriate mechanisms. The fact that the process was incomplete is not of itself evidence of a failure on the part of the Union to comply with stated processes. I therefore cannot find that a sufficient case to answer has been made by the applicant and I find that this element of the complaint must be struck out on the grounds that it has no reasonable prospect of success pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

The entirety of this complaint is therefore to be struck out for the reasons stated above.

Complaint 10

That on 19 November 2012 Branch 284 was illegally amalgamated with Branch 242 without due consultation of the members of either branch which contravenes rule 35(7) and rule 43 (1) of the GMB rule book. Grievances lodged 21/4/11 and 23/11/12 and letter from 3 branch secretaries to Paul Kenny 5/7/12 refer.

Rule Book 2012 35 (17) and Rule Book 2011 43 (1) appears to apply.

Findings

This complaint is within time and it is within jurisdiction. It is alleged that challenges to the proposed amalgamation were raised preceding the amalgamation on the dates of 21st April 2011 and 23rd November 2012 and were not dealt with by the Union according to its stated processes. The stated processes of an internal complaints process are contained in Union Rule 6. In a letter of 30th November the Union has stated the process incumbent upon the applicant as a member to correctly raise the issue in accordance with the applicable complaints procedure.

The complaints process must be brought via the Branch in the first instance and on appeal to the Regional Committee. There is no evidence to support a case that the process was not adhered to by the Union. The process was not completed but this of itself is not evidence of a rule breach. I cannot see what rule breach is alleged in this complaint. All I can find is that a complaint was raised and not concluded and so I cannot find a rule breach on the process of the complaint.

Turning to the actual event which was the subject of the complaint - the Amalgamation of two branches at a meeting on 19th November 2012 which was allegedly outside rule due to an alleged failure to consult with members adequately pursuant to rule 35(7) and rule 43(1) of Rule Book 2012. This is a matter that potentially falls within my jurisdiction according to the applicant's case under category c of Article 90A of the Trade Union and Labour Relations (N.I.) Order 1995 in relation to the balloting of members.

I cannot find any reference in either of these rules which relates to the method or process of consultation with members or a balloting process and therefore cannot find any link between the rules allegedly breached and the alleged lack of consultation which is complained of. I therefore find the complaint must be struck out on the grounds that it is misconceived pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 11

That on the 28 April 2011, I was illegally terminated from my position as a full time secondee.

Findings

This is a matter governed not by Union rules but by the contractual arrangements between the applicant, the Union and the employer of the applicant. This issue comes under Employment Law and Contract Law. These are matters which are wholly outside the remit of the Certification Officer. I intend to strike out the complaint on the basis that it is misconceived pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Hubert Milne

Complaint 9

That on the 21 April 2011 and on the 23 November 2012, I lodged grievances which were never heard in breach of rule 6 of the GMB rulebook. The Union did not comply with its own rules in respect of processing a grievance of a Member.

Rule Book 2012 appears to apply.

Findings

Mr. Milne alleges that a Grievance Process instigated on 21 April 2011 and another on 23 November 2012 was not completed in accordance with the requirements of Union rules.

The first part of this complaint is **out of time** as it is based on an internal process having been invoked on 21st April 2011. The process was not completed and so the 12 month time limit began to run on 21st April 2011. The applicant had six months from the 22nd April 2012 within which to lodge his complaint with my office meaning the complaint must have been lodged by 22nd October 2012.

The incomplete grievance process invoked on 23 November 2012 is within time. However, there is no evidence of the process having been frustrated by the Union or any departure from the stated processes of Rule 6 on the part of Union officials. There is a duty on the applicant to comply with Rule 6 and raise the grievance through the appropriate mechanisms. The fact that the process was incomplete is not of itself evidence of a failure on the part of the Union to comply with stated processes. I therefore cannot find a sufficient case to answer has been made by the applicant and I find that this element of the complaint must be struck out on the grounds that it has no reasonable prospect of success pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Complaint 10

That on 19 November 2012 Branch 284 was illegally amalgamated with Branch 242 without due consultation of the members of either branch which contravenes rule 35(7) and rule 43 (1) of the GMB rule book. Grievances lodged 21/4/11 and 23/11/12 and letter from 3 branch secretaries to Paul Kenny 5/7/12 refer.

Rule Book 2012 35 (17) and Rule Book 2011 43 (1) appears to apply.

Findings

This complaint is within time and it is within jurisdiction. It is alleged that challenges to the proposed amalgamation were raised preceding the amalgamation on the dates of 21st April 2011 and 23rd November 2012 and were not dealt with by the Union according to its stated processes

The stated processes of an internal complaints process are contained in Union Rule 6. In a letter of 30th November the Union has stated the process incumbent upon the applicant as a member to correctly raise the issue in accordance with the applicable complaints procedure. The complaints process must be brought via the Branch in the first instance and on appeal to the Regional Committee. There is no evidence to support a case that the process was not adhered to by the Union. The process was not completed but this of itself is not evidence of a rule breach. I cannot see what rule breach is alleged in this complaint. All I can find is that a complaint was raised and not concluded and so I cannot find a rule breach on the process of the complaint.

Turning to the actual event which was the subject of the complaint - the Amalgamation of two branches at a meeting on 19th November 2012 which was allegedly outside rule due to an alleged failure to consult with members adequately pursuant to rule 35(7) and rule 43(1) of Rule Book 2012. This is a matter that potentially falls within my jurisdiction according to the applicant's case under category c of Article 90A of the Trade Union and Labour Relations (N.I.) Order 1995 in relation to the balloting of members. I cannot find any reference in either of these rules which relates to the method or process of consultation with members or a balloting process and therefore cannot find any link between the rules allegedly breached and the alleged lack of consultation which is complained of. I therefore find the complaint must be struck out on the grounds that it is misconceived pursuant to Article 70ZA (1) (a) of the Industrial Relations (N.I.) Order 1992.

Summary

In conclusion, my view is that the vast bulk of the complaints must be struck out either because of time limit issues, jurisdiction problems or because a hearing will be of no real value in determining some of the complaints which have little or no prospect of success under the scrutiny of the legal process of the Certification Officer. Thus Complaints 2-8 of the common complaints will be struck out unless the parties can show due cause as to why this should not be the case.

Essentially my view is that the applicants may have some limited evidence in their Complaint 1 of an alleged general failure of the branch to meet the requirements to hold Branch elections and thus to provide for the required committee quorum for running branch meetings, but they have no specific evidence of illegal meetings occurring and thus illegal decisions being taken in breach of rule.

Many of the allegations are so sweeping in scope and scale that it is practically impossible to prove the important elements of the allegations which would succeed in securing a remedy – namely that certain decisions, if proved to have been taken illegally, should be overturned and referred back to the Union to be re-taken in accordance with its applicable regulatory framework. I must consider what the mischief is that I am seeking to remedy and in this case, I am struggling to see how I can make any legal findings of illegality for which I can offer a truly constructive and useful remedy.

However, the applicants have established some limited evidence of a case to answer in Complaint 1 and in my judgment a case for the Union to answer on the general point of why the Union allegedly failed to hold Branch elections and to ensure there was a committee resourced to meet the requirements of quorum within the Branch. This needs to be addressed fully in a response from the Union. I am not satisfied that this has been given in the official response from the Union to date.

That said, it does not necessarily follow that if there were no elections to elect officers, that it can be proved that all individual meetings were illegal or that decisions taken at such meetings were improper or undemocratic. This is too much of a leap of judgement upon which to base a legal finding. It is for this reason that I find that the other allegations about individual meetings must fail.

I find that Complaint 1 partially meets the test of time limit, meets the test of jurisdiction and the test of case to answer. I have made an amendment to complaint 1 and issued a direction for further information from the Union on this matter.

I would also point out to the parties that there is very limited scope for remedy which can be offered by this process under the provisions of Article 90B of the Trade Union and Labour Relations (N.I.) Order 1995 which are:

(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.

Thus even if the applicants should be ultimately successful in establishing that the Union failed to ensure that Branch 242 held any elections since 18th June 2012 and I were to make a declaration of this in my final determination of Complaint 1, it does not necessarily follow that a remedy by way of any order will be made against the Union. The Certification Officer can set aside improperly taken decisions and refer decisions back to the Union to be re-taken if they are judged to be material issues for which an Order under Article 90B of the Trade Union and Labour Relations (N.I.) Order 1995 is appropriate. However, it is open to the Certification Officer to make a finding that a breach has occurred and make no order in respect of it if Article 90B of the Trade Union and Labour Relations (N.I.) Order 1995 Order would be of little or no constructive value or is otherwise not appropriate in all the circumstances.

Conclusions

1. On the facts set out herein and for the reasons given in this decision, I find that Complaints 2-8 of the complaints common to all three applicants must be struck out.
2. On the facts set out herein and for the reasons given in this decision, I find that Complaints 9, 10 and 11 of the complaints of Christine Ozdemir must be struck out.
3. On the facts set out herein and for the reasons given in this decision, I find that Complaints 9, 10 and 11 of the complaints of Patrick Lynch must be struck out.
4. On the facts set out herein and for the reasons given in this decision, I find that Complaints 9 and 10 of the complaints of Hubert Milne must be struck out.
5. On the facts set out herein and for the reasons given in this decision, I find that on the grounds that it is partially out of time, Complaint 1, which is common to the case of all three applicants, will be amended to read:

Complaint 1

That between 18th June 2012 and May 2014 GMB failed to ensure Branch 242 held any elections thereby breaching its Rules 35(7), 35(17) and 35(1). The relevant Rule Book is that of 2011/12. This alleged rule breach relates to Article 90A(1) Category (a) the election of officials

6. In response to Complaint 1 as amended I hereby direct that the Union address the Certification Officer on this matter for further consideration by the applicants and by the Certification Officer. The date by which such a response should be provided to my office is **Monday 29th June 2015.**

Dated this 9th day of June 2015

A handwritten signature in black ink, appearing to read 'Sarah Havlin', with a long horizontal flourish extending to the left.

**Sarah Havlin LLB
Solicitor
The Certification Officer of Northern Ireland.**