

D/01/2024

Decision of The Certification Officer for Northern Ireland

In the matter of an application pursuant to Articles 12-22 and 90A of The Trade Union and Labour Relations (Northern Ireland) Order 1995 ('the 1995 Order')

Mr Brian Booth & Others (Applicants)

V

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

Date of Decision:

22 April 2024

DECISION

Upon application by Mr Brian Booth & Others (the Applicants) under Articles 12-22 and 90A of the 1995 Order a total of three complaints were raised.

The following complaints have been determined:

Complaint number 1

Breach of Articles 12-22 of the 1995 Order and NIPSA's Constitution governing the nomination process to its General Council.

Complaint number 2

Breach of Article 90A (2)(a) of the 1995 Order and NIPSA's Constitution in failing to properly convene a branch Annual General Meeting.

Complaint number 3

Breach of Article 90A (2)(d) of the 1995 Order relating to the proceedings of NIPSA Branch 517.

My decision on the complaints is as follows:

Complaint 1 Not Upheld

Complaint 2 Upheld

Complaint 3 Not Upheld

DECLARATION

I hereby issue a declaration that the Respondent breached Article 90A (2)(a) of the 1995 Order.

I have determined that an Enforcement Order is required as I have not been provided with the necessary assurance in any of the Respondent's submissions that NIPSA is abiding by its own rules relating to the convening of Branch Annual General Meetings.

ENFORCEMENT ORDER

The Respondent is ordered to take the following actions within three months from the date of this declaration:

- Issue a circular reminding branches of the absolute requirement to convene Annual General Meetings in line with NIPSA's rules.
- Provide the Certification Officer with a copy of the most recent General Secretary's circular setting out the arrangements for Branch AGMs.
- Confirm whether Branch 517 has conducted properly constituted AGMs for the reporting periods following the 2020 AGM.
- The General Secretary to meet with the officers of Branch 517 to seek to bring a resolution to the discord that occasioned the submission of this complaint.

REASONS

General Background

1. Mr Booth & Others (the Applicants), comprising nine members of Branch 517 of NIPSA's Public Officers Group (the Respondent), registered three complaints with my office on 14.12.2020.
2. I assessed the Applicants' three complaints against the following tests:
 - a. Were the complaints lodged within the statutory time limits.
 - b. Did the complaints fall within the scope of the Certification Officer's authorities as established in the 1992 & 1995 Orders, and
 - c. Based on the information provided by the Applicants, was there a potential case to answer.
3. The Respondent, in one of its submissions, had suggested that the first complaint relating to the nominations to NIPSA's General Council may have been out of time.
4. Article 90A (6)(a) does stipulate that a complaint should be lodged within a period of six months starting with the day on which the breach is alleged to have taken place. Article 90A (6)(b) also allows for an extension of that six-month limitation period if an internal complaints procedure is invoked.
5. Under Article 90B I have the power to refuse to accept an application under 90A if I am satisfied that the Applicant has not invoked the internal complaints procedure. It is the case that the Applicants did not initiate an internal complaint.
6. However, this first complaint relies on Articles 12-22 (**Elections for Certain Positions**) of the 1995 Order which covers elections to the General Council and election of the President and General Secretary. Article 21(3) stipulates a twelve-month period for the lodging of a complaint under Article 22 (**Application to Certification Officer**).
7. I have therefore determined that all three complaints were lodged within the statutory time limits, fell within the scope of the governing legislation, and merited further consideration.
8. This complaint has been in process for a significant period of time due in part to the adjournment of a planned hearing with the agreement of both parties. There have been further delays following requests from the Respondent's legal advisers for more time to present a substantive response to the three complaints.

9. It is also important to record that there had also been no sense of urgency on the part of the Applicants' in seeking to have their complaint determined.
10. In June 2023, the Respondent indicated that they believed an Alternative Dispute Resolution (ADR) process facilitated by the Certification Officer could result in an internal resolution of this complaint.
11. My office reached out to the Applicants and to Branch 517 on behalf of the Respondent. The Applicants agreed to enter into an ADR process, however the Secretary of Branch 517 refused to be involved stating that the complaint was against NIPSA and that it was for NIPSA headquarters through the General Secretary and/or the General Council to respond.
12. It became clear to me that there is a significant disconnect between Branch 517 and the leadership of NIPSA with little prospect of gaining collective support for an internal resolution evidenced in the separate submissions from Branch 517 and NIPSA Headquarters. I therefore advised both parties of my intention to determine the complaint based on paper submissions.

Complaint number 1

13. The Applicants have challenged the validity of Branch 517 nominations to NIPSA's General Council for the 2020/21 year on the basis that they had been endorsed at an inquorate meeting on 25 February 2020.
14. The Respondent's submissions include minutes of the 25 February 2020 meeting which confirms that only two committee members were present (the Chairman and the Branch Secretary); eleven apologies were received and a further nine committee members were recorded as non-attendees.
15. I have reviewed the totality of NIPSA's 2020 Constitution and in particular the rules governing the construct and operations of NIPSA branches (**Section 4: Branches & Annex B Model Branch Rules**) and cannot find any explicit provisions relating to required quorums for meetings of branch committees.
16. There are however references in other sections of the NIPSA Constitution that quorums and any decisions should be based on a simple majority of those in attendance at a meeting.
17. It is not unreasonable to assume that two members is unlikely to constitute a quorum for a committee of twenty-two, representing the interests of around 1900 members.
18. However, in coming to my decision, I must be guided by the governing legislation, in this instance the 1995 Order as well as NIPSA's Constitution. I

took this same approach in ruling that this complaint was submitted within the statutory period provided for in Article 21(3) of the 1995 Order. In relation to Elections to the General Council there are explicit provisions within the NIPSA's Constitution where a member has concerns about the integrity of the Election process.

19. Section 6.44 & 6.45 of NIPSA's Constitution states that any complaint about elections to the General Council must be made to the Returning Officer, whose decision will be final. The Applicants have not provided any evidence (documented or verbal) that demonstrates they have taken all reasonable steps to resolve the complaint by use of any internal complaints procedure of the union as required under Article 90B. There is also a provision within the Constitution (6.46) which provides relief from the requirement to use the internal process if the complaint relates to an alleged breach of the statutory requirements as they apply to secret ballots.
20. In summary, the Applicants did not exhaust the internal complaints procedure before making application to the Certification Officer. Also, the complaint did not concern the conduct of a secret ballot that would have afforded the Applicants leave to apply directly to the Certification Officer.
21. It is for these reasons that I do not uphold this complaint.

Complaint number 2

22. The Applicants have alleged that Branch 517 failed to hold a properly constituted AGM in 2020 to elect Branch Officers as required by NIPSA's Constitution.
23. The activities of all NIPSA branch committees are governed by its Constitution and in particular **Section 4: Branches, Annex A Duties of Branch Officers, and Annex B Model Branch Rules.**
24. Section 4.8 requires an Annual General Meeting (AGM) to be held in October of each year to select the branch committee.
25. Section 2 of the Model Branch Rules requires notice giving the time, date, and place of general meetings normally 7 days prior to the date of the general meeting.
26. Section 4 of the Model Branch Rules states that the AGM shall receive the Branch Annual Report and Branch Financial Report as well as electing the Branch Officers and Branch Committee.

27. It is important to reference the impact that the Covid-19 pandemic had on public and private life with business meetings at the time of the complaint held remotely or through socially distanced physical meetings. This created challenges for all organisations; however, it is reasonable to assume that most public sector workers had the IT capability to receive email notices of meetings and to participate in online meetings at the time of Branch 517's AGM in November 2020.
28. The Respondent provided submissions in support of its claim that a 2020 AGM was held in line with NIPSA's Constitution.
29. Branch 517 Secretary provided a screenshot of an email of 23 October 2020 to all members of the branch seeking their agreement to the continuance of the existing committee for the forthcoming year; and contends that significant numbers of members supported this approach.
30. NIPSA General Secretary issued a Branch Secretary Circular on 30 October 2020 advising of the requirement to hold AGMs either remotely or socially distanced in line with public health guidance.
31. The Respondent confirmed that on 2 November 2020 the lead Applicant (Mr Booth) strongly objected to the proposal referred to in paragraph 28 and demanded that an AGM should be convened. The General Secretary wrote to Branch 517 on 3 November 2020 encouraging the branch to hold an AGM remotely.
32. The Branch 517 Secretary has stated that a properly constituted AGM was held and that notice of this meeting was communicated via social media and WhatsApp as well a poster being displayed in NIPSA head office; and that a HQ official was in attendance as per the General Secretary's circular of 30 October 2020.
33. The Applicants contend that they had not received notice of an AGM held on 10 November. One of the named Applicants emailed the Branch 517 Secretary on 9 November 2020 asking for dates for the AGM.
34. The Branch 517 Secretary responded on 10 November at 16.58 advising that an AGM was scheduled for that same day at 5pm.
35. In determining this complaint, the critical issue is whether the Applicants were given due notice of the 10 November 2020 AGM. I have considered the submissions of both parties and there is a lack of credible documentation to support the Respondent's claim that the AGM had been notified to the Applicants.

36. The Respondent has referred to social media and WhatsApp communications but has not provided any supporting documentation. The Respondent's reliance on the display of a poster in the Headquarters building, in the context of Covid, is not a sustainable position.
37. The Applicants were able to provide email correspondence of 9 & 10 November with the Branch 517 Secretary which supports their complaint that there had been no proper prior notice of the 10 November AGM.
38. The Respondent has provided a barely legible handwritten note that is offered as the formal minutes of the 10 November AGM. It would appear that the Branch Chair and Secretary, a full-time NIPSA official and two members of Branch 517 were in attendance. One apology from a branch of around 1900 members was also recorded.
39. The Respondent also did not provide my office with a copy of the official return that notifies NIPSA HQ of the newly elected committee.
40. This is in stark contrast to the communication for the Branch 517 meeting immediately following the 10 November AGM and which is the subject of the third complaint. An invite attaching the agenda for that meeting issued well in line with the notice periods promulgated in NIPSA's rules.
41. The unanswered question is why the same notification process could not have been applied to the 10 November AGM.
42. The Respondent has not provided any meaningful evidence that a properly notified AGM was held.
43. I am therefore upholding this complaint.

Complaint number 3

44. The Applicants have alleged that the Respondent, in this instance the Chair of Branch 517, breached NIPSA's rules in relation to a meeting on 26 November 2020.
45. The complaint rests on the refusal of the Chair to accept a motion of no confidence in the Branch Chair which was seconded on six occasions.
46. The Applicants allege that anyone raising motions that challenged the Chairman and/or the validity of the 10 November AGM were muted and unable to contribute to the committee discussions.

47. The Respondent does not dispute that a motion of no confidence in the Chairman and the Committee was proposed and seconded on six occasions. The Chairman took the view that the proper procedure for such a motion had not been followed in that it had not been notified in advance of the meeting and included in the meeting agenda.
48. It is clear from the various submissions that this was a difficult meeting and that there were heated exchanges. The difficult nature of this meeting directly relates to the Applicants' frustration with the way in which the AGM of 10 November had been handled and, in particular, their perceived exclusion.
49. The Respondent has suggested that the Chairman did not consider that the proper procedure for such a motion had been followed, believing that the motion should have been notified in advance.
50. The Respondent now concedes that there is nothing in the NIPSA rules which would suggest that such a motion could not have been tabled; and that where the rules are silent the Chairperson can make a ruling.
51. I have reviewed the NIPSA rules in some detail and the issue of tabling motions at Branch Committee meetings is not covered. The rules do say that the Chairperson can make a ruling and that it would require two thirds of those in attendance to overturn that ruling.
52. It would appear that the Chairman did rule against the tabling of this motion and this action was greeted with significant discord from within the Branch Committee. I have been able to determine from the minutes of the 25 February that there are twenty-two members of the Committee, but I have not been provided with the information on the numbers that attended the 26 November meeting. It is therefore not possible for me to determine whether the challenge from the Applicants would have secured the two thirds requirement set out in the Model Branch Rules.
53. A motion of no confidence in the Chair of Branch Committee is a very significant matter and there is a counter view that prior notice of such a motion would be desirable.
54. The Applicants received the agenda for the 26 November meeting and could have tabled the no confidence motion or even their concerns about the AGM under Item 6. Any Other Notified Business.
55. The election of all Committee members, including the Chairperson, falls to the wider membership of that Branch and the membership may have had some expectation that they would have the opportunity to consider this serious matter.

56. There are a range of factors that have informed my decision:

- The rules are silent on the tabling of motions which is unhelpful when you are dealing with critical issues such as the potential removal of a Chair of a large branch.
- The Chairman exercised his right to make a ruling even though that ruling would appear to be at odds with the NIPSA rules.
- It is unclear whether the Applicants' challenge of that ruling enjoyed a two thirds majority of those attending.
- Why did the Applicants not ask for their concerns about the AGM or a no confidence motion against the Chairman to be included in the agenda for 26 November meeting under Item 6. Any Other Notified Business.
- Should a meeting of the branch have been called given their role in appointing the Committee and they had been consulted (23 October 2020) on the proposal to reappoint the committee.
- There is an acceptance that relationships within the Committee had fractured over an extended period of time.
- There is little by way of prima facie evidence to inform my decisions.
- The genesis for this complaint was the way in which the 2020 AGM was conducted, and I have already upheld that separate complaint.

57. For the above reasons I am not upholding this complaint.

Final conclusions

58. The Respondent has acknowledged that there has been significant internal strife within Branch 517; there is no doubt that this has contributed to the problems that have played out publicly in the submission of the three complaints.
59. The lead member for the Applicants, Mr Booth, has been the vice-chair of Branch 517 for a considerable period of time. A lot of the issues raised in the three complaints centred around poor working relationships and an absence of good communication.
60. It is at odds with good governance that the Chair, Vice-Chair and Secretary of a committee do not have regular discussions and this would appear to be the fault line that will need to be addressed moving forward.
61. I have already made reference to the fractured relationship within Branch 517 but also the lack of collegiality that exists between this branch and NIPSA Headquarters. This became very apparent during the consideration of this case; I received separate submissions from NIPSA HQ and Branch 517 instead of being furnished with a corporate response as is the norm when a trade union is providing a response to a complaint.
62. I had asked for a range of information during the conduct of this case that would have assisted me greatly in determining the three complaints. The following information was not made available to my office:
- Had Branch 517 conducted properly constituted AGMs for the 2021 and 2022 reporting periods.
 - List of Branch 517 Committee members in attendance at the 10 November 2020 AGM.
 - Copies of all electronic correspondence informing Branch 517 members of the 10 November 2020 AGM.

None of the above provided.

63. My final observation relates to NIPSA's more general adherence to its constitution as it applies to the holding of AGMs. In the responses received from Branch 517, there was a strong inference that branches were not holding annual AGMs pursuant to NIPSA's Constitution.

64. Given that I have not received sufficient assurance that AGMs are a priority for NIPSA, I have deemed it necessary to issue an Enforcement Order.

Tom Evans OBE

A handwritten signature in black ink, appearing to read 'T Evans', with a stylized flourish above the 'E'.

Certification Officer for Northern Ireland