

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

MR R. EGAN

v

NASUWT

Date of Decision

27 June 2006

DECISION

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

- (i) I declare that, by its removal of the applicant from office by a decision on 15 September 2004, pursuant to a resolution of its National Officers on 18 May 2004, the union breached its rule 4(a)(iii). The union having now taken action to remedy this breach, I do not consider it appropriate to make an order in relation to this declaration.
- (ii) I refuse to make the declaration sought that the union's decision to remove the applicant from office had the effect of imposing a disciplinary sanction on him outside the union's disciplinary rules, thereby breaching National rule 26.

REASONS

1. By an application dated 2 December 2004 the applicant Mr R Egan complained of two alleged breaches of rule by his union, the National Association of Schoolmasters Union of Women Teachers ("NASUWT" or "the union"). The rules in question related to (i) the removal of a person from an office and (ii) disciplinary proceedings, and therefore potentially came within the jurisdiction of the Certification Officer by virtue of Article 90A(2)(a), (b) and (d) of the 1995 Order. The alleged breaches, as clarified in correspondence, were as follows:

Complaint 1

That by deciding on 15 September 2004 that Mr Egan was in breach of the union's rule 4(a)(iii) because he held elected office in the South Down/South Armagh Association and by removing Mr Egan from that elected office the union breached National rule 4(a)(iii).

Complaint 2

That the union's decision to remove Mr Egan from elected office had the effect of imposing a disciplinary sanction on him outside the union's disciplinary rules, thereby breaching National rule 26.

2. These matters were investigated in correspondence and as required by Article 90B(2)(b) of the 1995 Order, the parties were offered the opportunity of a hearing, which took place on 6 December 2005 and on 1 March 2006 and 2 March 2006. The initial hearing was adjourned to allow the union to consider a point of law.

The union was represented by Mr J O'Hara Q.C, instructed by Mr J O'Neill of Thompsons McClure, Solicitors. Evidence for the union was given by Mr G Bartlett (Deputy General Secretary) and Mr P Scott (a Northern Ireland member of the National Executive). Ms S Rogers (National Treasurer) attended on the union's behalf but was not called by it to give evidence; she was, however, questioned by Mr Egan. Mr Egan acted in person and gave evidence on his own behalf. Mr J Arbuckle and Mr B Morgan (NASUWT members) gave evidence for Mr Egan. A large bundle of documents, which contained relevant correspondence, minutes of meetings and union papers, was prepared for the hearing by my office. A considerable quantity of documents was submitted to my office in the period of adjournment and a second large bundle was prepared. Additional documents were introduced by the union and the applicant at the hearing. The rules of the union were also in evidence. Both parties submitted skeleton arguments before the hearing. At the end of the hearing I agreed to allow the parties to submit their respective summations to me in writing. These were received at my office by 22 March 2006. Mr. Egan's and Mr. O'Hara's summations comprised almost forty-one and just over three pages respectively.

Findings of Fact

3. On the basis of the documents and the oral evidence provided to me and the representations made by the parties, I find the facts to be as follows:
4. In 1998 Mr Egan was employed as a full-time teacher in a school in Newry, Co Down. He also had an appointment as an associate lecturer with the Open University (OU): he carried out the work involved in this by correspondence from his home in Warrenpoint. Both Newry and Warrenpoint are in the area covered by the South Down/South Armagh local association of NASUWT. Mr Egan was an active member the South Down/South Armagh local association and was at this time its Secretary.
5. In December 1998 Mr Egan left his post in the school in Newry and took up a full-time post in a school in Lurgan, Co Armagh. Lurgan is in the area covered by the Armagh/Craigavon local association of NASUWT. He retained his OU appointment and continued to carry out the work for it from his home in Warrenpoint.
6. Although his full-time post was now in the Armagh/Craigavon local association

area, Mr Egan wished to remain in the South Down/South Armagh local association. Sometime in early 1999 (probably April) he spoke to Mr W Carville, then a paid official of NASUWT in Northern Ireland, and asked him to arrange this, on the basis of his employment with the OU. In this he was relying on what was then rule 4(a)(iv) in the NASUWT rulebook [now 4(a)(iii)], which stated that where a member has more than one workplace and these workplaces are in different local association areas, the member "shall elect to join the local association which he/she considers he/she can serve most effectively" .

7. On 31 January 2002 Mr Egan wrote to the then General Secretary of NASUWT, Mr de Gruchy, to complain of an alleged breach of rule in the conduct of a by-election for a Northern Ireland member of the union's National Executive. He believed this had disadvantaged one of the candidates, Mr J McDaid (who in the event was elected). This letter was acknowledged on 13 February.
8. On 15 February Mr B Gandy, then Assistant Secretary for recruitment in NASUWT, wrote to Mr Egan. He said that Mr Egan was recorded as a representative of South Down/South Armagh at the forthcoming Annual Conference (Easter 2002), though the records showed him as teaching within the Armagh/Craigavon local association area. He asked for clarification of this apparent anomaly. By letter of 20 February Mr Egan replied, confirming that he had changed school to one in the Armagh/Craigavon area and rehearsing his request to Mr Carville to arrange that he should remain in South Down/South Armagh on the basis of his "other continuous employment (since 1993) as a lecturer based in Warrenpoint". He quoted rule 4(a)(iv) and expressed surprise that this matter which he had believed had been sorted out three years earlier should now be an "apparent anomaly". He added that he had continued to be the Secretary of South Down/South Armagh in the interim. On 28 February Mr Gandy replied, saying that the information that Mr Egan worked in more than one location had clarified the apparent anomaly.
9. Mr Egan's complaint about the by-election was substantively answered on 5 March 2002 by Ms C Keates, then Deputy Secretary of NASUWT. She said that, following a similar case, election procedures and protocols had been reviewed and that in future the procedures to be followed would be made explicit. Although there might or might not have been a breach of rule, the National Officers had therefore decided to take no further action on his complaint. Mr Egan was not content with this response and wrote again to Mr de Gruchy (17 March). He posed seven questions and alleged that the union was discriminating against him and applying double standards in the investigation of complaints. He also alleged that there was either a calculated and deliberate attempt to cover up the involvement of a paid official in the alleged electoral misconduct or else a deliberate and conscious breach by someone else of guidance given by that official. Mr Egan received no reply to this letter until he sent a reminder in August 2002 to the new General Secretary, Mr E O'Kane. Mr O'Kane put the matter before the National Officers again and replied in September that the decision conveyed by Ms Keates in March had been confirmed.
10. In September 2002 Mr Egan became the representative of Mr Arbuckle in a

disciplinary complaint brought against the latter under rule 26 by Ms Rogers, NASUWT's National Treasurer. Mr Egan at once initiated an exchange of correspondence with Mr Bartlett, then an Assistant Secretary of the union, in which he raised, at considerable length, various issues and concerns about the handling of the complaint and the arrangements for the hearing, suggesting that the union was making a deliberate and premeditated attempt to prevent Mr Arbuckle from receiving a fair hearing and from having the support of his representative at the hearing.

11. The hearing took place on 27 September 2002 and the disciplinary panel, which was chaired by Mr T Bladen (a Vice President and one of the union's five National Officers), found that Mr Arbuckle had acted in a way prejudicial to the interests of the union. Immediately after the hearing Mr Egan wrote to NASUWT's National President, Mr P Butler, alleging that there had been "a clear and deliberate conspiracy by the nominee of the General Secretary [i.e. Mr Bartlett] and others to undermine the possibility of Mr Arbuckle having a fair and impartial hearing". He did not provide details of his allegations, saying that he had been advised by the Northern Ireland members of the National Executive not to do so because of the amount and complexity of the material he was referring to.
12. Mr Arbuckle appealed against the decision of the disciplinary panel and the appeal was heard over 5 days in December 2002 and February and March 2003. The appeal panel, chaired by Mr Butler, upheld the decision and ordered that Mr Arbuckle be suspended for three years from his elected post as Secretary of the Northern Ireland Executive Council (NIEC). In some additional comments appended to their decision the appeal panel was severely critical of Mr Egan's behaviour during the hearing, and of comments he had made about senior officials in his written summation, which they found "deeply offensive and without foundation".
13. In May 2003, following the failure of his appeal, Mr Arbuckle made six complaints to the Certification Officer for Northern Ireland concerning alleged breaches of rule by NASUWT in disciplinary proceedings and matters arising. The complaints were heard over four days in June and August 2004 and Mr Egan appeared as a witness on behalf of Mr Arbuckle. The parties submitted written summations after the hearing (initially in mid September, finally in early October). The Certification Officer, my predecessor Mr McElrea, found in a decision of May 2005 that Mr Arbuckle had not had a fair hearing in the disciplinary and appeal processes and ordered that his suspension from office be lifted with immediate effect. He also found that the union had breached two of its rules. He dismissed the remaining four of Mr Arbuckle's complaints.
14. In April 2004 Mr P Scott, a Northern Ireland member on the National Executive, was attending the union's Annual Conference, held that year at Llandudno. Among the conference papers was a document headed "Attendance Register Annual Conference 2004". Mr Scott noted that Mr Egan was included in this as an observer from the Armagh/Craigavon local association. Mr Scott knew that Mr Egan was Secretary of the South Down/South Armagh association and on returning home after the conference he made a check of the membership

records he held as a National Executive member. He found that Mr Egan was recorded as working at a school in Lurgan and that his local association was given as Armagh/Craigavon. On his next visit to NASUWT headquarters for a National Executive meeting he went to the membership department to cross check. He found that his own records were confirmed.

15. Mr Scott mentioned this matter to Mr Bladen, who raised it at a meeting of the National Officers on 18 May 2004. In the minutes of that meeting, under the heading "Other Action Matters", the following entry appears:

(d) "Northern Ireland dispute over pay parity.

To consider a report from the Acting General Secretary.

It was RESOLVED:

That the report be adopted.

It was further RESOLVED:

That the Acting General Secretary write to Richard Egan advising that he cannot be a member and Local Secretary of a Local Association in which he is not employed."

16. The Acting General Secretary, Ms Keates, took no immediate action on this instruction. It was not until 15 September 2004 (the day after the date for initial submission to the Certification Officer of summations in the Arbuckle case) that she wrote to Mr Egan, in the following terms:

"The National Officers have resolved that you are currently in breach of NASUWT Rule 4(a) (iii). Although you live in the area covered by this local association and are free to attend its meetings you can only be a member of and, therefore, hold office in a local association in which you are employed.

I will, therefore, be asking the National Executive Members as a matter of urgency to liaise with other local officers of the South Down/South Armagh Association and with me to organise an election for your replacement.

I thank you for the work you have done as local secretary. I know this will be a disappointment to you but I also know how meticulous you are in seeking to ensure that the National Rules are applied and honoured."

17. Mr Egan replied to this by letter dated 18 September. He said that his letter constituted a formal and official complaint. He claimed that the union knew that he was in complete compliance with rule 4(a)(iii) and mentioned (without giving details) previous correspondence with it on the subject. He said that in reaching its decision to remove him from office the union had failed to observe due process (since the disciplinary procedures under rule 26 had not been applied) and had acted in an arbitrary and discriminatory manner. The Acting General

Secretary was, he said, "fully complicit" in this illegal action which he could only regard as "a deliberate and calculated attempt on the part of the NASUWT to victimize, harass and discriminate against me". He said that he believed this action had been taken because of assertions he had made when acting as Mr Arbuckle's representative in the internal union disciplinary hearings and as a witness for him before the Certification Officer.

18. Ms Keates responded by letter dated 23 September. She said the way to resolve the issue and address Mr Egan's complaint was for him to provide evidence that his employing authority was the one in which he held office or, alternatively, to supply her with copies of the correspondence he had previously had with NASUWT on the matter. She added:

"I refute entirely your claim that the Officers' decision is a "deliberate and calculated attempt to victimise, harass and discriminate" against you. I can assure you that the Officers and myself are too busy addressing the needs of members to engage in such pettiness."

19. In his reply of 2 October Mr Egan gave the dates of his 2002 correspondence with Mr Gandy, which he assumed was on NASUWT's files. He asked for information on: how and when his membership had been put on the National Officers' agenda; whether a complaint had been made about him and, if so, for details of it; the procedure leading to the National Officers' resolution and any report before the National Officers which had enabled them to come to the resolution; and the names of all those present or in attendance at the National Officers' meeting and a copy of the minutes. On 11 October he wrote to Ms Keates to remind her that he had not had a reply to his 2 October letter. He made a further formal and official complaint to the effect that in refuting his previous complaint without an investigation the union had discriminated against him and Ms Keates had breached the rules. On 12 October he made a complaint to the Certification Office.

20. Ms Keates replied on 14 October to Mr Egan's letters of 2 and 11 October. She said she had no intention of entering into protracted correspondence with him on this issue. She asked him again to provide the evidence she had sought in her 23 September letter, adding that if he did not have copies of the correspondence he asserted he had previously had with NASUWT headquarters, he should provide her with the name of his correspondent and the approximate date of the exchange, and she would then try to trace it. The letter concluded:

"With regard to your 'formal and official' complaint, you made allegations about the motivation of the Officers in reaching their conclusion about your eligibility to hold office. As I was present at the meeting, and privy to the discussion I am able for the record to refute your allegations. There is nothing to investigate."

Please be advised that I will not respond to any further correspondence on this matter unless you provide me with the information I have requested."

21. Mr Egan replied on 22 October. He pointed out that he had already provided the name of his previous correspondent at NASUWT headquarters and the dates of the exchange, in his letter of 2 October, a copy of which he enclosed. He noted that the information he had asked for in that letter had not been provided. He asked whether evidence from his employer was what NASUWT wanted, what kind of evidence and whether every other member was required to supply the same evidence; and he said he considered that NASUWT's request was discriminatory. He also asked, since NASUWT appeared not to have the previous correspondence, whether someone would have had access to his file to remove it. As to the renewed refutation of his complaint by Ms Keates, he said that the process laid down in the rules for handling complaints had not been followed and that Ms Keates' decisions deprived him of his rights, privileges and benefits of membership and breached the rules. He went on:

“ To imply there is no victimisation or discrimination by the NASUWT is in my opinion untrue and I must point out that I now have gained access to information which indicates that each witness for Mr Jim Arbuckle has received communications from the NASUWT which allows a reasonable person to believe otherwise. I believe each of the communications can be described as discriminatory and show a disturbing pattern of behaviour on the part of the NASUWT. I am sure these communications are all in the files of the NASUWT.”

22. On 14 November Mr Egan wrote to Ms Keates making a formal and official complaint that the National President (then Ms P Lerew) had refused him the right to speak at a meeting of the NIEC held on 6 November. (Mr Bartlett had e-mailed Mr A Longman, President of the NIEC, on 21 September indicating that Mr Egan was not entitled to attend any meeting associated with the NIEC as a representative of any local association other than that in whose area he was employed. Mr Egan had seen this e-mail). Mr Egan said that this was another example of the discrimination, victimization and harassment he had encountered because he had represented and been a witness for Mr Arbuckle.
23. On 18 November a letter signed by the two Northern Ireland members of the National Executive, Mr P Scott and Mr J McDaid, was sent to all members of the South Down/South Armagh association. It advised that the post of Secretary to the association was vacant and invited members to a special general meeting on 16 December for the purposes of an election to fill the post. The letter was not sent to Mr Egan. On 20 November Mr Egan wrote to the members of NIEC saying that he had seen this letter, that it had been sent to 500 plus members but not to him, that his employment circumstances had not changed since NASUWT had accepted in 1999 and 2002 that he was a member of South Down/South Armagh, and that all of this was happening simply because of assertions he had made at meetings and because he had been a witness for Mr Arbuckle.
24. Mr Egan wrote again to Ms Keates on 28 November. He said that the refusal to respond to his letters was discrimination against him. He lodged a further three

formal complaints, including that NASUWT had removed him from office without proper reason and in breach of the rules. He said that the contents of two letters written in 2002 relating to his status had been given to Mr Scott and Mr McDaid at an NIEC meeting on 25 September; the procedure they were following to organize an election for his replacement was therefore a deliberate process carried out in the knowledge that they were operating outside the rules. No replies were sent to Mr Egan's letters of 22 October and 14 and 28 November to Ms Keates. On 2 December he made a further complaint to my office.

25. The general meeting arranged by Mr Scott and Mr McDaid took place as scheduled on 16 December 2004. Mr Morgan was the only candidate for the post of Secretary and was duly elected. Mr Scott sent a written report of the meeting to Headquarters in which he said that Mr Egan, Mr Morgan and Mr Arbuckle had made allegations of corruption and lying against the National Officers, the National Executive and the senior paid officials of the union. On 18 December Mr Egan wrote again to Ms Keates with a further complaint that he was being discriminated against, because NASUWT had, according to a statement allegedly made by Mr McDaid at the meeting, lost or misplaced Mr Egan's letter of 2 October - which he considered to be not an accident, but further evidence of a deliberate pattern of discriminatory treatment. He asked for all NASUWT documents relating to his removal from office and to the National Officers' instructions to Mr Scott and Mr McDaid regarding the election. This letter received no reply.
26. In January 2005, on a number of grounds, the National Executive issued directions imposing constraints on the operation of the South Down/South Armagh association. At about the same time, on the instruction of the National Executive, Ms Keates sent an invitation to the members of the association to attend a meeting at which the action taken in regard to Mr Egan would be explained and allegations and misinformation that the National Executive believed were being wrongfully disseminated to members would be addressed. The meeting was held on 16 February 2005 at the Canal Court Hotel in Newry. Ms Lerew, Mr Bartlett, Mr Scott and Mr McDaid attended. The meeting was a heated one and failed signally to ameliorate the situation.

The Relevant Statutory Provisions

27. 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 removal of a person from, any office;*
- (b) *disciplinary proceedings by the union (including expulsion);*
- (c) *.....*
- (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*

Declarations and orders

90B. –

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

(a).....

(b).....

(c).....

(d) may make or refuse to make 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.

Right not to be unjustifiably disciplined

31. –

(1) *An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.*

(2) *.....*

(3) *.....*

(4) *.....*

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

Meaning of “unjustifiably disciplined”

32. –

(1) *An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is –*

- (a) *conduct to which this Article applies, or*
- (b) *something which is believed by the union to amount to such conduct;*

(2) *This Article applies to conduct which consists in –*

- (a) *.....*
- (b) *.....*
- (c) *asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any statutory provision or any rule of law;*
.....

(3) *This Article applies to conduct which involves the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject-matter of any such assertion as is mentioned in paragraph (2)(c).*

(4) *This Article also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within paragraph (2) or (3).*

The Relevant Union Rules

28. The rules of the union that are relevant to this application are:

4. Membership

(a) Full Membership

- (i) *All persons who are employed as qualified teachers and such other persons whose contract of employment requires them to teach, lecture or instruct whether on a full or part-time basis are eligible for Full Membership of the Association provided they support the Objects of the Association.*
 - (ii) *The right to admit a candidate to membership of the Association shall be vested in the National Executive of the Association whose decision shall be final.*
 - (iii) *On admission to the Association a member shall join the Local Association within whose area the member's workplace is situated. If a member has more than one workplace and such workplaces are situated in areas covered by more than one Local Association the member shall elect to join the Local Association which he/she considers he/she can serve most effectively. Where no Local Association exists the member shall be allocated to the list of centrally attached members.*
 - (iv) *Unless the context otherwise so requires, in these Rules the word "Member" shall mean "Full Member".*
- (b) Retired Membership**
- (i)
 - (ii)
 - (iii) *A Retired Member paying a Full Member subscription shall join the Local Association covering the area in which he/she lives or the Local Association with which he/she served when a Full Member, according to his/her wishes.*

26. Internal Association Discipline

(1) Offences

A member of the Association commits a disciplinary offence if that member:

- (a) *wrongly or fraudulently receives or misapplies funds of the Association;*
- (b) *fails to participate in official industrial action;*
- (c) *acts contrary to or fails to carry out lawful instructions of the National Executive;*
- (d) *discriminates against or harasses another member on the grounds of gender, ethnic origin, disability, sexuality, religion or age;*
- (e) *fails to pay any fine imposed under this Rule within two months of the conclusion of proceedings, without good and sufficient reason;*
- (f) *acts contrary to or fails to carry out the policies of the Association;*
- (g) *acts in any way prejudicial to the interests of the Association.*

(2) Disciplinary Committee

- (a) *If a member believes another member (the respondent) has committed a disciplinary offence and that member wishes to make a complaint, he/she shall submit his/her complaint in writing setting out details of the respondent's conduct to the General Secretary.*
- (b) *Upon receipt of such a complaint the General Secretary shall send a copy of the complaint to the respondent who shall within 14 days of the date it was sent to him/her notify the General Secretary in writing whether the complaint is admitted or denied.*

- (c) (i) *Upon receipt of a denial under (b) above, or upon the expiry of 14 days if no response to the complaint from the respondent is received the General Secretary shall refer the complaint to the Ex-President who shall consider whether a preliminary investigation of the complaint is necessary.*
- (ii) *If the Ex-President is of the opinion that a preliminary investigation is necessary he/shall conduct such an investigation.*
- (iii) *If the Ex-President is of the opinion that a preliminary investigation is not necessary he/she shall instruct the General Secretary to convene a Disciplinary Committee meeting for the purpose of a hearing to consider the complaint, save that if the Ex-President is of the view that the complaint is frivolous or vexatious he shall instruct the General Secretary to notify the member who submitted the complaint and the respondent that no further action will be taken.*
- (d) *Upon conclusion of a preliminary investigation under (c)(ii) above the Ex-President shall report in writing to the General Secretary that: either*
 - (i) *in the opinion of the Ex-President there are insufficient grounds to proceed with the complaint further whereupon the General Secretary shall notify the member who submitted the complaint and the respondent that no further action will be taken; or*
 - (ii) *that in the opinion of the Ex-President the complaint should proceed further whereupon the General Secretary shall convene a Disciplinary Committee meeting for the purpose of a hearing to consider the complaint.*
- (e) *Upon receipt of an admission under (b) above the General Secretary shall convene a Disciplinary Committee meeting for the purpose of a hearing to consider the complaint.*

(3) *Discipline at Disciplinary Committee Level*

- (a) *The Disciplinary Committee shall be a Committee of the National Executive and shall comprise two members of the National Executive as nominated by the National Executive from time to time and the Senior Vice-President who shall chair meetings of the Committee.*
- (b) *The Disciplinary Committee may resolve to:*
 - (i) *dismiss the complaint; or*
 - (ii) *find the complaint justified.*
- (c) *If the Disciplinary Committee passes a resolution in accordance with (b)(ii) above, or the respondent has admitted the complaint under (2)(b) above, the Disciplinary Committee shall resolve:*
 - (i) *to impose no penalty; or*
 - (ii) *to penalise the respondent.*
- (d) *The penalties available to the Disciplinary Committee shall be:*
 - (i) *a reprimand;*
 - (ii) *a fine not exceeding five times the full annual subscription of a full Member of the Association;*
 - (iii) *to suspend the respondent from membership of the Association for a specified period not exceeding one year;*
 - (iv) *to expel the respondent from membership of the Association;*

- (v) *if the respondent is an Officer of the Association, to debar the respondent permanently or for a specified period from holding office in the Association.*
- (e) *As soon as is practicable, the General Secretary shall notify the respondent in writing of the resolution(s) of the Disciplinary Committee and of any right of appeal.*

Hearing of 6 December 2005

29. On 1 December 2005, five days before I was due to hear Mr Egan's complaints, Mr O'Neill of Thompson McClure wrote to my office on behalf of NASUWT. He said that the union, having recently, as a result of the efforts of my office, received information about Mr Egan's employment in the South Down/South Armagh association area, and having reviewed that information, had now authorised him to confirm that it accepted that Mr Egan was entitled to be a member of that association under rule 4(a)(iii). It therefore followed that the union had been wrong to act as it did in removing him from his position as secretary in September 2004. As a member of the association he was entitled to be its secretary.

30. Mr O'Neill said that the union did not, however, accept that Mr Egan's removal from office constituted disciplinary action within rule 26: rather, it had been based on what the union now accepted was a flawed interpretation and application of rule 4(a)(iii). He continued:

"In essence, the union accepts that Article 90A(2)(a) of the Trade Union and Labour Relations (NI) Order 1995 applies i.e. removal of a person from office. The union submits that in these circumstances it is entirely unnecessary to consider Article 90A(2)(b) because once there is a finding under Article 90A(2)(a), no further finding is required. The Certification Officer can make a declaration under Article 90B(2)(d) in respect of the removal from office and consider whether enforcement action is necessary under Article 90B(3).

In all these circumstances, the union submits that the concessions made in this letter meet the case presented to the Certification Officer by Mr Egan and enable the Certification Officer to make the necessary declaration and consider making any enforcement order without taking the case any further."

31. I considered that the union would have to develop this argument somewhat more fully before I would be able to take a view on its validity. I therefore decided that the hearing should go ahead, with the union addressing me at the outset on the question.

32. At the hearing, Mr O'Hara repeated that the union now accepted that it had wrongly removed Mr Egan from office. But there was, he said, clear duplication between Mr Egan's two complaints. The second complaint was about the

alleged motivation for his removal. This was not relevant to my jurisdiction, which was concerned only with whether there had been a breach of rule or not. There was no purpose in my considering the second complaint. Article 90A(2)(a) dealt with cases of removal from office and when I made a finding on that, that was the end of the matter. Article 90A(2)(b) dealt with cases of breach of disciplinary rules and was irrelevant here, where the union had not purported to be following a disciplinary proceeding, but rather to be acting because it believed (albeit mistakenly) that Mr Egan was not eligible to be a member of South Down/South Armagh association.

33. Mr O'Hara referred me to a number of cases determined by the Great Britain Certification Officer. In *Morgan v NASUWT* (D/38/05), the Certification Officer had stated that the issue of motive was irrelevant to whether there had been a breach of statute. In *Ryan v UNISON* (D/45-48/01), the Certification Officer had held that Ms Ryan's exclusion from Branch meetings without disciplinary process fell within his jurisdiction but, Mr O'Hara said, he would not have been able to hear her complaint if he had not taken that view. This was a strained interpretation of the GB equivalent of Article 90A(2)(b), for which there was no need in the present case, since I had clear jurisdiction to deal with Mr Egan's removal from office under 90A(2)(a). In *Dennison v UNISON* (D/12/03), the Certification Officer had acknowledged that his jurisdiction under the equivalent of Article 90A(2)(b) must be examined with particular care in cases not involving an allegation of breach of a rule that deals expressly with discipline.
34. Mr O'Hara further pointed out that Mr Egan had lodged a complaint of unjustifiable discipline under Article 32 of the 1995 Order with the Industrial Tribunals in respect of his removal from office. To bring himself within that Article, he was required to give the reason for the unjustifiable discipline and he had identified this as the assertions he had made in the Arbuckle proceedings. If that was the case, then the 1995 Order clearly gave the jurisdiction of his complaint to the Tribunals, where motive was relevant, and not to the Certification Officer, where it was not. It could not have been intended that under the same piece of legislation the Tribunals and the Certification Officer would both have jurisdiction to hear the same complaint. Mr O'Hara said that this should make me look very carefully at what I was being asked to decide in this complaint.
35. Mr Egan took a different view of the situation. He argued that the two complaints concerning discipline were different, recourse on them had accordingly been given to different bodies, and he could use both the Certification Officer and the Tribunals to get his rights. He outlined his complaints and said that he, like Ms Ryan, had suffered a sanction that was mentioned only in the union's disciplinary rules, and had been denied any hearing or opportunity to respond. The union had accepted for years that he was properly a member of South Down/South Armagh association, then suddenly, without good reason, had removed him, because he had supported Mr Arbuckle. This was discipline in breach of rule 26. Both *Dennison* and *Ryan* showed that the question of motive was within the Certification Officer's jurisdiction and that Article 90A(2)(b) was not relevant only in cases where disciplinary procedures had been wrongly applied. Mr Egan pointed out that in *Dennison*, it had been held that the fact that the suspension of

a benefit was not lawfully done opened the door for a consideration of the true nature of the action. Similarly, his removal from office had not been lawful, as was now conceded, and this opened the door for consideration of the true nature of the union's action against him. He added that in *Morgan*, the Certification Officer made his comment about the irrelevance of motive simply because he had no complaint relating to motive before him, and Mr Morgan's request to him to consider motive, made only at the hearing itself, was refused.

36. After consideration, I decided that I did have jurisdiction and would proceed to hear Mr Egan's second complaint. I considered that the wrongful removal of Mr Egan, which had been detrimental to him, might, on the evidence so far available, have been done with a disciplinary motivation and that I should examine it from that point of view. I considered that both *Dennison* and *Ryan* provided support for my doing so, and in particular that, as in *Dennison*, "the door was opened" for this by the union's wrongful action, though I accepted the force of the Certification Officer's comment there about cases concerning a rule not expressly dealing with discipline. I also agreed with Mr Egan's view on the Certification Officer's comment in *Morgan*: in my reading of it this was not intended to be of general application, but was specific to the circumstances in that case. As regards the jurisdictions of the Certification Officer and the Industrial Tribunals, I concluded that unjustifiable discipline and breach of disciplinary rules were separate matters. I took notice of Mr O'Hara's argument about the duplication of proceedings on the same issue, but observed that Article 31(5) of the 1995 Order states that "The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this Article....." This seemed to me to entail that Mr Egan was entitled to bring complaints on different aspects of the same matter separately to me and the Tribunals. Mr O'Hara had also argued that, at the least, I should postpone my hearing until after the Tribunal hearing. I did not see any clear justification for this view, and in addition I noted that no date had been set for the Tribunal hearing.
37. Since the union had conceded on the first complaint and since the documents provided by it gave no clear idea of how it had reached its decision to remove Mr Egan or how the mistaken interpretation of rule 4(a)(iii) had come about, I proposed that the union should present its case first. This was contrary to the normal practice in my hearings, but I felt that in the circumstances it would be a more efficient way of getting to the heart of the matter of the second complaint. Mr O'Hara contested both my decision to hear the second complaint and my proposal on the order of presentation. He asked me to adjourn the hearing to allow his client to consider making application for judicial review of my decision. I accepted his request and the hearing was adjourned. In late December the union decided not to apply for judicial review and the hearing was duly reconvened, for 1 and 2 March 2006.
38. The union having accepted that it had wrongly removed Mr Egan from office, the parties used part of the 6 December hearing, and intervals in it, to address the question of remedy. They agreed the following:
- (i) Mr Egan would remain a member of Armagh/Craigavon until a meeting of the NIEC to be held on 28 January 2006; would be entitled to attend that

- meeting as a representative of Armagh/Craigavon; and could ask the officers of the NIEC to allow him to read a statement at the meeting about his removal from office;
- (ii) Mr Egan's membership would be transferred from Armagh/Craigavon to South Down/South Armagh with effect from midnight on 28 January 2006, which would give him the 21 days membership he needed to be able to offer himself as a candidate for office in South Down/South Armagh at the next elections there, to be held at the AGM on 28 February;
 - (iii) a letter containing an unreserved apology to Mr Egan from the General Secretary, Ms Keates, in terms settled at the hearing, would be sent to the members of the South Down/South Armagh association, copied to members of the NIEC and members of the National Executive and published in the next issue of the union's Northern Ireland magazine, "Platform", which was scheduled for March 2006. The agreed text, which was written down in manuscript at the hearing was:

"To: MEMBERS OF THE NASUWT SOUTH DOWN/SOUTH ARMAGH LOCAL ASSOCIATION

Dear Colleagues

You were advised by letter dated 18 November 2004 that the then Secretary of the South Down/South Armagh Local Association (Mr Richard Egan) was not eligible to hold that office and was instead a member of the Armagh/Craigavon Local Association. In fact that was wrong. Mr Egan was, and is, entitled to be a member of the South Down/South Armagh Local Association and was, and is, entitled to hold office in that Local Association. The National Association apologises unreservedly to Mr Egan for its interpretation of the relevant rule which it has now accepted as erroneous and which led to the wrongful removal of Mr Egan from office.

Yours sincerely

*Chris Keates
General Secretary*

*cc: Members of the Northern Ireland Executive Council
Members of National Executive"*

- 39. I told the parties that I would make a declaration of breach of rule 4(a)(iii) in my decision in due course and that I accepted that the agreement they had reached was an appropriate remedy.
- 40. In transposing the text of the agreed letter into typescript, the union made two

mistakes: it wrote "apologies" instead of "apologises" and "law" instead of "rule" in the last sentence. A final proofreading spotted "apologies", but missed "law". The letter was issued on 26 January 2006. When Mr Egan drew its attention to the fact that there was still an error, the union identified "law" and issued a correct version to all the agreed parties (9 February). The first 2006 issue of "Platform" was published in May, not March as anticipated. The version of the letter printed in it was the one of 26 January. Mr Egan complained to the union and to my office about both the mistake in the text and the delayed publication. The union immediately undertook to issue, and did issue, a correct text by post individually to all its Northern Ireland members. Mr Egan also complained, truly, that the union had transferred his membership to South Down/South Armagh on 30 January 2006, not at midnight on 28 January as agreed. The error in the text of the letter as issued was highly regrettable. However, the union has now corrected it, at some cost. It has also remedied the error in the magazine, at what must have been a much more considerable cost, including the cost of first class postage to 15,000 or 16,000 members. The fact that the magazine was published later than had been expected did not in my judgement breach the agreement. The transfer of Mr Egan's membership on Monday 30 January 2006 instead of at midnight on Saturday 28 January was not a material departure from the agreement. Mr Egan was able to put himself forward for election at the AGM of South Down/South Armagh, which was the purpose of this provision of the agreement. I therefore consider that the agreement has been carried out and that it is not appropriate for me to make an order in relation to the union's breach of rule 4(a)(iii) of its rules.

Resumed hearing, 1/2 March 2006

41. For the resumed hearing additional papers had been submitted which threw more light on the timing and method of the union's decision to remove Mr Egan from office. I had intended therefore that the hearing would proceed in the normal order (complainant first). However both parties told me that they had assumed that the union would go first and said they wished to proceed in that way. I acceded to their wishes.

The Union's case

42. In his evidence Mr Scott confirmed that he had noticed Mr Egan listed as an observer on behalf of Armagh/Craigavon in the attendance register for the Llandudno conference in April 2004. He had thought this must be an error, but had found to his surprise on checking his own and the central membership records that Mr Egan was indeed shown as a member of that local association. He raised a query on this informally with Mr Bladen and the next time he could recall hearing of it was when he received a telephone call from Mr Egan in September 2004, following Ms Keates' letter telling him he could not hold office in South Down/South Armagh. Mr Scott was unable to remember the details of that telephone conversation, but thought he told Mr Egan that the records did actually show him as a member of Armagh/Craigavon. Mr Scott said that subsequently Mr Egan had been asked at two public meetings, in November and

December 2004, by the other Northern Ireland National Executive member (Mr McDaid) to provide information about his second workplace and was assured that if this was done, the Northern Ireland members would sort out the matter with Headquarters. He said they would have done so even as late as December 2004, if Mr Egan had given them the evidence they asked him for, but he chose not to provide it.

43. In cross-examining Mr Scott, Mr Egan cast doubt on the conference attendance register. He had not in fact attended the Llandudno conference, yet he was shown on the register as having done so, and the union's skeleton argument claimed he had done so. (The union accepted that this was a mistake in the skeleton argument). He did not understand how his name would have been put on the register at all, and still less so as an observer for Armagh/Craigavon. Local secretaries nominated conference delegates and observers after discussion at local meetings and the Armagh/Craigavon secretary could not possibly have nominated him, because he knew him to be secretary in South Down/South Armagh. He said he could not remember whether he had received conference papers, but if he had he might have set them aside unopened, such was the volume of papers he received as a local secretary. He did not accept Mr Scott's evidence that the register and other conference documents were produced and circulated before the conference, and that the register was therefore a list of those nominated to attend, not of those who actually did attend. He said he recalled on previous occasions getting papers both before and after conference. He suggested that in fact the register was not contemporaneous, but had been created by the union subsequently to fit in with the story it was now putting forward. He said that the union had supplied no documentary evidence as to how his membership had come to be an item on the National Officers' agenda on 18 May 2004, but pointed out that in the minutes of the meeting it appeared under a heading "Northern Ireland dispute over pay parity", and suggested that his membership had been raised then because he had been publicly very critical of the union on that issue. Mr Scott said that he at least had never discussed Mr Egan's views on pay parity with any member of National Officers or of the National Executive. Mr Egan suggested that it was significant that Mr Scott chose to raise the "query" about his membership (which in his view was actually a formal complaint) with Mr Bladen, who had chaired Mr Arbuckle's disciplinary hearing and could be expected to be resentful towards him (Mr Egan). It would have been normal to raise it with the General Secretary. Mr Scott repeated that he had raised it in the way he had because it was not a formal complaint. Mr Egan said further that the letter sent to him by Ms Keates on 15 September 2004 was not what the National Officers had instructed her to send. She had been instructed to give him advice about the problem over his membership, but instead had informed him he was in breach of rule and removed him from office. There was no written evidence that this change had been endorsed by the National Officers or the National Executive. He said that, moreover, no written evidence, such as National Executive minutes, had been provided to show that the National Executive had endorsed the National Officers' decision of 18 May, and argued that it had never done so, since it would not concern itself with the matter of an individual's membership.
44. In his evidence Mr Bartlett said that he was present when the National Officers

took their decision about Mr Egan on 18 May 2004. He was then the Acting Deputy General Secretary and was at the meeting in his role of servicing the committee. The National Officers believed that Mr Egan could only be a member of Armagh/Craigavon association, because his employment was there, and that he could only hold office where he was a member. They did not contemplate that any disciplinary offence had been committed by him, no disciplinary complaint had been made, and no one ever suggested that rule 26 procedures were appropriate. The Officers had thought themselves to be dealing with a straightforward administrative issue. Neither Mr Egan's representation of Mr Arbuckle in 2002/03 nor his (at that time) forthcoming appearance as a witness for Mr Arbuckle before the Certification Officer was mentioned at the meeting. Mr Bartlett confirmed that documents for annual conferences, including the attendance register, were sent out to participants before the event.

45. Mr Bartlett denied that Ms Keates' letter of 15 September 2004 was different in substance from the resolution of 18 May, though it was more explicit about the consequences of that resolution. He explained that the reason for delay in issuing that letter was that he had advised Ms Keates to hold off sending it until the hearing of Mr Arbuckle's case before the Certification Officer was completed, for fear that it might be interpreted by Mr Egan as an attempt to intimidate him in his role as a witness. That was why it was issued just after the (first) closing date for summations in that case. He denied Mr Egan's suggestion that his advice showed that the Arbuckle case was a factor in the decision itself: it only concerned the timing of its implementation. Mr Egan's subsequent correspondence with Ms Keates had caused further delay in implementing the resolution. Ms Keates had invited Mr Egan to provide information about his employing authority so as to give him every chance to specify the location of his other employment, but he had chosen not to do so, and in fact the union had not seen documents relating to his OU employment until these had been acquired from him by the Certification Office, late in 2005. Even then, there was no proof of where Mr Egan's workplace for his OU post actually was, as the documents simply showed that he was a lecturer "in Northern Ireland"; and Mr Egan's description of himself as "based in Warrenpoint" was vague.
46. Questioned by Mr Egan, Mr Bartlett said that the union had had a long-standing interpretation of rule 4(a)(iii) under which it was the union that decided which association a member who had workplaces in more than one area should be allocated to, and in practice such members were placed in the association in whose area their principal workplace was. The union now accepted that this was wrong and that was why it had conceded at the December hearing that it had breached the rule. In response to Mr Egan's incredulity that such a clearly expressed rule could be misinterpreted in this way, Mr Bartlett said that it was a long established view which went back beyond his time, and he and others had not questioned it; but they had held it in good faith. Mr Egan pointed out that in 2002 Mr Gandy had interpreted the rule correctly and therefore the union's view could not be described as long established after all. Mr Bartlett replied that Mr Gandy had had no authority to depart from the standard interpretation of the rule and had not consulted any higher authority in the union before or after he did so. Mr Gandy had since retired and moved abroad, and the union had not been able

to contact him for clarification after Mr Egan's complaints in 2004. Mr Bartlett further stated that the union had been unable to find the 2002 correspondence between Mr Gandy and Mr Egan when the latter referred Ms Keates to it in 2004. It had been turned up by accident late in 2005 in un-indexed archives. Up to that point, he would have been certain that it was not in the union's records.

47. Mr Egan said that on 25 September 2004, at a meeting of the NIEC which was attended by the two NI members of the National Executive and paid officials, including, he believed, Mr Bartlett, copies of an "information sheet" had been handed out by colleagues of his (he himself had been excluded from the meeting). This had conveyed the sense of Mr Gandy's letters and had quoted his own reply verbatim. He claimed therefore that the union was effectively in possession of the correspondence from that time. Mr Bartlett could not confirm that he had been given this sheet. (Mr O'Hara later stated on his behalf that he had not).
48. Mr Egan questioned Mr Bartlett about a letter of 3 December 2004 from Ms Keates to Mr Arbuckle. Mr Arbuckle had written to the union's membership department explaining that his work (for UNICEF) now took him to schools throughout Northern Ireland and since he no longer had one workplace, he elected under rule 4(a)(iii) to be a member of the South Down/South Armagh association. Ms Keates replied accepting this and advising Mr Arbuckle that the Secretary of his new association was Mr Egan. (Mr Egan pointed out that union records therefore showed him holding that post at that time). Mr Bartlett said this was a standard letter, used when members reported a change in their circumstances. It was sent out by a clerk in the membership department, and although it had Ms Keates' name at the bottom, it would never have been seen by her. He himself had seen this letter only a considerable time afterwards and had realised at once that it should not have been sent - he did not believe Mr Arbuckle was entitled on the facts given to be a member of any association in Northern Ireland he chose. However, he had decided not to take any action on it, because he did not want to waste union time and resources on it. He denied Mr Egan's assertion that this showed that allocation to a particular association did not matter to the union and that the insistence on it in Mr Egan's case should be seen in that light.
49. Continuing, Mr Egan questioned Mr Bartlett on correspondence he had had with Mr Morgan in 2003. Mr Bartlett, he said, had raised issues about possible misuse of union funds in Mr Morgan's travel arrangements for Mr Arbuckle's disciplinary hearing and about his use of "facility time" for this union business while on sick leave from his employment. He had also written to Mr Morgan threatening disciplinary proceedings for sending a union document to persons not entitled to receive it, including Mr Arbuckle. Mr Egan argued that these actions were taken because Mr Morgan had been a witness for Mr Arbuckle and were of a piece with actions the union had taken against himself and anyone else who supported Mr Arbuckle. Mr Bartlett denied this. He had been concerned about Mr Morgan's conduct for just the reasons he had given in his letters, and not because of any connection with Mr Arbuckle. He had not threatened Mr Morgan with disciplinary action in the second letter mentioned. He had said he would consider referring the matter to the National Officers and, if he

had referred it, it would have been up to them to decide what steps, if any, to take. Mr Bartlett said that, like Mr Egan, Mr Morgan had chosen not to provide information that would have helped him to understand the points he was concerned about. In the end, he had not taken things further.

50. Mr Egan questioned Mr Bartlett about the meeting in the Canal Court Hotel in February 2005. The point of the meeting was to explain to the members why Mr Egan had been removed from office and at it Mr Bartlett had said that he had received two complaints about Mr Egan. Mr Egan believed that it was because of these complaints that he had been removed. But he had never seen the complaints and the rule 26 procedure, which should have governed the handling of them, had not been applied. He said that the National President Ms Lerew, who was at the meeting, had asked him, with surprise, if he had not seen the complaints, which, in his view, meant that she had seen them. Mr Bartlett said that he had been referring to the fact that two members had complained orally to him about Mr Egan. They had, however, declined to put the complaints in writing (as is required under rule 26(2)(a)) and they had therefore not been pursued. He had mentioned them at the meeting (at which he said he and the National Executive members were repeatedly shouted down by Mr Egan and his supporters and which was so bad that in the end they had to abandon it) only because it was being continually asserted that Mr Egan was an exemplary secretary and all members were entirely happy with him, and he wanted to point out that this was not universally the case. These oral complaints were about alleged harassment by Mr Egan and about his handling of casework. They had had gone no further and had nothing whatever to do with Mr Egan's removal. He had not heard Ms Lerew asking Mr Egan if he had not seen the complaints.
51. Mr Egan asked Mr Bartlett why such a small matter as the proper association for an individual member like himself should come before the National Officers, if it was merely an administrative issue and there was a recruitment department to deal with such things. Mr Bartlett replied that the recruitment department had no involvement in the administration of membership. This function, which was mostly routine, was delegated by the General Secretary to the staff of the membership department. Mr Egan's case had not been routine: he was (in the Officers' understanding at the time) holding office in one association while being a member of another. Mr Bartlett said that this was abnormal; he could not recall another such situation having arisen.
52. Mr Egan referred Mr Bartlett to papers provided by the union, which concerned a member who had attended the Llandudno conference without apparently being nominated by her local association, and had made a claim for expenses. That matter, Mr Egan said, had been properly dealt with – enquiries by the National Officers, reference to the National Executive, instruction to investigate the expenses. In his case, on the other hand, the union had simply removed him from office, without any such process. Mr Bartlett said that in the former case it had appeared that a disciplinary offence concerning use of union funds might have been committed and the potential for disciplinary proceedings therefore arose naturally (though in the event they were not invoked). In Mr Egan's case, no question of a disciplinary offence or of disciplinary proceedings ever arose.

53. Finally Mr Egan referred Mr Bartlett to a statement that Mr Bartlett had made during the internal disciplinary hearings on Mr Arbuckle, to the effect that he had, on a personal basis, taken offence at comments Mr Egan had made about him and would hold this against him. Mr Egan suggested that his removal from office was connected with the animosity Mr Bartlett had built up towards him because of those comments. Mr Bartlett said that Mr Egan's unfounded allegations that he had told lies and was a corrupt official had made him very angry, and he had said so openly and honestly, but he had never let them affect his professional dealings with him. At the end of his lengthy cross-examination Mr Bartlett, responding to a question from Mr Egan about his attitude to him, made a personal comment which Mr Egan considered extremely offensive and which he said showed the bitter resentment Mr Bartlett felt towards him, which was a factor in the way the union had treated him.
54. In the course of the day the union had been seeking membership records from headquarters to confirm the information given in evidence by Mr Scott. These were introduced on the conclusion of Mr Bartlett's evidence. Mr Bartlett provided some explication of them, but they proved difficult to interpret on the spot, and considerable, and somewhat confused, discussion ensued. Further union records were introduced on the following day by Mr Scott and also, in some bulk, by Mr Egan, leading to further discussion. I return to these records later, in my conclusions on this complaint.
55. The union chose not to call Ms Rogers as a witness, but agreed to her being questioned by Mr Egan. Ms Rogers was the person who brought the complaint which had led to the disciplinary proceedings against Mr Arbuckle in 2002. In her evidence, Ms Rogers said that "decision" was almost too strong a word for what the National Officers had done in regard to Mr Egan's membership at the meeting of 18 May 2004. Once it was realised that he was a member of Armagh/Craigavon association, it followed automatically that he could not hold office in South Down/South Armagh. It had seemed at the time a simple administrative act. She denied that there had been a different approach in Mr Egan's case than in other membership or office holder cases included in the bundles; most of these were also treated as administrative matters. In response to further questions from Mr Egan, Ms Rogers confirmed that the National Executive had ratified the National Officers' resolution of 18 May 2004 on his membership. She explained that the minutes of each National Officers meeting were placed on the agenda of the next National Executive meeting: recommendations contained in them were voted on individually by the National Executive, resolutions and other matters were ratified by a vote accepting the minutes as a whole, unless a member asked for an individual vote on any of them. The June 2004 National Executive meeting ratified the 18 May National Officers' minutes, including the resolution on Mr Egan.
56. Ms Rogers confirmed that she was aware of the delay in writing to Mr Egan and the reason for it. She also confirmed that Ms Keates subsequently informed the National Officers that Mr Egan was raising issues about the resolution and claiming that he was entitled to be a member of South Down /South Armagh association. She could not recall whether the Officers had actually been given copies of the correspondence, but they were made aware of the nature of it by

Ms Keates. Their understanding was that Ms Keates was seeking information about where in South Down/South Armagh Mr Egan's employment was and that he was unwilling to provide this - they could not understand why. She therefore denied Mr Egan's assertions that it was not the National Officers, but Ms Keates, who had taken the decision to remove him and that the National Officers had not been kept in the picture. She further confirmed that the decision had been reviewed by the National Officers before the issue of the letter of 18 November 2004 declaring the post of Secretary in South Down/South Armagh vacant. They considered that no information had been provided that would alter the original decision and agreed that the letter should be sent. They knew that Mr Egan had made reference to correspondence with Mr Gandy, but the union could not trace this. She said that in any case it would not, as it turned out, have answered the question of who was Mr Egan's employer and what was his workplace in South Down/South Armagh. To Mr Egan's assertion that the action taken in his case was disciplinary and came under rule 26, Ms Rogers replied that no-one at National Officers had seen this as a disciplinary matter; discipline had not come into the framework of the discussion.

Mr Egan's case

57. In presenting his case, Mr Egan referred again in detail to many of the documents he had mentioned, and repeated many of the arguments he had made, in examining the union's witnesses. He said that he had already supplied Ms Keates with the information she asked him for in her letter of 14 October 2004 and she had lost/misplaced it, according to a statement made by Mr McDaid (para 25 above). He said there was a pattern here - in Mr Arbuckle's case also the union had "misplaced" documents: whenever it was intent on disciplining someone, papers that might clarify the situation were "misplaced". He had anyway, on 25 September 2004, given union officials and officers his information sheet with his reply to Mr Gandy quoted verbatim. (He could not quote Mr Gandy's originating letter because at that time he had not been able to find it). He had made complaints to Ms Keates which were not actioned, and had asked for information which she did not supply. She had ignored the information he gave her and had not even responded when he asked what kind of evidence she wanted about his employment in South Down/South Armagh. He had tried to get a hearing at the NIEC and had written a letter which was handed to its members at a meeting, but he been ordered out of the meeting by the Acting President, on the instructions of Ms Keates. All this convinced him that whatever he did or whatever steps he took to try to resolve the situation, the union was determined to "get" him. The union had not supplied in evidence the written instruction that was given to the Northern Ireland National Executive members to declare a vacancy for Secretary of South Down/South Armagh; there was a "paper trail" in such matters when other members were concerned, but not in his case. He said this was suspicious, as was the fact that Ms Rogers could not remember whether or not National Officers had seen correspondence relating to him. He also pointed out that very soon after he had made his complaint about electoral misconduct to Mr de Gruchy in 2002, he had received Mr Gandy's letter about his membership of South Down/South Armagh. It seemed that anyone making complaints to or assertions about the union could

expect immediate retaliation.

58. Mr Egan referred to Mr Scott's report of the meeting of 16 December 2004, which he said was biased and designed to cast him and the local association in a bad light. He denied that he had in effect called Mr Scott a liar at that meeting, as the report alleged. He referred again to the meeting of 16 February 2005, which had been called for the purpose of explaining the actions the union had taken in respect of the local association and Mr Egan himself. At that meeting, with that agenda, Mr Bartlett had mentioned that there were two complaints against him, and he (Mr Egan) and other members present (he referred to letters from two of these) had understood him to be saying that these complaints, from unidentified persons, were the reason for his removal from office. He agreed, however, that Mr Bartlett had not said this in terms. He said that this was the second time Mr Bartlett had used this strategy of alleged complaints; he had claimed during the Arbuckle disciplinary hearings that paid officials in Northern Ireland had complained to him of harassment by elected officers, but he gave no details because they had not made their complaints official. The fact was, Mr Egan said, that the union was dissatisfied with the way those hearings had gone and proceeded to take disciplinary actions against anyone who had been involved on Mr Arbuckle's behalf. It had also changed its practice as a result - disciplinary hearings were no longer recorded on tape. He believed the union officers blamed him for the fact that they had been forced to change these procedures.
59. Mr Egan referred to other cases of action taken by the union over problems with local association office holders, on which the union had provided some documents. Contrary to the union's contentions, he said, these papers showed that it had not behaved in the same way to him as to others. Others were asked to explain "apparent anomalies" and lengthy periods elapsed before action, if any, was taken, whereas he was immediately told that he was in breach and would be replaced. Many of the union's queries about other office holders were raised only after he complained about his removal from office, and he believed they were no more than a smokescreen. The papers also showed that the workplace criterion did not matter to the union. The Secretary of Armagh/Craigavon, who, having retired on health grounds, did not have a workplace, had responded to a query from the union on his entitlement to hold office by referring it to correspondence between himself and Mr Gandy on the matter. As in his (Mr Egan's) case, the union failed to trace that correspondence, but unlike in his case it nevertheless confirmed that the Armagh/Craigavon Secretary could continue in office. He said that there were many members who had no workplace (e.g. unemployed and student members) but were nevertheless assigned to an association. He referred to records which showed that a large number of members were registered by the union as employed at a place which was actually the home address of a former paid official in Northern Ireland. Workplace was not important to the union, he said; the idea that it was had been concocted by it to suit its case.
60. Finally Mr Egan referred to an e-mail sent by Mr McDaid to Ms Keates and Mr Bartlett in November 2004, in which he mentions that Mr Morgan had been nominated for the vacant post of Secretary of South Down/South Armagh and

that Mr Egan might be elected Secretary in Armagh/Craigavon, and continues: *"Not a pleasant thought - two for the price of one"*. Mr Egan said he thought this a damning comment and consistent with the attitude to him taken by NEC members and the top officials of the union. It showed the malice they had towards him and their intention to remove him from office come what may.

61. Cross questioning, Mr O'Hara asked Mr Egan whether he asserted that Ms Rogers' evidence of the previous day, that discipline had not come into the framework in the National Officers' meeting of 18 May 2004, should be disbelieved and disregarded. After considerable equivocation, Mr Egan said he did not. To a similar question about Mr Bartlett's evidence concerning his advice to Ms Keates not to write to him until the Certification Officer's hearing on Mr Arbuckle was completed, Mr Egan said he was unable to answer. He agreed that in his reply to Ms Keates' letter of 23 September 2004, he had not provided evidence of his employing authority or copies of his correspondence with Mr Gandy, as requested. He repeated, however, a statement he had made during Mr Bartlett's evidence, namely that he had not understood what "employing authority" meant: it was a term not used in Northern Ireland. As regards the correspondence, he had not sent copies because he did not at that time have Mr Gandy's initiating letter, but he did supply the dates and had already given his information sheet of 25 September to union officials and officers in Northern Ireland. Mr O'Hara said he had not mentioned his difficulty in understanding "employing authority" at the time and if there really had been a difficulty one would expect that he would have asked for clarification in his reply. He also pointed out that Mr Egan made no reference in that reply to having given his 25 September "information sheet" to union officials and officers, though one would expect that he would have told Ms Keates to expect to receive it from them. Mr O'Hara added that not having Mr Gandy's originating letter did not prevent Mr Egan sending Ms Keates the remainder of the correspondence, which he did have. Mr Egan accepted that, in hindsight, he should have asked about the meaning of "employing authority" and should have sent copies of the correspondence. Mr O'Hara's put it to him that, in fact, he had deliberately withheld information from Ms Keates. Mr Egan denied this: he was, he said, "keeping his cards close to his chest", because from the moment he received Ms Keates' letter of 15 September, he believed he was being "stitched up" by the union.
62. Mr O'Hara said that Mr Egan's case was that there was a conspiracy to remove him unlawfully from office. He reminded him of his earlier assertion that it was Ms Keates, and not the National Officers, who had taken the decision. Did he therefore say that it was a conspiracy on the part of Ms Keates? Or was it Ms Keates and others, and if the latter, which others? Mr Egan said that Ms Keates was the figurehead, he did not know who else was involved, but he assumed the National Officers and probably Mr Bartlett were, because Ms Keates would not take such action on her own, without making sure she had the support and tacit understanding of others.
63. In his evidence, Mr Morgan said Mr Egan had always been quite open that his membership of South Down/South Armagh association was based on his OU appointment: everyone locally knew this. He confirmed that Mr Bartlett had

mentioned complaints against Mr Egan at the 16 February 2005 meeting and that he and many others there had understood that these complaints were the reason for Mr Egan's removal from office. He said that after appearing as a witness for Mr Arbuckle he had received two letters from Mr Bartlett, as mentioned in para 49 above: he and others had assumed that these were preliminaries to the initiation of rule 26 proceedings against him. Neither of these letters was justified by the facts of the case. He said that the members of the Northern Ireland Executive Council had intervened on his behalf over the threat to refer him to the National Officers. He had also had a rule 26 complaint made against him for allegedly drafting a letter to a local newspaper on the issues between the union and the South Down/South Armagh association. This was brought by Mr Bladen, the chairman of the Arbuckle hearing, who was then the ex-President. He believed all these actions were taken by the union because he had supported Mr Arbuckle. In cross examination by Mr O'Hara, Mr Morgan agreed that neither of Mr Bartlett's letters had resulted in any disciplinary action, and that the complaint against him by Mr Bladen had been dismissed by the disciplinary committee.

64. On being directed by Mr Egan to extracts from minutes of several meetings of the National Officers, Mr Morgan noted that complaints made to the Certification Officer by NASUWT members (including himself and Mr Arbuckle) were listed under the heading "Internal Union Discipline". He agreed with Mr Egan's suggestion that this showed that the union regarded the making of such complaints as a disciplinary offence. Mr Egan confirmed that he himself believed that the union held this view, and acted on it. Mr O'Hara denied that the union held any such view; what we had here was merely the clumsy insertion of items under an inappropriate heading in the minutes. Finally, Mr Morgan said that he knew from experience as a membership secretary that there were "abominable" problems with the union's membership records - double entries, the same person with different membership numbers, members being moved into and out of local associations, sometimes in the course of a single week, and so on. That being so, the union should have consulted Mr Egan before removing him, and not just relied on records it knew to be flawed.
65. In his evidence, Mr Arbuckle reasserted a number of points already made by Mr Egan and recorded above. He also said that, to his knowledge, out of some 15 or 16 thousand NASUWT members in Northern Ireland, only two had ever faced internal disciplinary proceedings - himself and Mr Morgan.

Conclusion on the second complaint

66. Mr Egan's complaint is that when the union officers decided on 18 May 2004 that he could not hold office in South Down /South Armagh, and re-affirmed that decision on or about 15 September 2004, they did so in order to discipline him for assertions he made at Mr Arbuckle's internal hearings and the hearing before the Certification Officer for Northern Ireland; and that they did so without following the disciplinary procedures laid down in the union's rules. I have to decide whether or not the evidence supports this claim. As can be seen above, many matters of fact and many arguments and assertions claimed to have a

bearing on it were adduced. I examine these under various headings below.

The information the National officers had: the union's records

67. It is clear that there is, or was, a degree of disarray in the union's records. For example, in December 2004, when it had been maintaining for months, and still was maintaining, that Mr Egan was a member of Armagh/Craigavon association, it informed that Mr Arbuckle that Mr Egan was the Secretary of South Down/South Armagh. Mr Egan provided a number of union records listing him as the holder of that office. It would appear that there is, or was, some disjunction or lack of communication between the union's central membership records and its records of local office holders. Mr Morgan stated in evidence, and there were printouts to show, that in the Northern Ireland records at least, there were inconsistencies and contradictions as to the details of individual members. These and other failures of record keeping (such as the loss of, or failure to trace, correspondence) suggest a level of inefficiency in its systems that the union would be advised to address with some urgency, and I recommend that it does so. Despite these problems, however, I find on careful examination that the printouts of the central membership records provided by the union at the hearing, and those supplied by Mr Scott to the hearing, are generally coherent within themselves and with each other. I accept their authenticity, despite arguments by Mr Egan seeking to cast doubt on them. They show that in April 1999 the local association of which Mr Egan was a member was changed from South Down/South Armagh to Armagh/Craigavon. This would be consistent with union HQ learning that he had changed his employment from the school in Newry to the school in Lurgan. The records then show that later in April, his association was changed back to South Down/South Armagh. This would be consistent with Mr Carville having told HQ in the meantime that Mr Egan wished to remain in South Down/South Armagh. In the record at this point Mr Egan's employment is shown as being at "R. Egan School". This was a fiction apparently created by a clerk in the membership department in order to override the computer program's automatic matching of schools with the local association whose area they are in (i.e. the program would not allow employment at a school in Lurgan to co-exist in the same record with membership of South Down/South Armagh association). Then in November 1999, Mr Egan's local association was changed back again to Armagh/Craigavon and his school back to the one in Lurgan. There was no explanation of why that change was made (Mr Egan clearly did not request it), though Ms Rogers speculated that someone in the membership department could have noticed the fictitious school and "corrected" the entry. No further movement was shown in the record until it was changed back again to South Down/South Armagh in January 2006, following the union's concession in December 2005. This is consistent with the position noted by Mr Gandy in his initial letter of February 2002. It seems clear that Mr Gandy did not follow up his correspondence with Mr Egan by arranging for the membership records to be amended to reflect the situation he had just accepted. If he had done so (as good practice would surely demand), or if the "apparent anomaly" had been more thoroughly addressed at that time, much future trouble would have been saved. (I may add here that it is not clear to me whether union officers and

senior officials were aware of the practice of creating a fictitious school to overcome an apparent inflexibility in the membership computer program. But if they were not, I recommend to them, now that they have seen the dangers associated with it, that they consider whether the program can be modified to enable it to deal with unusual situations, or if that is not possible or viable, that they at least produce a protocol or set of rules to acknowledge the problem and guide the staff of the membership department).

68. I conclude that Mr Scott's account of what he found in his own and in the central membership records is true, and that he mentioned the matter to Mr Bladen, who raised it at the National Officers' meeting on 18 May 2004. I am unable on the evidence given to say whether Mr Bladen or the other National Officers carried out their own check with the membership department before making the resolution of 18 May 2004, or whether they simply accepted Mr Scott's report. But I believe that if they did check, as one would certainly expect them to do, they will have found Armagh/Craigavon given as Mr Egan's local association.
69. How Mr Egan's local association came to be changed back to Armagh/Craigavon in November 1999 is unexplained. The fact that it was changed is important, for it is the source of all the subsequent trouble. Mr Egan held that there was something sinister in this change. However, I was given no evidence that there were any difficulties between Mr Egan and the union in 1999, or any reason to believe that someone would, or could, have made the change with sinister intent at that time. It only emerged as a potential problem more than two years later.
70. I accept Mr Scott's evidence that he was led to check the membership records because of Mr Egan's appearance on the attendance register for the Llandudno conference as an observer for Armagh/Craigavon, when he knew him to be Secretary of South Down/South Armagh. In the printouts provided to me there are two separate records which show Mr Egan as a conference observer for that association, confirming the attendance register. I therefore reject Mr Egan's allegation that the register is not a contemporaneous document but one created fraudulently by the union after the event to support its case.
71. I was offered no satisfactory explanation as to how Mr Egan came to be listed as an observer for the Llandudno conference. I accept his statement that he did not attend (though the register does not in my view purport to be a list of actual attendees; lists of those signed up to attend are usually supplied in conference packs, in my experience). I accept also his contention that the Secretary of Armagh/Craigavon association would not have nominated him. He said that as Secretary of South Down/South Armagh he did not send forward papers nominating himself as an observer for that association; so it could not be that a clerk in HQ, checking the details of nominees, might have consulted the membership records and "corrected" his local association. (It is clear that such checks are carried out in the run-up to annual conferences: Mr Gandy's enquiry to Mr Egan in February 2002 was made in the context of the forthcoming annual conference). I find it implausible that some freakish accident in the compiling of the register is responsible for Mr Egan's name appearing spontaneously on it. I conclude that he was in fact nominated somehow, but on the evidence provided,

I am unable to say more on this point.

72. In light of these considerations, I conclude that the information the National Officers had in May 2004 and September 2004 was that Mr Egan was a member of the Armagh/Craigavon local association and that the question about the discrepancy between his membership and the office he held was legitimately raised by Mr Scott.

The information Mr Egan supplied to Ms Keates.

73. Following Ms Keates' letter of 15 September 2004, Mr Egan wrote to her on six occasions before the 16 December meeting at which he was replaced as Secretary of South Down/South Armagh association: 18 September, 2 October, 11 October, 22 October, 14 November, and 28 November. In the first of these he referred Ms Keates to previous correspondence on the matter of his membership, which he assumed was on the union's files. In the second, written after Ms Keates had replied asking him for evidence of his "employing authority" in South Down/ South Armagh or, alternatively, copies of the previous correspondence he had mentioned, Mr Egan gave the name of Mr Gandy as his previous correspondent and the dates of the three letters exchanged between them. The third letter (11 October) made no reference to his employment. The fourth letter (in response to one from Ms Keates asking again for information about his employing authority or copies of the previous correspondence he had mentioned, or the name of his correspondent and the approximate dates of the correspondence, which she said she would then attempt to trace) provided the same information as the second, a copy of which was enclosed with it. The fifth letter made no reference to his employment. The sixth asserted that the union had information within its files acknowledging that he had two workplaces. It also said that the contents of two letters written in 2002 about his status (meaning his letter of 20 February 2002 and Mr Gandy's reply) had been given to Mr Scott and Mr McDaid and to NIEC members on 25 September 2004.

74. Thus the information that Mr Egan supplied to Ms Keates up to the start of December 2004 was:

- (i) that Mr Gandy had accepted his right to be a member of South Down/South Armagh association in 2002;
- (ii) that the grounds for this acceptance were that he then had two workplaces (one of which, by inference, was in the area covered by South Down/South Armagh association); and
- (iii) that he still had his workplace in that area.

Mr Egan repeated at the hearing that his information sheet (which gave verbatim the text of his letter of 20 February 2003 to Mr Gandy) had been given to the Northern Ireland National Executive members and to NIEC members on 25 September 2004. He construed this as being equivalent to giving it to "the union", a proposition which is not self-evident. Mr Scott did not confirm that he had received the information sheet. An e-mail of 21 February 2005 from Mr McDaid (see para 76 below) suggests that Mr McDaid was not aware of its contents. It is common ground that Mr Egan did not send it to Ms Keates. He did not mention to her until 28 November that it had been handed out on 25

September, though he had written to her four times in between. Mr Egan argued that in any event the union had the correspondence all along, as was shown by the fact that a letter sent by Ms Keates to my office on 17 January 2005 contained an exact quote from his letter of 20 February 2002 to Mr Gandy. Obviously, however, that is not at all a necessary conclusion, and Mr Bartlett specifically stated that the correspondence was not found by the union until late 2005. It seems probable that Ms Keates was quoting from the letter of 20 February 2002 as reproduced in the information sheet, which she may well have made efforts to acquire after Mr Egan's letter of 28 November 2004 alerted her to its existence.

75. Mr Egan said more than once at the hearing that he had provided "a plethora of information" in trying to resolve the problem over his membership. On the facts set out above, I cannot agree. Mr Egan claimed that he did not reply to the question about his "employing authority" in South Down/South Armagh because this phrase made no sense to him. I find that disingenuous. The meaning is not especially mysterious and Mr Egan could easily have asked Ms Keates for an explanation of it. He said at the hearing that, with hindsight, he ought to have done so. He did not send Ms Keates copies of the correspondence as requested. He said in evidence that this was because at the time he had only two of the three letters, but he also accepted that he ought to have sent what he did have. It seems clear that in the interest of solving the problem he should have sent the letters, even if he felt that the union ought to have them on its files and ought to be able to turn them up itself. He might reasonably have reflected also that a situation in which a person with full-time employment in one area was claiming membership in another had an inherently high risk of being misunderstood, and acted accordingly, since he knew the full facts and others might not. My conclusion is that Mr Egan's behaviour was not that of someone trying straightforwardly to resolve the problem. He said in evidence that he was "keeping his cards close to his chest" because he was convinced from the outset that the union was intent on "stitching him up". I take this to mean that Mr Egan deliberately withheld the information he was asked to supply. By doing so, he took a long step towards making his fear of removal from office a self-fulfilling prophecy.
76. Mr Morgan gave evidence that it was well known locally what Mr Egan's other employment was. Even if true, this could not directly help Ms Keates. But Mr Scott gave evidence that he did not know what Mr Egan's other employment was and that Mr McDaid asked Mr Egan twice in public meetings what it was and did not get an answer. Mr McDaid's e-mail mentioned above confirms this and shows that Mr McDaid only learned for the first time at the Canal Court Hotel meeting on 16 February 2005 that "his [Mr Egan's] secondary employment is as 'an associate lecturer with the Open University working out of Warrenpoint'." (Mr McDaid then concluded, mistakenly it appears, that NASUWT did not organise in universities and that Mr Egan was therefore not entitled to membership on the basis of his OU post; but this has no importance for the point under discussion here).

Allocation of NASUWT members to local associations.

77. Like Mr Egan, I find it difficult to understand how the union's interpretation of rule 4(a)(iii), as explained by Mr Bartlett (para 46 above), came about. In the circumstances it describes, the rule clearly gives the member the option to choose the association "which he/she believes he/she can serve most effectively". Yet the union's view was that *it* would tell the member which association he/she was allocated to, and this would be the one where the member's principal employment was located (which seems to require the further assumption that one of the employments would always be identifiable as the principal one). It is of course not at all unknown for beliefs or conventions to exist for long periods unexamined within organisations and to influence their actions by force of inertia. But it seems strange that this one would not have been reconsidered when Mr Egan began to make his complaints. There is also the fact that Mr Gandy accepted Mr Egan's right to membership of South Down/South Armagh in 2002. Mr Bartlett's account seems to imply that Mr Gandy did not know the standard interpretation, or else that he chose not to apply it for some reason that is unclear.
78. I find the point about the standard interpretation odd in another way. The union referred in general terms to a flawed interpretation in the letter in which it conceded its error and then at the hearing Mr Bartlett offered the more detailed account of it given above. But it is not clear to me why the union introduced it at all. I was given no evidence that it came into play when the National Officers made their resolution of 18 May 2004. The standard interpretation as outlined by Mr Bartlett has to do with cases where the union accepts that a member has two workplaces in different local association areas. But, as I understand it, the National Officers did not believe in May 2004, or indeed arguably right up until December 2005, that Mr Egan had two workplaces. The evidence given by Ms Rogers and Mr Bartlett was that it was believed that he had one employment only, in Lurgan. The resolution itself says that Mr Egan is to be told that he cannot be a member and secretary in South Down/South Armagh because he is not employed there. Ms Keates' letter of 15 September is based on the same premise, and her subsequent correspondence asks several times for evidence to the contrary. The standard interpretation as described is in fact irrelevant to the decision taken by the National Officers in May and confirmed in September 2004, and I do not accept Mr Bartlett's evidence regarding it. Ms Rogers said in her evidence that the National Officers had done in Mr Egan's case "the same as they had done for ages" - namely accepted the computer record as to his workplace and its matching of the workplace with the local association to which he must therefore belong. That seems to me to be a true description of the National Officers' deliberations at the relevant meetings.
79. Mr Egan advanced the argument that allocating members to the association in whose area they work is not important to the union. The implication is that when the union applied this principle strictly to him, it was acting unusually and was using this merely as a cover for its desire to punish him. Mr Egan referred to South Down/South Armagh membership records which he supplied and which showed that, for example, some members were allocated to that association even though they apparently did not work in the area (an official's home address

was entered as their "school"), some had "unknown South Down/South Armagh" entered as their school, some "supply South Down /South Armagh", some were shown as "home tutors." He concluded that having members in the right association does not matter to the union, and that a member can be in any association he chooses, as Mr Arbuckle's allocation to South Down/South Armagh showed. I find these examples and this argument unconvincing. The bulk of the members whose school is shown as "unknown South Down/South Armagh" are also shown as "newly qualified"; it is possible therefore that they did not have a regular employment at the time the record was entered and were allocated to South Down/South Armagh association because they lived in its area. They are a special case, as indeed are supply teachers and home tutors. It is not reasonable to go from such cases to the conclusion that the union does not consider it important that members generally should be allocated to the right association. Proper allocation lies at the base of the union's organisation and for the union to be unconcerned about it would be for it to invite chaos. Moreover, I take it that an important function of each local association is to negotiate with the employers in its own area and to represent its members' interests to those employers. This clearly presupposes that its members are employed in its area, since if they are employed in a different area, it cannot represent them. Conversely, members not employed in their association's area would have a say, and if they were officers, possibly a decisive one, in dealings with employers by which they were not personally affected, which is a form of power without responsibility. I do not accept that the union would knowingly countenance such possibilities, and I find Mr Egan's argument untenable.

80. Mr Egan claimed that the union's treatment of the Secretary of Armagh/Craigavon association was relevant here. He made two points about it: that it too showed that allocation by workplace did not matter to the union, because the Secretary, being retired, had no workplace, and that it showed that he (Mr Egan) was treated differently by the union, because in very similar circumstances he had been removed from office while the Armagh/Craigavon Secretary had not. However, the union has a rule (4(b)(iii)) about the allocation of retired members to local associations and this was applied in this case. As to the second point, the Armagh/Craigavon Secretary responded to the union's query about his workplace by providing the pertinent information that he was a retired member, which clarified the situation and enabled the union to reach a decision in accordance with the rule. Mr Egan, on the other hand, failed to provide information to clarify his situation. Accordingly I do not accept these points made by Mr Egan.

The nature of the National Officers' decision of 18 May 2004.

81. Mr Egan made a number of statements about the National Officers' decision in May 2004. The reasons he gave for it were: the union was angry over his actions and assertions on behalf of Mr Arbuckle and wished to punish him for these; it had formal complaints made by two South Down/South Armagh members; it had a formal complaint (not a "query") from Mr Scott about his membership; and it regarded complaints to the Certification Officer, such as the one by Mr Arbuckle in which he was involved, as a disciplinary offence. Mr Egan

did not clarify the relationship between these reasons, but clearly the first is to be taken as the union's motive for its action and the others perhaps as separate grounds for the action, even if not put forward as such by the union. As to the nature of the decision, the reasons for his belief that it was disciplinary were that formal complaints were matters coming under the disciplinary rule (rule 26), that the union held the view about complaints to the Certification Officer just mentioned, and that the action taken against him (removal from office) was an action mentioned only in rule 26. Rule 26 procedures had not been applied, however, and he had been disciplined without being heard, and outside the rules.

82. Mr Bartlett and Ms Rogers, both of whom were present at the 18 May meeting, stated that the decision was administrative in nature. They said that, on the facts as the National Officers understood them on that date, Mr Egan was not a member of the South Down/South Armagh association and therefore was not eligible to hold office in it. The National Officers instructed the General Secretary to inform him of this. It was as simple as that. No extraneous factors were considered and the question of discipline never came into it. Under cross-examination, Mr Egan declined to say that Ms Rogers' evidence on this last point was false. The minute of the 18 May meeting is couched in terms of eligibility, not discipline.
83. I do not accept Mr Egan's claim that Mr Bartlett's advice about delaying the issue of Ms Keates' letter shows that the Arbuckle case was a factor in the decision: first, because Mr Bartlett said he gave his advice to Ms Keates, who was conveying the decision, not to the National Officers, who made it; and second, because the reason Mr Bartlett gave in evidence for his advice (the hope of avoiding misinterpretation) seems to me a credible and common sense one. Mr Egan also sought to support his contention as to the union's motive by showing that others who had given evidence for Mr Arbuckle (Mr Morgan and Mr A McCay) had been disciplined or victimised for doing so, and inviting the inference that his own case was a further instance of the same behaviour by the union. As indicated earlier, Mr Morgan received two letters from Mr Bartlett taking issue on stated grounds with aspects of his conduct; one of these held out the possibility of a reference to the National Officers. However, no further action was taken on either matter. Mr Morgan was also the subject of a rule 26 disciplinary enquiry but the case against him was dismissed on the grounds that he had written the letter complained of on the instructions of the Executive Committee of South Down/South Armagh and could not be held responsible individually. Mr Egan offered no evidence convincing to me that these actions concerning Mr Morgan were due to his association with Mr Arbuckle and not to the reasons set down at the time. The matter involving Mr McCay was that, as President of the NIEC, he invited Mr Arbuckle to its annual dinner in March 2004, shortly after the latter had been found to have acted against the interests of the union and been debarred from holding office. Ms Keates wrote to Mr McCay about this, saying that in the circumstances the invitation would be seen as supporting Mr Arbuckle against the union, and that his presence would embarrass officers, also invited, who had been involved in the case. She asked him to withdraw the invitation, and instructed him that in any event union funds were not to be used to pay for the cost of the dinner, accommodation etc for Mr

Arbuckle. Whatever one may think of Ms Keates's letter, she did openly explain her reasons for writing it (and expressed regret that she had to write in such terms), and these reasons were not obscure or negligible or frivolous. I see no ground for simply setting them aside as a cover for another alleged "real" reason, such as that asserted but not demonstrated by Mr Egan.

84. As regards Mr Egan's assertion that formal complaints about him were the reason for the National Officers' decision of 18 May 2004, I was in my judgement given no good grounds to accept it. The scenario that Mr Egan presents appears to be: the union wanted to punish him because of the Arbuckle case; a suitable instrument with which to do this in accordance with rule turned up - formal complaints against Mr Egan by members of his association; the union ignored this opportunity, but then proceeded to remove Mr Egan from office on the ground of these complaints, without either acknowledging or addressing them. I find this hypothesis lacking in credibility. Further, I was given no evidence to show (i) that these alleged complaints were ever registered and processed as would have been required under the rules, or (ii) that their makers had protested about the failure of the union to follow them up, as one would expect them to have done. I conclude that no formal complaints against Mr Egan existed, and that if complaints were made orally, as Mr Bartlett claimed, their makers did not pursue them. As to Mr Scott's intervention, even if what he said to Mr Bladen is allowed to be a "complaint", and not, as he put it, a "query", it could not in my judgement be a *disciplinary* complaint, since being in the wrong association is not a disciplinary offence under rule 26 (1). As regards Mr Egan's claim that it is a disciplinary offence for a member of NASUWT to exercise a right (conferred by statute) to take a complaint to the Certification Officer, I consider the evidence he adduces (the heading under which some such complaints appear in the National Officers' minutes) to be quite inadequate to support it. Further, the absurdity of such a stance from the union's perspective is apparent when one reflects that by disciplining a member on this ground the union would expose itself to another complaint of discipline outside the rules (and/or unjustified discipline), leading to further discipline and a further complaint, and so on, in a potentially endless series. To my knowledge, neither Mr Arbuckle nor Mr Morgan, both of whom brought complaints to the Certification Officer, has subsequently been disciplined by the union on any such ground.
85. Mr Egan said that his removal from office was a disciplinary sanction, since the only place removal from office is mentioned is in the disciplinary section of the union's rulebook. In fact, however, it is not mentioned by the rules. Rule 26(3)(d) lists the penalties available to the Disciplinary Committee: (i) reprimand, (ii) fine, (iii) suspension from membership of the union for up to one year, (iv) expulsion from the union and (v) temporary or permanent debarment from holding office in the union. (i) to (iv) are not relevant. As to (v), Mr Egan was not debarred from holding office in the union. Indeed he stood for office in the Armagh/Craigavon association in early 2005 (and I understand was elected). There were no protests from the union that this was not allowed, though it was aware in advance (Mr McDaid's email of November 2004 to Ms Keates and Mr Bartlett, para 60 above) that Mr Egan might become Secretary of the Armagh/Craigavon association. This supports the evidence of Mr Bartlett and Ms Rogers that the

National Officers and the officials of the union did not conceive of themselves as applying a disciplinary penalty laid down in rule 26, but instead as addressing a situation that was in breach of the membership conditions of rule 4. I have already rejected Mr Egan's other arguments for considering the union's action to be disciplinary (i.e. that it acted on formal complaints and that it views taking a case to the Certification officer as a disciplinary offence).

86. I therefore do not accept Mr Egan's claim that the National Officer's decision was a disciplinary one. Mr Egan's further claim that the rule 26 disciplinary procedures were not applied by the union falls as a consequence.

Mr Egan's allegation of a conspiracy

87. Mr Egan said in evidence that Ms Keates was the figurehead in a conspiracy to punish him for the things he had said about the union and its leadership during the Arbuckle proceedings. He assumed that the National Officers were involved, and probably Mr Bartlett. (I found this "probably" somewhat odd, since Mr Egan also seemed to say that Mr Bartlett's personal hatred of him was a major reason for the action taken against him). He apparently assumed, additionally, that Mr Scott was involved since he implied that Mr Scott deliberately chose to raise the issue of his membership with Mr Bladen rather than through more normal channels because he knew Mr Bladen, as chairman of the original Arbuckle hearing, would be hostile to him. I note here that, according to Mr Egan, the "more normal channels" would have been the General Secretary or the Deputy General Secretary, i.e. Ms Keates and Mr Bartlett, which seems to deprive this argument of a good deal of its force, since, on Mr Egan's own showing, these would have been equally if not more hostile to him than Mr Bladen. I have already said that I do not accept Mr Egan's further claim that this conspiracy extended to action against all those who had supported Mr Arbuckle.
88. Mr Egan did not offer evidence as to any specific personal reason that Ms Keates or Mr Scott or three of the five National Officers might have had for wanting to punish him. He said that Mr Bartlett had the reasons already mentioned, and implied that Ms Rogers and Mr Bladen (the remaining two National Officers) had reasons arising from their personal involvement in Mr Arbuckle's disciplinary proceedings and their dissatisfaction with the way those had gone. How those who had no personal grudge against Mr Egan were persuaded to join in the conspiracy by those who allegedly had was not explained. It is possible, perhaps probable, that some officers and officials felt an abiding anger towards Mr Egan for the reasons he gave, but that is not the same thing as saying that they gave expression to their anger by taking unlawful action against him. In my judgement, Mr Egan failed to show that they took that step.
89. Mr Egan said in evidence that, from the moment he received Ms Keates' letter of 15 September 2004, he believed he was being "stitched up". It seems that he made up his mind immediately at that point that the real reason for the letter was the intent of officers and/or officials of the union to punish him for his recent activities on behalf of Mr Arbuckle. This seems to me to show a predisposition

on Mr Egan's part to believe in a conspiracy. A belief may be held on the basis of a predisposition and yet be true, but in this case I do not consider that Mr Egan has shown with any acceptable degree of probability that there was an illegal conspiracy to remove him from office. I think it is not irrelevant to recall here that Mr Egan complained of an alleged conspiracy to cover up electoral misconduct in 2002, considered Mr Gandy's query about his membership as an underhand attempt by the union at retribution for that complaint, and complained of a conspiracy to prevent Mr Arbuckle having a fair and impartial hearing.

90. Mr Egan suggested that various gaps in the paper trail of documents provided by the union showed that it was not prepared to release records of its actions (or perhaps to record them at all) because it knew they were unlawful and it needed to cover them up. He said that there was no agenda showing that his membership was properly scheduled for discussion at the 18 May meeting of the National Officers, no National Executive minutes endorsing the resolution to write to him, no National Officers or National Executive minutes endorsing the letter of 15 September 2004 which was different from the resolution of 18 May. I do not think that the first two of these points add much to Mr Egan's case. Even if it is true that Mr Egan's membership arose as an "unplanned" item in the National Officers' meeting, I would not consider it especially significant. Unplanned items do come up at meetings, and this is not an infallible sign of something sinister. The nature of the item in question and the information considered in relation to it seems to me more important. I have already examined these. As regards endorsement of the National Officers' resolution, Ms Rogers affirmed in evidence that this had been received, and she explained the relevant mechanism.
91. However, I do consider the third issue (whether Ms Keates' letter of 15 September 2004 differed from the National Officers' resolution of 15 May 2004) to be an important one. Ms Rogers and Mr Bartlett said in evidence that the letter was the same in substance as the resolution, but Ms Rogers could not recall whether the National Officers had seen the text of the letter before issue. I am prepared to accept that the National Officers' instruction to Ms Keates to "advise" Mr Egan that he could not hold office meant that he was to be "told" or "informed of" this, not that he was to be "given advice" about it. I accept also that the instruction meant that he would inevitably be removed from office, if the facts were duly confirmed. But on grounds of the union's previous practice (as Mr Egan pointed out, the formula of "seeking clarification of an apparent anomaly" was regularly used in other such cases), as well as on grounds of good practice generally, I cannot accept that the National Officers intended that Mr Egan should be told abruptly and without, on the face of it, an opportunity to offer any explanation, that he was out of office forthwith. I say "on the face of it" because, in fact, Mr Egan was, belatedly, given such an opportunity and had he reacted differently the situation could have been saved. But I believe that the tone and manner of Ms Keates' letter goes some way to explain why Mr Egan reacted as he did. He believed in good faith, and rightly as it turned out, that he was legitimately a member and the Secretary of South Down/South Armagh association. He had been Secretary for some eight years. He should have received more considerate treatment and I believe Ms Keates went further and faster than she should have done in following through the National Officers'

resolution. I should add that I think Ms Keates was also too quick to decide to stop communicating with Mr Egan, despite the exasperation that the tone and manner that he adopted clearly caused her. A little more patience and some softening of approach might, possibly, have increased the chances of a resolution at that time. In these respects, as in others mentioned elsewhere in this decision, the union's performance left a good deal to be desired.

92. For the reasons set out in detail above I find that the union or its officers or officials did not discipline Mr Egan outside the rules, and accordingly I refuse to make the declaration sought in Mr Egan's second complaint.

R Gamble
Certification Officer for Northern Ireland