

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

MR M LEWIS

v

PRISON OFFICERS' ASSOCIATION

**Note: This decision is the subject of a challenge by Mr. Lewis in the Northern Ireland Court of Appeal and therefore cannot be relied upon.
This information will be updated when appropriate.**

Date of decision:

15 December 2005

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'):

1. I dismiss the applicant's complaint that the union breached rule 24.2 of its rules as the disciplinary committee which suspended him, on 13 January 2005, did not consist of 7 members.
2. I dismiss the applicant's complaint that the union breached rule 24.3 of its rules as the disciplinary committee which suspended him did not act on a report from the union's NEC or on a report from the union's General Secretary or on a branch recommendation. I also dismiss the application that the union failed to inform him of the nature of any alleged complaint(s) against him contrary to the tenets of natural justice.
3. I dismiss the applicant's complaint that the union breached rule 26.2 of its rules as the disciplinary committee which suspended him did not give him written notice by registered or recorded delivery to his last known home address (or work address if the home address is not known).
4. I declare that the union breached rule 26.4 of its rules as the disciplinary committee, having received the applicant's appeal against suspension under rule 26.4, did not give him written notice by registered or recorded delivery to his last known home address (or work address if the home address is not known). I do not consider it appropriate to make an order in relation to this declaration, as the union assured me that it would now review its procedures for mail to Northern Ireland members.

REASONS

1. By an application dated 15 February 2005, the applicant, Mr Markus Lewis, complained of four alleged breaches of rules by his union, the Prison Officers' Association. The complaints, as clarified and confirmed in correspondence, were as follows:
 - (i) That the union breached rule 24.2 of its rules as the disciplinary committee which suspended Mr Lewis, on 13 January 2005, did not consist of 7 members;
 - (ii) That the union breached rule 24.3 of its rules as the disciplinary committee which suspended him did not act on a report from the union's NEC or on a report from the union's General Secretary or on a branch recommendation (it is also a part of Mr Lewis's application that the union failed to inform him of the nature of any alleged complaint(s) against him contrary to the tenets of natural justice);
 - (iii) That the union breached rule 26.2 of its rules as the disciplinary committee which suspended him did not give him written notice by registered or recorded delivery to his last known home address (or work address if the home address is not known); and
 - (iv) That the union breached rule 26.4 of its rules as the disciplinary committee, having received his appeal against suspension under rule 26.4, did not give him written notice by registered or recorded delivery to his last known home address (or work address if the home address is not known).

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 Friday 18 November 2005. The union was represented by Mr B Caton, General Secretary and Mr G Travis, Assistant General Secretary, and Mr Waterworth, a POA member was also present. Mr B Dickson (POA member) represented Mr Lewis. Mr Lewis gave evidence on his own behalf. Mr J Duffy and Mr T Bell, (POA members), gave evidence for Mr Lewis. Also in attendance for Mr Lewis were Mr G Brown and Mr T Moody (POA members). A bundle of documents containing relevant correspondence, minutes of meetings, and other papers, was prepared for the hearing by my office. The rules of the union (2004 edition) were also in evidence. Both parties submitted skeleton arguments.**

Findings of Fact

3. From the written and oral evidence provided to me I make the following findings of fact:

4. When the events leading to this application occurred, Mr Lewis was Chairman of the POA Branch at HMP Maghaberry, and had been so for some eight years. Within the outer perimeter of Maghaberry there are a number of "houses", one of which is Mourne House, a walled prison containing mainly, but not only, female prisoners. In 2002, following the suicide of a male paramilitary inmate,

there had been press coverage claiming serious deficiencies in the running of Mourne House and alleging that staff there were involved in various unacceptable kinds of relationship with prisoners and with paramilitary organisations on the outside.

5. In 2004, the BBC Northern Ireland current affairs programme "Spotlight" became interested in the earlier allegations about Mourne House. In or around May 2004 a journalist on Spotlight carried out a number of interviews for the programme. Among those interviewed were Mr R Davidson and Mr D Waterworth, Chairman and Secretary respectively of what was at that time the separate Mourne House Branch of the POA (it was disbanded in June 2004); Mr F Spratt, POA Area Chairman in Northern Ireland; and Mr Lewis. Mr Lewis had often in the past acted as a media spokesman for the POA.
6. The Spotlight programme was broadcast on 12 October 2004. In it Mr Lewis referred to a report into alleged acts of corruption at Mourne House, which he said had been compiled in 2002 by an officer in the prison and passed to the prison Governor. He said that the report contained evidence of improper relations between staff and female prisoners and of drug trafficking. About a dozen staff in all were involved. He said that the evidence was good enough to support a police investigation, but no action had been taken on it.
7. At a meeting of the Maghaberry Branch on 18 October, which Area officials also attended, Mr Lewis read a prepared statement, in which he said he wanted "to put the record straight" about comments made on the programme. He said that the way Spotlight had been edited had made it appear that he was the author of the report on Mourne House (referred to as "the whistleblower"), but that was not the case. He added that a small group of staff at Mourne House had dragged not only the other staff there, but the whole Prison Service into the gutter and he hoped there would be a police investigation. Mr Davidson, who in his Spotlight interview had expressed doubts whether a report on Mourne House existed, challenged Mr Lewis to substantiate his allegations and name the officers responsible. Mr Lewis said he would not say more for fear of compromising an investigation. There are different accounts of the tone and feeling of this meeting, but it appears that Mr Davidson and some others walked out soon after this exchange.
8. Two weeks after the Spotlight broadcast, the Northern Ireland Prison Service suspended Mr Lewis from work under its disciplinary code, on the grounds that he had given the interview without seeking necessary permissions.
9. On 29 October Mr Davidson and Mr Waterworth wrote to Mr Caton complaining about what Mr Lewis had said on Spotlight. They said his statements were totally unsubstantiated, that he had withheld information from members at the 18 October meeting, and that he had cast a slur on the professional integrity of the Committee and members of the Mourne House Branch. They asked that he be investigated by the POA Disciplinary Committee at the earliest possible opportunity.
10. On 1 November, Mr G Quinn, a POA member and, as became clear, the author of the report Mr Lewis had referred to on Spotlight, wrote to Mr Spratt to

complain formally that in the programme Mr Lewis had, without Mr Quinn's permission, made public confidential information given to him as a POA representative and that this had damaged a case he (Mr Quinn) was taking against the Prison Service. Mr Spratt forwarded this letter to Mr Caton on 11 November. In a covering letter of his own he stated that he had received many complaints about Mr Lewis's statements from POA members, as well as two from POA Branch Committees, and he added that he too believed Mr Lewis should be referred to the Disciplinary Committee, for appearing on television on POA matters without the authority of the Area Committee.

11. Mr Caton wrote to Mr Lewis, at HMP Maghaberry, on 29 November saying that he had received complaints about his comments on Spotlight, and naming the complainants. He offered Mr Lewis mediation, as he did also to the complainants. All of the latter rejected mediation; no reply was received from Mr Lewis.
12. Mr Caton then referred the complaints to the Disciplinary Committee, by means of a letter dated 15 December 2004 to the Acting Chairman. He indicated that it was a complaint of breach of rules, identified the complainants and their positions in the POA, enclosed their letters, and advised the Committee that mediation had been offered and refused. He asked the Committee to investigate the facts by interviewing all the parties and considering documentary evidence, and to do so in accordance with the Rules and Constitution. The copy list for this letter comprised the members of the Disciplinary Committee, the complainants and Mr Lewis. Mr Caton gave instructions for Mr Lewis's copy, with the letters of complaint enclosed, to be sent to POA HQ in Northern Ireland for forwarding to Mr Lewis's home address, it having been brought to his attention that Mr Lewis was ill and not at work. POA HQ NI sent Mr Lewis's copy to his home address by recorded delivery on 4 January 2005.
13. The Disciplinary Committee met on 13 January 2005 and considered this matter among others. They decided that Mr Lewis should be suspended temporarily from office and on the same day Mr P Maltby, the Secretary of the Committee, wrote to Mr Lewis to inform him of this. He said that the Committee would investigate the facts in due course, but had decided after viewing the Spotlight video that it would be prudent to suspend him with immediate effect. He advised Mr Lewis of his right to appeal against his suspension, by writing to the General Secretary within 14 days. This letter also was sent to POA HQ NI for forwarding to Mr Lewis's home address.
14. Mr Lewis replied to Mr Maltby on 21 January. He requested immediate relief from the suspension on the grounds that he had not been told that there was a complaint against him before the Disciplinary Committee, or that the Committee was to meet to consider it, or what the precise nature of his alleged misconduct was; and that he had not had any opportunity to offer an explanation of it. He went on to ask for several pieces of information which he considered necessary to enable him to prepare for a full hearing. He said he required an explanation as to why the Committee had not complied with Rule 26.2, which required them to send notification of suspension to a member's home address or, if that was not known, to his work address. Delay caused by this non-compliance had reduced his time for appeal from 14 days to seven.

15. In a reply dated 31 January, Mr Maltby told Mr Lewis of Mr Caton's letter of 15 December 2004, which he said had been sent by recorded delivery but had not been able to be delivered and had subsequently not been collected by Mr Lewis from the Post Office. (He had found this out by checking with POA HQ NI on 25 January). He advised him to write to Mr Caton if he needed another copy. He said that the Committee had not investigated the case, and referred Mr Lewis to Rules 26.1 and 26.2. As to information for the full hearing, he said that Mr Lewis would be provided with all evidence when the hearing commenced. On the addressing of the letter, he said he had consulted the General Secretary and been advised that it was normal practice for letters to Northern Ireland members to be sent via POA HQ there. He took Mr Lewis's letter as notice of appeal and gave the date that had been fixed for the appeal hearing.

16. Mr Lewis and his solicitor wrote to Mr Maltby on 2 and 4 February respectively. The first of these crossed in the post with Mr Maltby's of 31 January. Mr Maltby replied to the solicitor's letter on 14 February, essentially repeating points made earlier to Mr Lewis. On 15 February Mr Lewis wrote again to Mr Maltby, seeking expenses for attending the appeal hearing and requesting that the disciplinary committee come to Northern Ireland for it, as he was not well enough to travel. On the same day he made application to the Certification Office. The Disciplinary Committee refused to travel to Northern Ireland for the appeal hearing, but offered to postpone it until the next meeting of the Committee. The hearing was later postponed anyway, because of severe weather and in the end never took place. The POA subsequently carried out a full disciplinary hearing, in Northern Ireland, on Mr Lewis's case.

THE RELEVANT STATUTORY PROVISIONS

17. Right to apply to Certification Officer

90A. –

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in paragraph (2) may apply to the Certification Officer for a declaration to that effect, subject to paragraphs (3) to (7).

(2) The matters are –

(a) the appointment or election of a person to, or the removal of a person from, any office;

(b) disciplinary proceedings by the union (including expulsion);

(c)

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

Declarations and orders

90B. –

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

(a) *to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*

(b) *to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

(4) *The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (3)(a) specify the period within which the union is to comply with the requirement.*

THE UNION RULES

18. Relevant extracts from the Union Rules (as revised at Annual Conference 2004).

RULE 13 MEETINGS

Quorum

Rule 13.1 *The quorum will consist of:*

- (a) *in the case of a Branch meeting, twice the number of members of the Branch Committee plus one; and*
- (b) *in the case of Conference and all other meetings, a majority of those eligible to attend the meeting.*

RULE 24 DISCIPLINE

Breaches of Discipline

Rule 24.1 *Subject to any statutory restrictions in force at the time, any member may be disciplined who:*

- (a) *acts against the interests of the Association's membership locally or nationally;*
- (b) *behaves in a manner which can be construed as unacceptable – by word, act or omission;*
- (c) *tampers with, falsifies or otherwise wilfully misuses any books or documents or records of the Association or any Branch;*
- (d) *obtains possession of and wrongfully refuses to give up anything belonging to the Association or any Branch;*
- (e) *falsifies, withholds or tampers with any forms, papers or returns used in any vote, election or ballot of the Association or any Branch;*

- (f) *impersonates any other member in connection with the conduct of any vote, election or ballot of the Association or any Branch;*
- (g) *does anything which is likely to invalidate any vote, election or ballot of the Association or any Branch;*
- (h) *obtains membership of the Association or any Branch by misrepresentation or by failing to volunteer any material fact;*
- (i) *becomes 2 months or more in arrears with the payment of any membership subscription which is due;*
- (j) *disobeys any properly made and communicated directive or sanction of the member's Branch, the National Executive Committee or the Disciplinary Committee; or*
- (k) *breaks any lawful Rule of the Association or the member's Branch.*
- (l) *Acts contrary to any policy adopted by Conference from time to time and which conference has determined shall be annexed to the Rules.*

Disciplinary Committee

Rule 24.2 *The Association will have a Disciplinary Committee consisting of 7 full members of the Association selected or re-selected every three years:*

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

Rule 24.3 *The Disciplinary Committee may act on:*

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

Rule 24.4 *The Disciplinary Committee has power to direct a Branch to cease any disciplinary investigation (whatever stage has been reached) and to proceed itself under Rule 26.*

Report by General Secretary

Rule 24.5 *If the General Secretary (or, in the General Secretary's absence, his or her Deputy) becomes aware of an alleged breach of Rule 24.1 he/she will seek through the Association's Mediation Policy a satisfactory resolution of any complaint. Where this proves to be unachievable or where all parties do not agree, then he/she will report it in writing to the Disciplinary Committee.*

General

Rule 24.6 *Neither the Association nor its officials are responsible for any expenses incurred by a member in proceedings under Rules 23 to 27.*

Rule 24.7 *Where practicable, a member must exhaust all stages of the procedure for appealing against a disciplinary sanction before applying to any court, tribunal, outside agency or outside official for redress.*

RULE 26 TEMPORARY SUSPENSION BY DISCIPLINARY COMMITTEE

Powers

Rule 26.1

If the Disciplinary Committee:

- (a) is investigating whether a member (including a member of a Branch Committee or the National Executive Committee) is subject to action under Rule 24.1; and*
- (b) believes that it is prudent for the protection of the Association or any Branch;*

the Disciplinary Committee has power to:

- (c) suspend the member from local or national office (or both) until the final decision on the investigation and any proposed sanction; or until the outcome of any appeal; and*
- (d) amend or cancel the suspension at any time.*

Rule 26.2

The Disciplinary Committee must give written notice of the imposition, amendment or cancellation of any suspension:

- (a) to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known); and*
- (b) to the member's Branch and to the General Secretary.*

Appeal

Rule 26.3

If the Disciplinary Committee:

- (a) imposes a suspension; or*
 - (b) amends a suspension in a way which extends its scope;*
- the member who has been suspended may appeal to the Disciplinary Committee by sending written notice to the General Secretary within 14 days of receiving the notice of the decision (or such longer period as the Disciplinary Committee determines on proof of special circumstances) asking them to amend or cancel the suspension.*

Rule 26.4

If a member appeals under Rule 26.3 the Disciplinary Committee must give at least 10 days written notice to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known) stating:

- (a) the time, date and place of the meeting at which the Disciplinary Committee will hear the appeal;*
- (b) the member's right to be present at the meeting and to make a personal statement (either personally or through a friend who is a member of the Association).*

Rule 26.5

At the end of the appeal hearing the Disciplinary Committee will confirm, amend or cancel the suspension.

RULE 27 SANCTIONS BY DISCIPLINARY COMMITTEE

Powers

Rules 27.1 *If a member (including a member of a Branch Committee or the National Executive Committee) is subject to action under Rule 24.1 the Disciplinary Committee has power to do one or more of the following:*

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

Proceedings

Rule 27.2 *Before taking any final decision under Rule 27.1 the Disciplinary Committee must appoint a sub-committee comprising at least:*

- (a) 5 members of the Disciplinary Committee in the case of a National Executive Committee member; or*
- (b) 3 members of the Disciplinary Committee in any other case; which will:*
 - (c) consider the complaint in accordance with all Rules;*
 - (d) visit the members branch;*
 - (e) investigate the allegations;*
 - (f) report in writing to the Disciplinary Committee;*
 - (g) provide copies of its report to the member, the complainant, the member's branch and the General Secretary by written communication.*

Rule 27.3 *The Disciplinary Committee will give at least 21 days written notice to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known), stating:*

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

- Rule 27.4** *The Disciplinary Committee will:*
- (a) *consider the sub-committee's report as soon as reasonably practicable; and*
 - (b) *determine the imposition of the appropriate sanction(s).*
- Rule 27.5** *The Disciplinary Committee must give written notice of the outcome of the inquiry and of any sanction imposed:*
- (a) *to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known);*
 - (b) *to the member's Branch;*
 - (c) *to the General Secretary;*
 - (d) *to the National Chairman;*
 - (e) *to the complainant.*

Summary of Submissions

For the Applicant

19. In his presentation, Mr Dickson went in considerable detail into the background to Mr Lewis's complaints. From some of what he said he sought to draw conclusions that cast doubt on the good faith of certain POA officials in their dealings with Mr Lewis, with regard both to these complaints and to other matters, and to suggest that they had deliberately aimed to cause damage to him. These claims (which were strenuously denied by the union) are not of relevance to the specific complaints that Mr Lewis lodged with my Office and are not further addressed in this decision. Other issues that were dwelt upon at some length but are not relevant to the complaints, e.g. whether Mr Lewis was an acknowledged spokesman for the POA, whether he needed clearance from the Area Committee to appear on Spotlight, are likewise not considered further.
20. On the question of the number of members of the Disciplinary Committee, Mr Dickson said Rule 24.2 was clear – the Committee consisted of seven full members of the Association. There had not been seven members present at the meeting on 13 January 2005 when the Committee had suspended Mr Lewis, but only three, or possibly four. The rule had therefore been breached. Rule 13.1 defined what a quorum for meetings was, but made no mention of the Disciplinary Committee. That Committee was so important that it would have been specifically mentioned if the drafters had intended it to be subject to the quorum rule. It was carefully balanced to ensure fairness in the serious matter of administering discipline, and all seven of its members needed to be present for decisions. The POA had recently decided to add two reserve members to the Committee, which was clearly intended to make sure that seven members would always be available.
21. Mr Dickson also pointed out that in correspondence with the Certification Office in April 2005; Mr Caton had implied that it was a sub-committee of the Disciplinary Committee that had taken the decision to suspend Mr Lewis: he

had not mentioned a quorum at that stage, but only later. Mr Dickson argued in addition that this reference to a sub-committee showed that what Mr Lewis had suffered was not a prudential temporary suspension but a full disciplinary suspension, since under the rules the latter was the business of sub-committees and the former was not. This suspension had been imposed before Mr Lewis knew of the complaints against him, and that was contrary to natural justice.

22. On the question whether the Disciplinary Committee had acted on a report from the General Secretary in considering Mr Lewis's case, Mr Dickson said that the letter sent to the Acting Chairman on 15 December did not constitute a report. The General Secretary had simply received the complaints with one hand and passed them on with the other. His treatment of them was casual to the point of being cavalier. He had made no attempt to sift them, to consider whether they were irrelevant or spurious, or to take a view on whether they were such as to be capable of triggering the disciplinary procedure at all. He had, however, filtered out complaints on other occasions, Mr Dickson claimed, citing a complaint made by Mr G Quinn in 2002, on which no action had been taken. It was accepted that a report did not need to be a lengthy document, but it did need to contain some facts, and consideration of them. The Rules intended the General Secretary to involve himself in the serious matter of references to the Disciplinary Committee, to be something more than a post-box. His letter of 15 December was not a report in the sense intended by the Rules.
23. The third and fourth complaints both concerned the means by which correspondence was transmitted to Mr Lewis by the Disciplinary Committee. Mr Dickson said that Mr Lewis had never received either Mr Caton's letter to him of 29 November 2004 offering mediation or his copy of the letter of 15 December referring the complaints to the Disciplinary Committee. He was therefore completely in the dark when he received the Committee's letter of 13 January 2005.
24. Mr Dickson said that Rules 26.2 and 26.4 both required notice (of suspension and of appeal hearing, respectively) to be sent by the Committee, by registered or recorded delivery post, to a member's home address, or if that was not known, to his work address. Mr Lewis's home address was known to the POA, yet the two notices had been sent to POA HQ NI, contrary to rule. As well as breaching the rules, this had disadvantaged Mr Lewis, since it delayed his receipt of the correspondence: the letter of 13 January 2005 had not been received by him until 20 January, cutting down his time for appeal. Moreover, by posting the notices to the Northern Ireland HQ, the POA had in effect sent them to one of the complainants - Mr Spratt, who was head of that office. This was unfair, and detrimental to Mr Lewis.
25. Mr Dickson said that the union would argue that it was standard practice, based on security considerations, not to send mail to Northern Ireland members at their home address, but he denied that this was the case. Mr Lewis had received mail from the POA at his home address, sometimes registered/recorded, sometimes not, sometimes in a plain envelope, sometimes in an envelope with POA markings on it. A letter forwarded to his

home by POA HQ NI had the HQ shown as the return address in case of non-delivery. This address would be recognisable to paramilitaries and would identify Mr Lewis as a prison officer. These facts gave the lie to the POA's security argument. Mr Duffy said in evidence that he too had had POA correspondence delivered to him by a variety of means and had in fact written to the Finance Officer requesting that mail sent to Northern Ireland members at home should always be in a plain envelope. This had been accepted by the National Executive Committee, but it had not been properly or consistently applied.

26. Mr Dickson concluded that the POA's argument on this issue did not stand up: they had breached the rules for no good reason, and even if there had been a good reason, the rules were still breached.

For the Union

27. Mr Caton said that the rules were decided by POA members in Conference. The union did not wish to be invoking disciplinary proceedings against its members, but if complaints were made they had to be responded to – they could not be ignored. He personally would like to see some change in the way disciplinary matters were handled, particularly to give more power to the General Secretary to exercise discretion on complaints. However, though the National Executive Committee had put proposals for such change to Conference on three occasions, Conference had made it clear each time that it was content with the rules as they stood.
28. The procedure therefore was that on receiving a complaint he had to offer mediation, with the aim of preventing unnecessary recourse to the disciplinary procedures. If the offer was not accepted by any of the parties, then mediation could not take place and he had to report the complaint to the Disciplinary Committee for investigation. The Disciplinary Committee could send the complaint back, or it could accept it: if the latter, it would set up a sub-committee which would consider all the evidence and make a report to the full Committee, which would decide on the action to be taken, if any. The Disciplinary Committee was independent and the General Secretary had no voice in its proceedings or decisions.
29. On the first alleged breach, Mr Caton said that Rule 13.1 applied to the Disciplinary Committee, which did have a quorum and had operated with fewer than seven members on many occasions. It was an independent committee and could decide for itself, within the quorum rules, when it had enough members to transact the business in hand. He agreed that his reference to a sub-committee in correspondence with the Certification Office was incorrect and had caused some confusion, but it was not because the concept of a quorum was inapplicable to the Disciplinary Committee that he had not mentioned it before. This mistaken reference to a sub-committee did not mean that Mr Lewis's suspension had been converted into a full disciplinary suspension: it had remained a precautionary one under Rule 26.1 pending investigation. Such suspensions were normally imposed if there was a financial issue or if it was felt that to leave someone in office might interfere

with the subsequent investigation, and he believed the latter was the reason in the present case.

30. As for the appointment of two reserves to the Committee, this was not for the purpose suggested by Mr Dickson, but was intended to reduce the chances of failure to achieve a quorum if a number of the original members were prevented from attending.
31. On the second alleged breach, Mr Caton said that his letter of 15 December 2004 to the Acting Chairman of the Disciplinary Committee was a report for the purposes of the Rules. The role of the General Secretary was not to sift and filter complaints, or express views on them, as Mr Lewis contended. As mentioned earlier, Conference had expressly rejected this suggestion. If mediation was rejected, or if it failed, the General Secretary had to refer complaints to the committee established to deal with them. He was then a conduit for complaints, not a filter. Mr Caton accepted that sometimes he received "complaints" which were more in the nature of expressions of annoyance about something that had happened than complaints properly so called, and these he would not refer to the Committee. However, he had never seen the complaint allegedly made by Mr Quinn in 2002.
32. Regarding the alleged breaches of rule in communicating with Mr Lewis, Mr Caton said that it was the general practice, since the 1980s, that mail to POA members in Northern Ireland was sent to their work address, rather than their home, because of the terrorist threat. This practice, which had been followed also when sending election material to Northern Ireland members, even though that caused the union some difficulties with regard to the legislation on elections, was based on the principle that the security of members in Northern Ireland was the paramount consideration. His letter of 29 November 2004 had been sent to Mr Lewis at Maghaberry, but he had subsequently learned that Mr Lewis was not at work and so had instructed that the letter of 15 December should be sent to his home address *via* POA HQ NI. POA HQ in London would not necessarily have an up-to-date list of addresses for NI members.
33. Mr Caton said he could not say why his letter of 29 November had apparently not arrived at Maghaberry, but he pointed out that the letter of 15 December had reached Mr Lewis's address by recorded delivery. No one had been there to receive it and Mr Lewis had not collected it afterwards. He had later been advised to ask for another copy, but had not done so. Mr Maltby's letters of 13 January and 31 January, which were the subject of Mr Lewis's third and fourth complaints, had been sent by the same route, and had been delivered. The important thing was that Mr Lewis had received these letters and had been informed through them of his suspension and of the date for hearing his appeal against it. These letters had been sent by the route they had for a good reason and in adherence to an established principle, namely that the security of Northern Ireland members must not be compromised.
34. Mr Caton recognised that the evidence provided by Mr Lewis and Mr Duffy did show that the POA had not always followed its own procedures on mail carefully enough and so had not properly protected NI members' security. He apologised for this and said that he would now address the task of ensuring

that better procedures were installed and that they were observed consistently.

Conclusions

35. **Complaint 1:** There is nothing in the rules to suggest that Rule 13.1 does not apply to the Disciplinary Committee. That rule defines the quorum for meetings and distinguishes between Branch meetings on the one hand and all other meetings, including Conference, on the other. It makes no exceptions. I do not accept the argument that, because of its importance, the drafters of the rulebook would have mentioned the Disciplinary Committee specifically in Rule 13 if they had intended it to be subject to that rule in the same way as every other meeting. That is mere speculation and requires the reader to disregard the plain words of the rule. The union provided documentation after the hearing which showed that the Disciplinary Committee had acted on previous occasions with fewer than seven members present, and that four members (ie a majority of those entitled to attend, and a quorum under Rule 13.1) had been present at the meeting on 13 January 2005.
36. The argument that the decision to appoint two reserves can only mean that the POA recognised that all seven members must always be present I find unconvincing: it is not the only possible interpretation, and Mr Caton gave a good alternative. On general grounds, also, it is reasonable to expect that the Disciplinary Committee would have a quorum. The quorum is a virtually universal device, for the clear practical reason that the business of any Committee or meeting would soon be paralysed if every member had to be present on every occasion.
37. I therefore reject Mr Lewis's complaint that the POA breached Rule 24.2, as the Disciplinary Committee which suspended him on 13 January 2005 did not consist of seven members.
38. I address here also the argument that Mr Caton only spoke of a quorum of the Disciplinary Committee late in the day, having previously in correspondence (April 2005) referred to a sub-committee; and the further argument that this showed that Mr Lewis's precautionary suspension had been converted into a full disciplinary one, and so involved a breach of natural justice, since he had not then been heard. The reference to a sub-committee was incorrect and misleading, and it caused some considerable degree of confusion. However, Mr Caton's mistaken reference in April 2005 does not change what was done by the Disciplinary Committee in January 2005: sitting with a quorum of four members, it made a decision to suspend Mr Lewis temporarily under Rule 26. That remained the nature of Mr Lewis's suspension until a hearing of the substantive issue was completed later in the year.
39. **Complaint 2:** Rule 24.3 lists three triggers on which the Disciplinary Committee may act. The relevant one in this instance is "a report from the Secretary General". Mr Dickson argued that Mr Caton's letter of 15 December to the Acting Chairman of the Committee could not be considered a report, for the reasons indicated in paragraph 22 above. His argument relies on a particular interpretation of the word "report" for which I find no warrant in the rules, and

which is certainly not the only meaning in common use. What Mr Caton provided to the Disciplinary Committee (which included also a video of the Spotlight programme) was in my view sufficient to enable them to take a view on whether they should accept the case or not, and if they accepted it, whether they should take any precautionary action or not. It therefore fulfilled the requirements of a report under the rules. I do not accept the view that the General Secretary is required to sift complaints or express a view on them in passing them to the Disciplinary Committee. The rules put no such duty on him and, indeed, it could reasonably be argued that any such action on his part would be an infringement of the function conferred by Conference on the Committee, or worse, that it would be tantamount to an attempt to influence, or even direct, the Committee.

40. I was given no conclusive evidence for the claim that Mr Caton had sifted out a complaint by Mr Quinn in 2002. In a document introduced by Mr Dickson at the hearing (a communication from Mr Quinn to Mr Lewis and Mr Duffy), Mr Quinn announced his intention to make a formal complaint to the General Secretary; but there was nothing to show that he had ever followed through on his intention.
41. I therefore reject Mr Lewis's complaint that the POA breached Rule 24.3 of its rules as the Disciplinary Committee which suspended him did not act on a report of the union's NEC or on a report from the General Secretary or on a branch recommendation.
42. It was also part of this complaint that the union failed to inform Mr Lewis of the nature of any complaints against him, contrary to natural justice. Mr Lewis appears not to have received Mr Caton's letter of 29 November 2004 offering mediation, and the copy of the letter of 15 December referring the matter to the Disciplinary Committee was returned unopened to the POA, because delivery had failed and it had then not been collected from the post office. Mr Lewis was, however, made aware by Mr Maltby's letter of 13 January that there were complaints against him and at the end of January Mr Maltby advised him of Mr Caton's letter of 15 December and invited him to ask POA HQ for another copy, which he did not do.
43. I am satisfied on the basis of the above that the union took reasonable steps to acquaint Mr Lewis with the complaints that had been made about him. In reaching that conclusion I have borne in mind that the proceedings that were underway in respect of Mr Lewis in January/February 2005 were preliminary proceedings involving a purely precautionary suspension – as opposed to full disciplinary proceedings in which all the facts behind the complaints would be aired – and that at that time therefore only limited information was available to the union. The union attempted to pass that information in its entirety to Mr Lewis and cannot be said to have acted contrary to natural justice. It was also argued that the union had breached the principles of natural justice because it had failed to tell Mr Lewis exactly which part of Rule 24.1 the complaints against him related to. Since Mr Lewis knew, or could have known, the actual substance of the complaints, the absence of this formal detail did not in my view materially affect the fairness of Mr Lewis's treatment.

44. **Complaints 3 and 4:** These complaints concern the notices to be given to a member who is subject to a temporary suspension under rule 26. Rule 26.2 says that “the Disciplinary Committee must give written notice of.....any suspension to the member by registered or recorded delivery post to the member’s last known home address (or work address if the home address is not known).” Rule 26.4 requires the Committee to give at least 10 days written notice to the member of the time, date and place of the appeal hearing, and specifies the same means and place of delivery as Rule 26.2.
45. In this case the notice under Rule 26.2 is Mr Maltby’s letter of 13 January 2005 to Mr Lewis and that under Rule 26.4 is Mr Maltby’s letter of 31 January to Mr Lewis. Both of these letters were sent by Mr Maltby to POA HQ NI, forwarded by that office at Mr Maltby’s request to Mr Lewis’s home address, and received there by Mr Lewis. In my view the Disciplinary Committee therefore gave Mr Lewis at his home address the notices that it was required to give him. I do not see that the fact that the notices were passed to Mr Lewis’s home address through POA HQ NI affects this conclusion. The rules require the Disciplinary Committee to get notice to a member by a particular kind of post. There is, however, no express stipulation that the notice must be served direct by the Disciplinary Committee as opposed to through a third party. It is clear to me that the intention of the rules is to ensure that a member is given notice, at his home address if possible, in a timely way, and by a means which will allow his receipt of the notice to be verified. In this instance I have heard evidence that for security reasons notice was sent to Mr Lewis at his home address through the agency of POA HQ NI. I do not consider that this conflicts with the provisions of rules 26.2 and 26.4.
46. It remains to determine whether Mr Maltby’s letters of 13 and 31 January 2005 were forwarded by registered or recorded delivery post. It was clear from the documentation that the first of these was sent by recorded delivery by POA HQ NI. The union did not provide me with evidence that registered or recorded delivery was used for the second letter and I conclude that it is probable that it was not.
47. I therefore reject Mr Lewis’s third complaint, that the union breached Rule 26.2 of its rules as the disciplinary committee which suspended him did not give him written notice by registered or recorded delivery mail to his home address. I uphold his fourth complaint and declare that the union breached Rule 26.4 of its rules as the Disciplinary Committee, having received his appeal against suspension, did not give him written notice by registered or recorded delivery mail to his home address. The breach consisted solely in the technical failure to use the postal method set down in the rules.
48. Mr Lewis is mistaken in claiming that his time for response to the notice of suspension was reduced by its being sent through POA HQ NI. The rules state that the time for response begins to run from the receipt of the notice by the member. The prescribed 14 days were therefore available to Mr Lewis. I do not accept Mr Lewis’s contention that there was unfairness and detriment to him in transmission of POA letters to him through POA HQ NI, because one of the complainants, Mr Spratt, was head of that office. To send letters to POA HQ NI is not the same as to send them to Mr Spratt; the head of an office does not see

every letter that is delivered to it. POA London would have expected these letters to be forwarded to Mr Lewis unopened and there was no evidence to suggest that this did not happen. Mr Lewis did not explain in what exactly the unfairness and detriment consisted, in his view.

49. It is worth noting that the requirement to send disciplinary notices by recorded delivery conflicts to some extent with the security principle. When using recorded delivery it is common to put a return address on the envelope, and this, even if no details other than the bare number and street were given, could potentially identify the recipient as a member of the POA. Clearly this creates a potential problem for the POA in both using recorded delivery to a home address, as laid down by the rules, and protecting NI members, as required by the security principle (and common sense). I was pleased to hear Mr Caton accept that the POA needed to review its procedures on the posting of mail to Northern Ireland members.

Observations

50. Although it is not necessary to do so for the purposes of determining Mr Lewis's four complaints, I will make some observations on two other points because his representative laid some emphasis on them at the hearing.
51. Mr Dickson argued that the disciplinary procedure had been invoked against Mr Lewis without proper cause. There was nothing in the complaints that was a proper ground under rule 24 for disciplinary action. If a rule was invoked groundlessly and without justification, that was itself a breach of the rule, for it was implicit that rules would be applied reasonably.
52. I would make two points about this. First, it is the business of the Disciplinary Committee to decide, on a preliminary consideration, whether it will accept a case or send it back. On this occasion it decided to accept the case, which means that it judged the complaints to fall properly under rule 24. I would not consider it my role to substitute my judgement for that of a constitutionally authorised committee in such a matter. Second, the place to argue that the complaints were invalid would, I believe, have been the appeal hearing on the suspension. The Disciplinary Committee would then have had to take a view and, if it had accepted the argument, would have had to cancel the suspension and stop any further action on the complaints. Not to raise the point at that time and then later to claim a breach of rule seems an unsatisfactory way of proceeding.
53. The second point made was that the disciplinary process lacked integrity from the start and was thus unsound. In support of this Mr Dickson said (among other, more minor points) that Mr Davidson and Mr Waterworth were not Chairman and Secretary of the Mourne House Branch as claimed by Mr Caton in his 15 December 2004 letter to the Disciplinary Committee; the Mourne House Branch had ceased to exist in June 2004. Further, Mr Spratt's letter covering Mr Quinn's complaint was not itself a complaint, but Mr Caton had named Mr Spratt as a complainant in his 15 December letter. In these ways Mr Caton had misled the Committee and sought to add weight to the complaints.

54. When Mr Davidson and Mr Waterworth signed their complaint as Chairman and Secretary of the Mourne House Branch, they no longer held those posts, and it was a lapse on Mr Caton's part to give them those designations when reporting the complaints to the Disciplinary Committee. (They had, however, held the posts at the time when Spotlight conducted its interviews and the events it reported occurred). As regards Mr Spratt's letter, it is open to debate whether it was a complaint; Mr Caton took the view that it was, and it can certainly be read in that way.
55. I do not believe that these matters damaged the integrity of the process or endangered its fairness. In raising them Mr Dickson appears to suggest that the Disciplinary Committee might be influenced by the status or position of a complainant, but I saw nothing in the evidence before me that would lead me to endorse that suggestion.

A handwritten signature in black ink that reads "R Gamble". The letter "R" is large and stylized, followed by the name "Gamble" in a cursive script.

Roy Gamble
Certification Officer for Northern Ireland