

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE
UNDER SECTION 55 AND SECTION 108A OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

MR A STAUNTON

v

UNISON

Date of Decisions:

16 May 2008

DECISIONS

Upon application by Mr Staunton (“the Claimant”) under section 55(1) and section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I declare that on or around 28 February 2007 UNISON breached section 47(1) of the 1992 Act by unreasonably excluding the Claimant from being a candidate in its National Executive Council elections in 2007. I do not consider it appropriate to make an enforcement order.
2. I refuse to make the declaration sought by the Claimant that on or around 6 December 2006 UNISON breached rule C7.4.1 of the rules of the Union by suspending the Claimant. The Claimant’s application was made out of time.

REASONS

1. The Claimant was a member of the trade union UNISON (“the Union”). By an application dated 4 November 2007, received at the Certification Office on 7 November and amended pursuant to a letter dated 3 January 2008, the Claimant made complaints to me against his then Union arising from a disciplinary investigation into his alleged misconduct. Following correspondence with the Claimant, he identified two complaints which were confirmed by him in the following terms:-

Complaint 1

“that on or around 28 February 2007 in UNISON’s 2007 elections to its National Executive in breach of section 47(1) of the 1992 Act, Mr Staunton was unreasonably excluded from standing as a candidate in those elections”

Complaint 2

“that on or around 6 December 2006 in breach of rule C7.4.1 UNISON suspended Mr Staunton without Mr Staunton facing a disciplinary charge under rule 1 of the rules of the Union”

2. I investigated the alleged breaches in correspondence. A hearing took place on 22 April 2008. At the hearing, the Claimant represented himself. The Union was represented by Mr Segal of counsel instructed by Mr O'Hara of Thompsons solicitors. Mr Nelson, the Union's Head of Democratic Services, attended and gave evidence. The documents in evidence were the rules of the Union and a 154 page bundle. Mr Nelson provided a written witness statement. Both parties submitted skeleton arguments.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties I find the facts to be as follows:-
4. The Claimant is a longstanding trade union activist. He joined UNISON in 1994 and held numerous positions within the Union at the time of his suspension from office in 2006. He was the Branch Secretary of the City of Plymouth Branch and the Branch International Relations Officer. He was the Branch Delegate to the Plymouth Trades Council and its Secretary. He was on the South West Local Government Service Group Executive and, through that position, a member of the South West Provisional Council, a reserve to the National Service Group Staff Side and on the Social Services Forum at national level. He was also on the Regional Council, the Regional Executive and Chair of the International Committee for the South West. The Claimant is employed by Plymouth City Council as a social worker, from which job he had four days a week paid release. The Claimant is also a member of the Socialist Workers Party and active politically in the south west.
5. During the course of 2006, the Claimant made it known that he was looking for support to stand in the Union's election to its National Executive Council ("NEC") in 2007, to take up office for a two year period from about June 2007.
6. In or about October 2006, the Union's General Secretary decided that there should be an investigation into concerns that the Claimant was using the Union's equipment and resources for purposes not permitted by the Union. A Regional Manager, Mr McMillan, produced a report which he sent to Mr Nelson, the Union's Head of Democratic Services, on 30 November 2006. This report concluded that there were grounds for a formal disciplinary investigation of the Claimant's alleged misconduct under rule I, which is the Union's rule dealing with disciplinary action. Rule I.5.1 provides that "*Where there appears to be reasonable grounds to think that a member might be guilty of a disciplinary offence*" someone may be appointed to "*...investigate whether the charges are justified*". Mr McMillan's report was considered by the Chair of the Union's Development and Organisation Committee, Mrs Highton, under her delegated powers. On 5 December 2006, Mrs Highton decided that there should be a rule I.5.1 investigation into the Claimant's alleged misconduct and Mr McMillan was appointed as the investigating officer. Mrs Highton also decided that the Claimant should be suspended from office with immediate effect for a period of up to 60 days under rule C7.4.1, the suspension to be reviewed in the event that the Claimant returned a Union computer as had been requested. By a letter dated 6 December, Mr Nelson informed the Claimant of his suspension. The fact of the

Claimant's suspension was reported to the NEC on the same day. The NEC noted the position.

7. Nominations for the 2007 NEC elections opened on 8 January 2007. The Claimant put himself forward and receipt of his nomination details was acknowledged on 17 January. The Union's election procedures provided that a nomination is not to be considered valid until written confirmation of its validity is received from the Union. All candidates are told that their nominations will be subject to scrutiny.
8. On 26 January 2007, Mr McMillan submitted to Mr Nelson his Rule *I* investigation report into the Claimant's alleged activities, together with a draft schedule of charges. These were forwarded to Mrs Highton for her consideration under the rule *I* procedure. On 30 January, Mrs Highton gave authority, under her delegated powers, for charges to be brought against the Claimant. She further decided that the Claimant should be suspended under rule C7.4.2, having regard to the allegations being of financial irregularities. Mr Nelson informed the Claimant of these decisions by letter dated 31 January. In that letter Mr Nelson also informed the Claimant that his disciplinary hearing would take place from 3 to 5 April.
9. On 6 February 2007, the Claimant wrote to Mr Nelson. In that letter he asked questions about the disciplinary hearing and expressed concerns about the conduct of the disciplinary investigation, the effect of certain correspondence from the South West Regional Secretary and the effect of certain contacts that the Union had had with his employer. This letter did not raise a complaint about his suspension on 6 December 2006, whether because that suspension was allegedly carried out in breach of rule, as he was not then 'facing disciplinary charges' under rule *I*, or otherwise.
10. On 15 February 2007, the Claimant submitted his election address and by the close of nominations on the 16 February he had the support of six branch nominations.
11. The eligibility of potential candidates for election in the NEC elections is determined on the basis of their standing at the close of nominations. At the close of nominations in this election, the Claimant was still suspended from holding office under rule C7.4.2. On this basis, it was determined that the Claimant was not eligible to stand in the 2007 NEC elections. Mr Staunton was first notified of his ineligibility by a letter from his Regional Secretary dated 20 February 2007 and received official confirmation in a letter from the Union's Election Coordinator, Wavenie Sterling, dated 28 February. The Claimant was told that the ruling had been made by the Independent Scrutineer and that he had until 9 March to appeal against the ruling.
12. By a letter dated 7 March 2007, Mr Nelson confirmed with the Claimant that his disciplinary hearing would take place between 3 and 5 April. Mr Nelson also enclosed a schedule of the charges and a copy of Mr McMillan's final investigatory report.

13. By a letter dated 8 March 2007, the Claimant informed Ms Sterling that he wished to “*appeal the decision that I am not eligible to stand in the above election*”. The Claimant set out the grounds of his appeal. However, this letter did not raise a complaint about his suspension on 6 December 2006, whether because that suspension was allegedly carried out in breach of rule, as he was not then ‘facing disciplinary charges’ under rule I, or otherwise.
14. Mr Nelson responded to the Claimant’s letter of appeal on 15 March 2007. He confirmed the chronology of the Claimant’s suspension from holding office and informed him that the returning officer would make the final decision on his eligibility. The returning officer was Mr Lonie of Electoral Reform Services Limited. By a letter dated 22 March, Mr Lonie rejected the Claimant’s appeal. The Claimant made further representations to Mr Lonie by a letter dated 13 May 2007 but these were also rejected by Mr Lonie in a letter dated 21 May.
15. The Claimant’s disciplinary hearing was postponed from 3 to 5 April 2007 until the end of July. It concluded on 31 July. By a letter dated 2 August, the Claimant was informed that many, but not all, of the charges against him had been upheld and that it had been decided that he be expelled from the Union. The Claimant appealed against this decision. His appeal was heard on 28 January 2008 and was rejected. The Claimant is therefore no longer a member of UNISON.
16. The Claimant commenced his application by a Registration of Complaint Form dated 4 November 2007, which was received at the Certification Office on 7 November. The Claimant’s original complaint was of a breach of section 47(1) of the 1992 Act only. By a letter dated 3 January 2008 the Claimant applied to add a complaint that the Union had breached rule C7.4.1 by suspending him from office on 6 December 2006. The application to add this complaint was granted.

The Relevant Statutory Provisions

17. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-

Section 46 ***Duty to hold elections for certain positions***

(2) The positions to which this Chapter applies...are -

- (a) member of the executive,*
- (b) any position by virtue of which a person is a member of the executive,*
- (c) president, and*
- (d) general secretary*

Section 47 ***Candidates***

(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded

Section 54 *Remedy for failure to comply with requirements: general*

(1) The remedy for a failure on the part of a trade union to comply with the requirements of this Chapter is by way of application under section 55 (to the Certification Officer) or section 56 (to the court)

(2) An application under those sections may be made –

- (a) by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time when it was held), or*
- (b) by a person who is or was a candidate at the election;*

and the references in those sections to a person having a sufficient interest are to such a person.

Section 55 *Application to Certification Officer*

(1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.

(5A) 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 more of the following requirements -

- (a) to secure the holding of an election in accordance with the order;*
- (b) to take such other steps to remedy the declared failure as may be specified in the order;*
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.*

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

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order.

Section 108A *Right to apply to Certification Officer*

(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 subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are -

- (a) -*
- (b) disciplinary proceedings by the union (including expulsion)*
- (c) -*
- (d) -*
- (e) -*

(6) An application must be made -

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*

(b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).

(7) Those days are -

(a) the day on which the procedure is concluded, and

(b) the last day of the period of one year beginning with the day on which the procedure is invoked.

Section 108B Declarations and orders

(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

(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 subsection (3)(a) specify the period within which the union is to comply with the requirement.

The Relevant Union Rules

18. The Rules of the Union which are relevant for the purpose of this application are as follows:-

C Membership

2.9 Employees of the union

2.9.2 Members in this category shall be excluded from eligibility to:

.1 seek or hold office in any lay structure of the Union

7.4 Suspension

7.4.1 The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such period is extended by agreement between the parties) if the member faces disciplinary charges under Rule I and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined.

7.4.2 In cases of alleged financial irregularities brought under Rule I and the member faces disciplinary charges related to such allegations arising from a Rule I investigation, the National Executive Council may suspend the members(s) from holding office until the conclusion of the disciplinary investigation, hearing or appeal.

I Disciplinary action

5.1 Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence,

5.1.1 the member's Branch Committee or Service Group Executive will investigate whether the charges are justified;

5.1.2 the National Executive Council may appoint any of its number, or the General Secretary, to investigate whether the charges are justified.

5.2 *It shall be open to the General Secretary to delegate all or part of the investigation to such person or persons as she/he thinks fit.*

5.3 *In any case, the body on whose behalf an investigation is undertaken shall consider the result of such investigation before deciding whether or not a charge should be brought.*

6 *Disciplinary charges may be brought against a member by the member's Branch, Service Group Executive or by the National Executive Council or the General Secretary acting on its behalf.*

7 *The following arrangements shall apply for the hearing of disciplinary charges:*

7.1 *a disciplinary charge brought by a branch shall first be heard by its Disciplinary Sub-Committee unless the member belongs to the Branch Committee in which Disciplinary action case it shall first be heard by a Disciplinary Sub-Committee of the National Executive Council;*

7.2 *a disciplinary charge brought by a Service Group Executive or the National Executive Council (or the General Secretary acting on its behalf) shall be heard first before a Disciplinary Sub-Committee of the National Executive Council; provided always that the Disciplinary Sub-Committees referred to at 1.7.1 and 1.7.2 above shall consist of no less than three members.*

8 *Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:*

By the Branch

(1) censure of the member;

(2) debarring the member from attending any branch meeting for a period not exceeding 24 months;

(3) referral of the matter to the National Executive Council for consideration of a more serious penalty including suspension or expulsion;

By the National Executive Council

(4) debarring the member from holding any Union office for whatever period seems to it to be appropriate;

(5) suspension of the member from all or any of the benefits of membership for whatever period seems to it to be appropriate;

(6) expulsion of the member from the Union.

Conclusions

Complaint One

19. The Claimant's complaint is as follows:-

"that on or around 28 February 2007 in UNISON's 2007 elections to its National Executive in breach of section 47(1) of the 1992 Act, Mr Staunton was unreasonably excluded from standing as a candidate in those elections"

20. Section 47 of the 1992 Act provides as follows:

Section 47 Candidates

(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

Summary of Submissions

21. The Claimant submitted that he had been unreasonably excluded from standing in the 2007 NEC elections. He argued that the Union could not rely upon his exclusion being deemed reasonable by section 47(3) of the 1992 Act. In his submission, there was no rule which provided that all suspended members were excluded from standing in relevant elections and contrasted rule C7.4.2 with rule C2.9.2.1, which expressly refers to “eligibility to seek or hold office”. He further argued that even if rule C7.4.2 was a rule which excluded suspended members standing for office, it provided for the class (i.e. suspended members) to be determined by reference to whom the Union chose to exclude and that it should therefore be disregarded. On the general question of the reasonableness of his exclusion, Mr Staunton submitted that the Union’s custom and practice of excluding all members suspended under rule C7.4 was unreasonable. He argued that the suspension of a member for the duration of a disciplinary procedure should be neutral but that the effect of excluding a suspended member from standing for election was not neutral. It could have an effect which lasted beyond the period of suspension. He maintained that such a custom and practice infringes the principle that a person is innocent until proven guilty in that it could prevent an innocent person from standing in an election. Mr Staunton considered that such a custom and practice was open to abuse by the ruling faction within the Union should they choose to target political opponents and remove them from sensitive elections by having them suspended at a time when no other candidate from that faction could be nominated to replace them. In Mr Staunton’s submission, the Union’s rules only provide for exclusion from standing for office as a disciplinary penalty under rule I.8.4 after a full hearing and, if relevant, an appeal. But, even in these circumstances, he argued, a member debarred at a disciplinary hearing could still stand for election until such time as his appeal was dealt with.
22. Mr Segal, for the Union, submitted that the Claimant’s exclusion from standing in the 2007 NEC election was deemed reasonable by section 47(3) of the 1992 Act. He argued that the relevant class for the purposes of that sub-rule was all members suspended under rule C7.4 and that all the members of that class had in fact been excluded from standing as candidates in relevant elections by virtue of that rule. Mr Segal accepted that neither rule C7.4.1 nor C7.4.2 expressly provide that members suspended under rule C7.4 are excluded from standing as a candidate in relevant elections but he argued that this is clearly implicit from the rule. He further argued that rule C7.4 is not a rule which provides for the creation of a class to be determined by reference to whom the Union chooses to exclude. In Mr Segal’s submission, rule C7.4 provides for a class which is determined (not to be determined) by reference to an objective fact, namely whether the member has been suspended in accordance with the various criteria of the rule,

not by reference to a power for the Union to decide whom to exclude as a matter of discretion. Mr Segal accepted that such a practice might work unfairly in a minority of cases but argued that its obviously sensible effect in the majority of cases should carry more weight. In the alternative, should the above arguments be unsuccessful, Mr Segal submitted that the Claimant's exclusion was not unreasonable under section 47(1). He argued that since the rule was adopted in its current form in 2002, it had always been interpreted as it had been in the Claimant's case and about six suspended members had in fact been excluded from standing in an election. He argued that it was obviously sensible to prevent someone from standing for a position that she or he would not be able to take up by reason of being suspended from holding office and that it is better to have a custom and practice that all suspended members are excluded than to require there to be an examination of the merits of each suspended member, which might then be regarded as selecting a person for ineligibility.

Conclusion – Complaint One

23. In January 2007, the Claimant submitted himself as a candidate in the 2007 NEC elections of the Union. However, on 6 December 2006, he had been suspended from office for up to 60 days pursuant to rule C7.4.1 and an investigation into his alleged misconduct had been authorised pursuant to rule I.5.1 of the rules of the Union. On 30 January, following the conclusion of that investigation, the Union decided that charges should be brought against him and that he should be suspended from holding office pursuant to rule C7.4.2 until the charges had been determined and the disciplinary matter concluded. The Claimant's eligibility for standing as a candidate in the 2007 NEC elections was examined as at 16 February, the end of the nomination period, and the Claimant was informed by a letter dated 28 February that the Independent Scrutineer had ruled that he was not eligible to stand in the election because he was suspended from holding office.
24. Section 47(1) of the 1992 Act provides that, "*No member of the trade union shall be unreasonably excluded from standing as a candidate*". However, by section 47(3) a member is not to be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the Union.
25. Accordingly, it is first necessary to examine whether the Claimant's exclusion is deemed not to have been unreasonable by section 47(3) of the 1992 Act. There are three stages to this examination. The first stage is to examine whether the Claimant was a member of "*a class*". The parties did not dispute that the "*class*" for these purposes was comprised of all those members suspended pursuant to rule C7.4. Those members constituted a grouping of members which is capable of objective identification. It is possible to know at any time who is in that grouping or class and who is not. The second stage is to examine whether all the members of that class were excluded as standing as a candidate by the rules of the Union. On the facts of this case the question is whether the Claimant, as a member suspended under rule C7.4, was excluded by that rule from standing as a candidate in the 2007 NEC election. Rule C7.4 provides as follows:-

C7.4 Suspension

7.4.1 The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such period is extended by agreement between the parties) if the member faces disciplinary charges under Rule I and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined.

7.4.2 In cases of alleged financial irregularities brought under Rule I and the member faces disciplinary charges related to such allegations arising from a Rule I investigation, the National Executive Council may suspend the members(s) from holding office until the conclusion of the disciplinary investigation, hearing or appeal.

26. I note that neither C7.4.1 nor C7.4.2 provide expressly that those who are suspended are excluded from standing as a candidate in a relevant election. The words of exclusion are different in the two sub-rules. Rule C7.4.1 refers to the power to suspend a member from office and rule C7.4.2 refers to the power to suspend member(s) from holding office. However, neither party contended that the scope of suspension was different under the different sub-rules and I find that the scope of the exclusion is indeed the same in both sub-rules. Construing rule C7.4 as a whole, I find that, in its ordinary literal meaning, a suspended member is suspended from any office that he or she may hold during the period of suspension and not that he or she is excluded from standing as a candidate in elections for office within the Union. I see no grammatical reason why any greater scope should be given to the words. Indeed, the reference to “*holding office*” in rule C7.4.2 suggests that the suspension is not intended to be an exclusion from standing as a candidate. Going beyond the literal meaning of the words, I was invited by Mr Segal to imply into the rule a broader meaning, to include suspension from standing as a candidate. The basis upon which any such implication should be made was not explained. Certainly the rule does not require such an implication for it to make sense or to be capable of practical application. Looking at the context of the rule, I make two observations. First, the right of a union member to stand for election is an important right of membership, as in any democratic organisation, and should not be taken away unless the members have so decided in a clearly expressed rule to that effect. Secondly, at the time that a rule C7.4 suspension is imposed, the member has not been found to have committed a disciplinary offence and it is therefore to be supposed that the suspension is not intended as a penalty. This latter point is one with which Mr Nelson appears to agree. His statement describes suspension under rule C7.4 as being “*precautionary*”. Viewing suspension as a precautionary measure, it is readily understandable that it might be in the interests of the branch or the Union to temporarily remove a member from the office that he or she is currently holding in order to protect the integrity of an ongoing disciplinary process. It is less readily understandable how the interests of the branch or the Union are prejudiced if a suspended member is able to put his or her name forward as a candidate for the membership at large to decide whether he or she should be elected. On the basis that a suspended member is elected there are three likely outcomes. First, if the person is found not guilty in the disciplinary process (or the disciplinary action is discontinued), the person

would take up office and would not have been disadvantaged. Secondly, if the disciplinary process is not concluded by the time the person would take up office, he or she would be unable to do so by virtue of the rule C7.4 suspension from holding office. Thirdly, if a person is found guilty, a sanction of debarment may or may not be applied as a final disciplinary sanction and the rule C7.4 suspension is superseded by the disciplinary penalty. Balancing such considerations, I find that there is no basis for the otherwise plain words of rule C7.4 to be construed so as to mean that a suspended member is also excluded from standing as a candidate. This conclusion is supported by a consideration of rule C2.9.2.1, which expressly excludes employees of the Union from eligibility “*to seek or hold office*”. The Union has therefore given thought to this concept within the same rule, rule C, but has not reproduced those or similar words in rule C7.4. Accordingly, I find that rule C7.4 is not a rule which excludes all the members of the class of suspended members from standing as a candidate and the Union cannot therefore rely upon section 47(3) as deeming the Claimant’s exclusion as not being unreasonable. Having regard to this finding, there is no need for me to consider the third stage of the examination, namely whether rule C7.4 is a rule “*which provides for such a class to be determined by reference to whom the Union chooses to exclude*”.

27. As I have found that the Union cannot avail itself of the protection to be found in section 47(3) of the 1992 Act, it is necessary to determine whether the Claimant was unreasonably excluded from standing in the 2007 NEC election by virtue of section 47(1). As Mr Segal observed, section 47 does not contain any guidance on what constitutes unreasonable exclusion. On the facts of this case, however, it is apparent that the Union did not think that it was necessary to expressly consider the merits of the Claimant’s exclusion as it was, in the Union’s view, a requirement of rule C7.4 which followed from the fact of his suspension. For the reasons set out in paragraph 26 above, I find that the automatic exclusion of someone from standing as a candidate who is merely the subject of a precautionary suspension is *prima facie* unreasonable, in the absence of an express rule permitting such exclusion. As the Claimant argued, the effect of a precautionary suspension should be neutral. It should be of no greater effect than is necessary for the purposes of the disciplinary process. Its effect should not be to impose a penalty which might remain as a detriment to the suspended person, should the disciplinary proceedings be discontinued or the person be found not guilty. There may be cases in which it would be reasonable to exclude a suspended member from standing for a relevant office in the absence of an express rule excluding all suspended members, but the facts of each case would have to be considered so as to be able to defend the particular exclusion on the grounds of reasonableness. On the facts of this case, no special circumstances emerge which cause Mr Staunton’s exclusion from standing as a candidate to be considered reasonable. Indeed, none were advanced by the Union.
28. For the above reasons, I declare that on or around 28 February 2007, UNISON breached section 47(1) of the 1992 Act by unreasonably excluding the Claimant from being a candidate in its NEC elections in 2007.
29. When I make a declaration on an application under section 55 of the 1992 Act, I am required by section 55(5A) to make an enforcement order, unless I consider

that to do so would be inappropriate. The enforcement order that the Claimant invites me to make is that the election in which he would have participated, the election for the Male seat of the South West Region on the NEC, be rerun. The Claimant accepted that he is now expelled and would be unable to contest a rerun election. However, he argued that a colleague of the same political persuasion would then be able to take his place. The Claimant's application was that he had been unreasonably excluded from standing as a candidate. My primary consideration would have been to restore to the Claimant the ability to stand for election to that seat. Such a remedy is not now possible. The issue as to whether others might have stood in the original election if the Claimant had not stood introduces considerable uncertainty. It is by no means clear that, if the Claimant had not been nominated, anyone would have stood or, alternatively, that several might have put themselves forward to advance their particular causes. In all the circumstances, and particularly having regard to the expulsion of the Claimant from the Union, I consider that it would be inappropriate to make an enforcement order.

Complaint 2

30. The Claimant's complaint is as follows:-

“that on or around 6 December 2006 in breach of rule C7.4.1 UNISON suspended Mr Staunton without Mr Staunton facing a disciplinary charge under rule I of the rules of the Union”

31. Rule C7.4.1 provides that:

7.4.1 The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such period is extended by agreement between the parties) if the member faces disciplinary charges under Rule I and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined.

32. There is a preliminary issue to be determined before any consideration of the substantive complaint. The preliminary issue is whether the complaint was made in time. The statutory provisions on time are contained in sections 108A(6) and (7) of the 1992 Act and are as follows:

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

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

33. The above provisions provide for a primary limitation period of six months. The suspension about which the Claimant complains occurred on 6 December 2006. The

Claimant commenced this claim by a Registration of Complaint Form received at my office on 7 November 2007 and amended by him to include this claim by an application to amend dated 3 January 2008. I find that this complaint was therefore made outside the primary limitation period of six months.

34. Section 108A(6)(b) of the 1992 Act provides for an extended limitation period in certain defined circumstances, namely that any internal complaints procedure of the Union has been invoked to resolve the claim within the primary limitation period of six months. The Claimant submitted, on the one hand, that the Union was in breach of its duty to inform him of the relevant complaints procedure and, on the other hand, that he had invoked an internal complaints procedure by his letter to Mr Nelson of 6 February 2007 and/or his letter to Ms Sterling of 8 March 2007. I find Mr Staunton's argument about not having been notified of the relevant internal procedure to be disingenuous, having regard to his experience within the Union. It is also irrelevant to a consideration of the statutory provisions. As to his submission regarding the letters of 6 February and 8 March, I have already found as a fact that neither of these letters raised a complaint about his suspension on 6 December 2006, whether because that suspension was allegedly carried out in breach of rule, as he was not then 'facing disciplinary charges' under rule *I*, or otherwise. Accordingly, the Claimant is unable to take advantage of section 108A(6)(b) to gain an extension of the primary limitation period with which he failed to comply. This application was therefore made out time.
35. For the above reasons, I refuse to make the declaration sought by the Claimant that on or around 6 December 2006 UNISON breached rule C7.4.1 by suspending him without him facing a disciplinary charge under rule *I* of the rules of the Union.

David Cockburn
The Certification Officer