

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 55(1) and 108A(1) OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) Act 1992**

Mr A Mathewson

v

National Union of Mineworkers

Date of Decision:

16 January 2017

DECISION

Upon application by Mr A Mathewson (“the claimant”) under sections 55(1) and 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

And pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992.

I strike out all eight of the claimant’s complaints on the grounds that the complaints have no reasonable prospect of success and/or are otherwise misconceived. The complaints I strike out are as follows:

Complaint 1

“The NUM breached Rules 7, 9.A (iv), 26.A(i) (ii) and Model Rule 9 of the 2011 Edition of the rules on an unknown date by publishing a purported ‘2014 Edition of the Rules’ not approved by the Certification Officer in accordance with the Trade Union and Labour Relations Act 1992. No reference was made to a ‘2014 Rule Book’ in October 2014 at the EAT hearings *M. Thompson –v- NUM* and *S. Mace-v-NUM*, nor in the subsequent correspondence between the NUM’s Leading Counsel and Mr. A. Scargill representing Messrs. Thompson and Mace. The NUM’s Leading Counsel informed the EAT that the Union was going to amend its Rules which could not take place until after the EAT judgments on 2 and 6 February 2015.”

Complaint 2

“The NUM breached Rules 5.A (i) (ii), 8, 9.E and Model Rule 9 of the 2011 Edition of the Rules on an unknown date in 2016. If my complaint was judged based on a purported ‘2014 Edition of

the Rules' (which is denied), Rules 5.A(i) (ii), 9.A(iv), and 9.E are contained in the disputed '2014 Edition of the Rules.' The representative members of the NEC elected in 2014 ceased to qualify to be members of the NEC in January 2016 because no NUM Area had more than 29 full financial members as specified in the Rules. Consequently, all elected representative members of the NEC – including the three National Officials – ceased to qualify to be members of the Union's NEC in accordance with Rule and the 1992 Act."

Complaint 3

"At the date of this Complaint the NUM is in breach of Rules 9.A(iv), 9.J and 11.A of the 2011 Edition of the Rules on the grounds that the President can only vote in his capacity as an elected representative of his Area to be a member of the NEC, a position he ceased to hold on the grounds set out in Complaint 2."

Complaint 4

"At the date of this Complaint the NUM is in breach of Rules 9.A(iv), 9.J and 12.B on the grounds that the Vice-President can only vote in his capacity as an elected representative of his Area to be member of the NEC; the Vice-President ceased to hold office on the grounds set out in Complaint 2."

Complaint 5

"At the date of this Complaint the NUM is in breach of Rules 9.A(iv), 9.J, 10.A, 11.A and 13.A on the grounds that the Secretary can only vote in his capacity as an elected representative of his Area to be a member of the NEC; the Secretary ceased to hold office on the grounds set out in Complaint 2."

Complaint 6

"The NUM is in breach of Rules 9.A(iv), 9.E, 10.A, 11.A, 14.A, 14.C, 14.D, 14.E, Schedule Two (III) (VIII) and Model Rule 9 of the 2011 Edition of the Rules on the grounds that Mr Nicolas Wilson is not allowed to remain as President from amongst representatives elected by Areas (including his own Area) as required by the Rule 9.A(iv) on the grounds that there are no representative members of the NEC by reason of the breach in Complaint 2."

Complaint 7

"The NUM is in breach of Rules 9.A(iv), 9.E, 10.A, 13.A, 14.A, 14.C, 14.F (ii) (iii), and Model Rule 9 of the 2011 Edition of the Rules on the grounds that Mr Christian J R Kitchen is not allowed to remain as Secretary from amongst representative members elected by Areas (including his own Area) as required by Rule 9.A(iv) on the grounds that there are no representative members of the NEC by reason of the breach in Complaint 2."

Complaint 8

“The National Executive Committee ceased to exist on 1 January 2016 on the grounds that no Area had more than 29 members in accordance with Rule 9.A(iv). Consequently, as the NEC no longer exists on the grounds that there are no longer any representative members who hold office on behalf of an Area of more than 29 members, the NEC can no longer constitute a ‘class’ within the meaning of Section 47 (3) of the 1992 Act. My complaint does not relate to an election but to the question of qualification. If members of the NEC cease to hold office due to retirement, incapacity, resignation, expulsion, suspension or if they no longer each represent an Area of the Union with more than 29 full financial members then the NEC as a body ceases to be a separate class within the meaning of Section 47 (3) of the 1992 Act.”

REASONS

1. Mr Mathewson brought this application as a member of the National Union of Mineworkers (“the Union”). He did so by a registration of complaint form dated 13 April 2016 and received by my office on 14 April 2016. This contained a considerable amount of argument and supporting documentation which was presented under three complaint headings.
2. Between 14 April 2016 and 5 September 2016 a number of rounds of correspondence were exchanged between Mr Mathewson and my office in which the office’s aim was to confirm the complaints that Mr Mathewson wished to make.
3. My office wrote to Mr Mathewson on 27 April 2016 setting out the essential information needed to proceed with the complaints and providing an example of the form in which complaints are generally formulated to enable a union to answer them and the Certification Officer to determine them. Mr Mathewson replied on 11 May 2016 providing information and argument under the headings of three complaints but not setting out the complaints in the suggested format.
4. My office wrote again to Mr Mathewson on 26 May 2016 setting out six suggested complaint wordings and asking Mr Mathewson to indicate whether or not he agreed to the wordings and to fill in any missing details such as the dates of the alleged breaches. The letter also pointed out that it might be necessary at some point to determine which was the valid rulebook before a full determination of the complaints could be made.
5. Mr Mathewson replied by a letter dated 2 June 2016 and received on 6 June 2016 stating that, “it appears to me that not only is the Certification Office procrastinating in respect of my complaint but doing everything possible to avoid dealing with them.” He wrote further that, “As a result of the Certification Officer’s procrastination or more

accurately his refusal to deal with my complaints I feel I have no alternative but to seek another way of outlining my complaints in the public domain."

6. Mr Mathewson was asked, by a letter from my office dated 13 June 2016, whether he wished to proceed with his complaints. Mr Mathewson indicated by a letter dated 20 June 2016 that he did wish to proceed with his complaints and he provided a substantive response to my office's letter of 26 May 2016 by his letter dated 5 July 2016 and received on 7 July 2016. This letter stated "I cannot work with the format set out by you in your letter 26 May 2016 because it does not reflect the complaints I submitted on 14 April nor in my letter to you dated 11 May 2016. I have, however, submitted my complaints in a form I trust is acceptable". The annexe included eight complaint wordings.
7. A letter from my office dated 20 July 2016 asked for the dates of the alleged breaches and proposed to take no further action on two of the eight complaints for the reasons stated in that letter. These reasons, which referred to complaints 1 and 8 are set out within the conclusions section of this decision. Mr Mathewson replied by a letter dated 29 July 2016 and received on 2 August 2016 in which he submitted that his eight complaints complied with the requirement to allow the Union, the Certification Officer or "anyone else" to understand the complaints. He stated that he did not know the dates of the alleged breaches.
8. My office wrote to Mr Mathewson on 10 August 2016 noting that he had stated that he did not know the dates of the breaches but also noting that he had referred to January 2016 in one of his complaints. The letter set out six of his eight complaints as worded in his previous letter and asking for his agreement to these complaints formulations. Mr Mathewson responded by a letter dated 16 August 2016 and received on 18 August 2016 stating that he did not accept the "decision" to reduce his eight complaints to six and attaching the eight complaints that he wished to submit.
9. My office wrote to Mr Mathewson on 23 August 2016 in response to his letter of 16 August. The letter stated that subject to his confirmation that the eight complaint wordings set out in his latest letter were his agreed complaint wordings, these would be forwarded to the Union for its comment
10. Mr Mathewson confirmed his complaints by a letter dated 2 September 2016 and received by this office on 5 September 2016. The complaints were as follows:

Complaint 1

"The NUM breached Rules 7, 9.A (iv), 26.A(i) (ii) and Model Rule 9 of the 2011 Edition of the rules on an unknown date by publishing a purported '2014 Edition of the Rules' not approved by the Certification Officer in accordance with the Trade Union

and Labour Relations Act 1992. No reference was made to a '2014 Rule Book' in October 2014 at the EAT hearings M. Thompson –v- NUM and S. Mace-v-NUM, nor in the subsequent correspondence between the NUM's Leading Counsel and Mr. A. Scargill representing Messrs. Thompson and Mace. The NUM's Leading Counsel informed the EAT that the Union was going to amend its Rules which could not take place until after the EAT judgments on 2 and 6 February 2015."

Complaint 2

"The NUM breached Rules 5.A (i) (ii), 8, 9.E and Model Rule 9 of the 2011 Edition of the Rules on an unknown date in 2016. If my complaint was judged based on a purported '2014 Edition of the Rules' (which is denied), Rules 5.A(i) (ii), 9.A(iv), and 9.E are contained in the disputed '2014 Edition of the Rules.' The representative members of the NEC elected in 2014 ceased to qualify to be members of the NEC in January 2016 because no NUM Area had more than 29 full financial members as specified in the Rules. Consequently, all elected representatives members of the NEC – including the three National Officials – ceased to qualify to be members of the Union's NEC in accordance with Rule and the 1992 Act."

Complaint 3

"At the date of this Complaint the NUM is in breach of Rules 9.A(iv), 9.J and 11.A of the 2011 Edition of the Rules on the grounds that the President can only vote in his capacity as an elected representative of his Area to be a member of the NEC, a position he ceased to hold on the grounds set out in Complaint 2."

Complaint 4

"At the date of this Complaint the NUM is in breach of Rules 9.A(iv), 9.J and 12.B on the grounds that the Vice-President can only vote in his capacity as an elected representative of his Area to be member of the NEC; the Vice-President ceased to hold office on the grounds set out in Complaint 2."

Complaint 5

"At the date of this Complaint the NUM is in breach of Rules 9.A(iv), 9.J, 10.A, 11.A and 13.A on the grounds that the Secretary can only vote in his capacity as an elected representative of his Area to be a member of the NEC; the Secretary ceased to hold office on the grounds set out in Complaint 2."

Complaint 6

"The NUM is in breach of Rules 9.A(iv), 9.E, 10.A, 11.A, 14.A, 14.C, 14.D, 14.E, Schedule Two (III) (VIII) and Model Rule 9 of the 2011 Edition of the Rules on the grounds that Mr Nicolas Wilson is not allowed to remain as President from amongst representatives elected by Areas (including his own Area) as required by the Rule 9.A(iv) on the grounds that there are no representative members of the NEC by reason of the breach in Complaint 2."

Complaint 7

“The NUM is in breach of Rules 9.A(iv), 9.E, 10.A, 13.A, 14.A, 14.C, 14.F (ii) (iii), and Model Rule 9 of the 2011 Edition of the Rules on the grounds that Mr Christian J R Kitchen is not allowed to remain as Secretary from amongst representative members elected by Areas (including his own Area) as required by Rule 9.A(iv) on the grounds that there are no representative members of the NEC by reason of the breach in Complaint 2.”

Complaint 8

“The National Executive Committee ceased to exist on 1 January 2016 on the grounds that no Area had more than 29 members in accordance with Rule 9.A(iv). Consequently, as the NEC no longer exists on the grounds that there are no longer any representative members who hold office on behalf of an Area of more than 29 members, the NEC can no longer constitute a ‘class’ within the meaning of Section 47 (3) of the 1992 Act. My complaint does not relate to an election but to the question of qualification. If members of the NEC cease to hold office due to retirement, incapacity, resignation, expulsion, suspension or if they no longer each represent an Area of the Union with more than 29 full financial members then the NEC as a body ceases to be a separate class within the meaning of Section 47 (3) of the 1992 Act.”

The Relevant Statutory Provisions

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

Section 46 Duty to hold elections for certain positions

- (1) A trade union shall secure –
- (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and
 - (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

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 who the union chooses to exclude shall be disregarded*

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.

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) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Secretary of State.

Section 256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may-

- (a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
-

(3) An order under this section may be made on the Certification Officer's own initiative and may also be made-

- (a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or
- (b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1).

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

The Relevant Rules of the Union

12. Rule 5.A in the 2011 Rules is as follows:

5.A Full Membership

The following categories of persons are eligible for full membership of the Union and in these Rules the expression "members" means a full member unless otherwise stated.

- (i) All persons employed in the coalmining industry and its ancillary undertakings.

- (ii) All persons employed in those sections of Energy Industries and such other industries and undertakings or sections thereof, specified by Conference.*
- (iii) All persons employed by the Union or by an Area including National or Area Officials/Agents.*
- (iv) All members who become Members of Parliament, Scottish Parliament, Welsh Assembly or of the European Parliament as long as they remain so.*
- (v) With the express permission of the NEC, all members formerly employed in any of the above categories and who are temporarily engaged in undertakings or institutions in which the Union does not organise and who continue to pay full contributions.*
- (vi) All members whose employment has been terminated by the employer, where the Union considers that a member has been unfairly dismissed, as long as the member continues to be unemployed.*
- (vii) All members retiring early on grounds of ill-health, incapacity or sickness as long as the member continues to be unemployed.*
- (viii) With the express permission of the NEC to include all members victimised as a result of the 1984/65 strike and any future disputes in accordance with Rule 6.G any other person not falling within one of the above categories and who continues to pay contributions.*

Rule 5.A in the 2014 Rules is as follows:

5.A Full Membership

The following categories of persons are eligible for full membership of the Union and in these Rules the expression "members" means full member unless otherwise stated.

- (i) All persons employed in the coalmining industry and its ancillary undertakings.*
- (ii) All persons employed in those sections of energy industries and such other industries and undertakings or sections thereof specified by Conference.*
- (iii) All persons employed by the Union or by an Area or Constituent Association of the Union.*
- (iv) National Officials and Area Officials.*
- (v) All members who become Members of Parliament, Scottish Parliament, Welsh Government or of the European Parliament as long as they remain so.*
- (vi) With the express permission of the NEC, all members formerly employed in any of the above categories and who are temporarily engaged in undertakings or institutions in which the Union does not organise and who continue to pay full contributions.*
- (vii) With the express permission of the NEC, all members whose employment has been terminated by the employer, where the EC considers that a member has been unfairly dismissed, so long as the members continues to be unemployed.*
- (viii) With the express permission of the NEC all members retiring early on grounds of ill-health, incapacity or sickness, so long as the member continues to be unemployed.*
- (ix) With the express permission of the NEC all members victimised as a result of the 1984/85 strike and any future disputes in accordance with Rule 6.C.*
- (x) With the express permission of the NEC any other person not falling within one of the above categories.*

13. Rule 9 of the 2011 Rules is as follows:

NATIONAL EXECUTIVE COMMITTEE

9.A *The National Executive Committee ("NEC") shall consist of:*

- (i) *The President*
- (ii) *The Vice-President.*
- (iii) *The Secretary.*
- (iv) *Representative members who shall be elected by Areas consisting of more than 29 members from amongst the members thereof to hold office until the conclusion of the next Biennial Conference at which all representative members (whenever elected) will retire.*
- (v) *One representative of and elected by the Miners' Parliamentary Group who shall not be entitled to vote.*

9.B *The basis of representation on the NEC shall be as follows:*

Areas (or consolidated groups of Areas) with less than 500 members, 1 representative.

Areas (or consolidated groups of Areas) with more than 500 members shall be entitled to one additional representative for every complete additional 250 members.

The representation automatically to rise and fall according to the increase or decrease of members.

The number of members in the Area shall, for the purpose of this Rule, be taken as being the number for which contributions have been paid to the Union for the twelve months ending on the preceding 31st December or the latest audited figures available.

9.C *Retiring members of the NEC shall be eligible for re-election.*

9.D *No member shall be eligible for nomination to the NEC unless he or she has been a full financial member of the Union for at least 12 months immediately prior to such nomination.*

9.E *Branches shall be entitled to nominate members for election as representative members of their Area on the NEC and Area Executive Committees shall, when more than one nomination is submitted, arrange an election by individual ballot of the members taken on the principle of "the transferable vote" as defined in Section 41 of the Representation of the People Act 1918, and the name of the person so elected shall be communicated to the Secretary of the Union in time to be included on the Final Agenda of the relevant Biennial Conference.*

9.F *Any casual vacancy amongst the representative members of the NEC shall be filled by a person elected by the membership of the appropriate Area, to hold office until the conclusion of the next Biennial Conference at which the other representative members of the NEC vacate their office.*

9.G *Every member of the NEC shall be entitled to be indemnified by the Union in respect of every act done as such member whether in accordance with the Rules or otherwise, so long as such act was done with the prior or subsequent consent of Conference or of the NEC. For the purposes of this Rule the word act shall include the not doing or failing to do something as well as the doing of anything. For the avoidance of doubt, this Rule shall apply*

whenever the act as defined occurred whether the same occurred before the passing of this Rule or later.

9.H The NEC shall only be removed in the following way:

(i) A resolution to that effect must be passed by a majority of at least 2/3rds of the total Area votes taken by a card vote at a specially convened Conference and

(ii) Such resolution must be confirmed by a majority of at least 2/3rds of the members as ascertained by a ballot vote.

9.I A representative member of the NEC shall only be removed by a decision of the National Disciplinary Committee or in the following way:

(i) A resolution to that effect must be passed by a majority of 2/3rds of the members of the NEC entitled to vote, and

(ii) A resolution to that effect must be passed by 2/3rds of the total Area votes taken by a card vote at a specially convened Conference, and

(iii) Such resolution must be confirmed by a majority of at least 2/3rds of the members as ascertained by a ballot vote.

9.J The NEC shall meet bi-monthly if practicable and at such other times as may be decided upon by the NEC. In the event of an emergency, the President shall be empowered to call special committee meetings. The President shall act as Chairman of the meetings of the NEC. If the President or Vice-President or the Secretary is not present within 15 minutes after the time appointed for holding the meeting, or if they have given notice of their inability to be present, the members of the NEC present shall choose one of their number to be Chairman of that meeting. Questions arising at any meeting of the NEC shall be decided by a majority of the votes. The President shall be entitled to vote in his or her capacity as an elected representative of the NEC but shall have no casting vote when presiding at meetings.

9.K The quorum necessary for the transaction of the business of the NEC shall be four, provided that if a quorum is not present within half an hour of the time appointed for the meeting, the members present may resolve that the meeting be adjourned to a date and time resolved upon by them, and if at such adjourned meeting of which due notice shall be given to the members of the NEC, a quorum is not present within half an hour of the time appointed for the meeting, the members present shall be a quorum.

9.L The NEC may delegate any of their powers to a sub-committee drawn from individual members of the NEC, and any such sub-committee or individual shall conform to any regulations or directions imposed by the NEC.

9.M An Area aggrieved by any decision of the NEC, or any such sub-Committee or individual as aforesaid shall have the right to appeal therefrom to Conference, whose decision shall be final. The decisions of the NEC upon all matters and business which it undertakes or transacts shall be binding, subject to any directions given by Conference and subject to the aforesaid right of appeal. An appeal to Conference shall not suspend the operation of a decision of the NEC nor shall an overruling or variation by Conference of any decision of the NEC invalidate anything done in pursuance of that decision prior to its being overruled or varied.

14. Rule 26 of the 2011 Rules is as follows:

26.A No alterations or additions to these Rules (or to the Rules for the Political Fund or for the administration thereof) shall be made except:

(i) By a decision of not less than 2/3rds majority on a card vote taken at the Biennial Conference, and then only after the proposed alterations or additions have been placed upon the Agenda of the Biennial Conference by an Area or the NEC.

(ii) By a decision of not less than 2/3rds majority on a card vote at a Special Conference and then only after the proposed alterations or additions have been placed on the Agenda of such Special Conference by the NEC four weeks prior to such Conference.

26.B On any question as to which the Rules (including the Model Rules) or Area Rules do not provide, or on any suggested conflict between Area Rules and these Rules (including the Model Rules), or on any question of Interpretation of these Rules (including the Model Rules), the matter shall be referred to the National President who shall make a ruling which shall be final and binding subject to an appeal to the NEC and thence to Conference.

26.C Any breach of these Rules shall be regarded as detrimental to the interests of the Union.

Parties' representations on the relevant rulebook

15. Mr Mathewson's complaints were copied to the Union on 12 September 2016. The Union was asked to comment on the complaints and, in particular, to comment upon which of the Union's rulebooks were in play from 2011 to date. The Union was asked to state how and when each rulebook was adopted, in accordance with the Union's rulebook procedure for amending rules and to state the procedure to adopt to each new rulebook and when that rulebook became effective.
16. The Union replied by a letter dated 20 September 2016 in which it referred to the Certification Officer's decisions in *Mace v NUM* (D/7-9/13-14) and *Thompson v NUM* (D/10-14/13-14) both dated 18 July 2013. The Union stated that following these decisions and "*in light of various comments and observations made by the Certification Officer in the course of those proceedings, the NEC determined that there should be a review of the rulebook to identify what revisions were necessary.*"
17. The Union stated that the 2011 Rules were rescinded on 20 February 2014 when the 2014 Rules were adopted.
18. The chronology of the rules adoption process as stated by the Union was as follows:

24 July 2013: a decision was taken to review the rulebook by the NEC at a special meeting of the NEC

July – December 2013: a sub-committee of four NEC members was established to meet with NUM legal advisers to comply with the NEC decision.

20 December 2013: a draft copy of proposed rule changes was sent to Area Secretaries inviting amendments and confirming that the closing date for these was 22 January 2014 which was four weeks before the Rules Revision Conference fixed for 20 February 2014. Amendments were received from the NUM (Yorkshire Area) and from NUM (Cokemen's Area).

20 February 2014: a special conference took place at which the proposed rulebook, as amended, was unanimously adopted by the delegates. The Union submitted that "*the conditions precedent in Rule 26 were complied with in every respect and the 2014 Rules were properly instituted.*"

19. The Union stated that the 2014 rulebook was unanimously rescinded and succeeded by the 2016 rulebook at a Rules Revision Conference on 8 June 2016.
20. In a letter from this office dated 27 September 2016 Mr Mathewson was asked to comment on the factual accuracy of the Union's submissions. He was asked, if he did not agree with anything the Union had stated, to provide any relevant evidence.
21. Mr Mathewson replied by a letter 10 October 2016 in which he stated as follows:

"I refer to my Complaint 1... 'No reference was made to a '2014 Rule Book' in October 2014 at the EAT hearings M. Thompson –v- NUM and S. Mace-v- NUM, nor in the subsequent correspondence between the NUM's Leading Counsel and Mr. A. Scargill representing Messrs. Thompson and Mace. The NUM's Leading Counsel informed the EAT that the Union was going to amend its Rules which could not take place until after the EAT judgments on 2 and 6 February 2015."
22. Mr Mathewson's points concerning the adoption of the 2014 rule book were, in summary, as follows.
23. Mr Mathewson was not aware that the Union had rescinded the 2011 rulebook and adopted a 2014 rulebook until an exchange of correspondence between him and Mr Kitchen, NUM Secretary, on 29 July 2015 and 18 August 2015. After writing to Mr Kitchen in October 2015, he provided Mr Mathewson with an up-to-date and current NUM National Rulebook.
24. Mr Mathewson was not aware, until receiving this office's letter of 27 September 2016, there had been a Rules Revision Conference on 20

February 2014 which had rescinded the 2011 Rulebook and replaced it with a new 2014 Rulebook.

25. Mr Mathewson quoted the Union's comment in its letter of 27 September 2016 that "*Following the decisions in Mace and Thompson, referred to above in light of various comments and observations made by the Certification Officer in the course of those proceedings, the NEC determined that there should be a review of the rule book to identify what revisions were necessary.*" He asked "*How can Mr Kitchen now claim that a 2014 Rule Book was adopted on 20 February 2014, eight months prior to the Union's Leading Counsel informing Mrs Justice Slade on 3 October 2014 that the Union was going to amend its Rules*". Mr Mathewson submitted that this makes clear that the Union could not have amended the 2011 Rules until after Mrs Justice Slade handed down her judgments on 2 and 6 February 2015. He stated that in his submission "*this is a complete answer to the NUM's letter of denial...*"
26. Mr Mathewson did not provide any documentary evidence to support a view that the 2014 rules were not properly adopted.
27. My office wrote to Mr Mathewson on 11 November 2016 with a letter, pursuant to section 256ZA(4) of the 1992 Act. This provided my provisional view that the Mr Mathewson's complaints should be struck out on the basis that they had no reasonable prospect of success and/or were otherwise misconceived and giving Mr Mathewson an opportunity to show cause why his complaints should not be thus struck out with the deadline set for his response as 9 December 2016.
28. Mr Mathewson responded by letter dated 25 November 2016 and received on 29 November 2016. This stated, in part, as follows:

"This provisional view by the Certification Officer does not surprise me; it is consistent with the blatant bias shown by the Certification Officer against anyone, including me, who submit a complaint or complaints against the NUM or its National Officials, Mr. C. Kitchen, Mr. N. Wilson, or Mr. W Thomas. Your response to my complaints 1-7 gives the impression that the Certification Officer is determined to protect the NUM National Officials at all costs irrespective of the evidence which on any reading proved that my complaints 1-7, as a matter of fact and law, represent a prima facie case in respect of all my 7 complaints.

The Certification Officer is yet again displaying blatant bias against complaint 8 - indeed against any complainants who submit a complaint against the above and displaying what can only be described as a protection of the above Officials at all costs! - A clear example of this behaviour by the Certification Officer was shown in Thompson-v-NUM 18 July 2013. Having found in favour of Thompson's complaint the Certification Officer promptly provided the NUM Officials with an unlawful "Get out of jail card" by stating that the Union could avoid his finding that the election for NUM (Yorkshire Area) Agent was in breach of rule by the NUM NEC simply deciding not to elect an Area Agent because it did not need one. His decision was overturned by the EAT only to

discover that nothing was going to be done to enforce the EAT's judgement which overturned the Certification Officer's decision."

The letter contained no other submission on why I should not strike out Mr Mathewson's eight complaints.

29. My office wrote to Mr Mathewson on 1 December 2016 acknowledging receipt of his letter and stating that the letter would be put to me for consideration of whether to exercise my powers under section 256ZA of the 1992 Act.

Conclusions

Complaints 1-7

30. Section 108A of the 1992 Act provides me with jurisdiction to determine certain complaints from a trade union member that his or her union has breached or threatened to breach one or more of its rules. The rules allegedly breached must relate to one of the rulebook areas specified in sections 108A(2)(a) to (d). Complaints by trade union members lodged under 108.A must refer to the rules of the Union that were current at the time of the alleged breach(es) of the relevant rule(s). Mr Mathewson did not provide the dates of the alleged breaches, despite having been asked to do so, but the complaints do refer variously to January 2016 and the "date of this complaint". His registration of complaint form was dated 13 April 2016. I also note that the rulebook submitted to this office by the Union on 2 July 2015 along with its annual return for the period 1 January 2014 to 31 December 2014 was the 2014 Rulebook. Having considered the submissions of both parties on the question of the relevant rulebook, and Mr Mathewson's letter dated 25 November 2016, I am not persuaded that the 2011 Rulebook was in force at the time of the alleged breaches of rule referred to in Mr Mathewson's complaints 1-7. This is because I find that the 2014 Rules had been adopted by the Union. Therefore the 2014 Rules were in force at the time of the alleged breaches of rule. Mr Mathewson's complaints, however, were made in reference to the Union's 2011 Rulebook.
31. In Mr Mathewson's letter of 10 October 2016 he referred to the proceedings at the EAT in October 2014 in relation to Thompson v NUM and Mace v NUM stating that, "No reference was made to a '2014 Rule Book'". I note that these proceedings related to complaints about an election in 2011 where it was the case that the 2011 Rulebook was relevant. It is not clear what relevance a revised 2014 Rulebook would have to the EAT proceedings. Mr Mathewson also referred to comments of leading counsel in regards to amendments to be made following the EAT's decision. I am not clear that this can be seen as a reference to the 2014 Rulebook or the further amendments that were made to the rulebook for the 2016 Rulebook. At paragraph 25 I reproduce comments made by the Union in a letter dated 20 September 2016. These comments suggest that the Union amended its 2011 rule book "*in light of various comments and observations made by*

the Certification Officer in the course of those proceedings". The proceedings referred to were complaints made by Mr Mace and Mr Thompson against the NUM and determined by the Certification Officer in July 2013 (D/7-9/13-14) and (D/10-14/13-14) respectively. The Union has provided details of the process it followed to arrive at the 2014 Rulebook. Beyond stating he was not aware that the Union had rescinded the 2011 Rulebook and adopted a 2014 Rulebook, Mr Mathewson does not challenge the Union's submission about the adoption of the 2014 Rulebook or provide documentary evidence to show all or any of the Union's evidence is inaccurate.

32. For the above reasons I have decided that Mr Mathewson's complaints 1-7 have no reasonable prospect of success or are otherwise misconceived. I order the complaints 1-7 to be struck out pursuant to section 256ZA of the 1992 Act.

Complaint 8

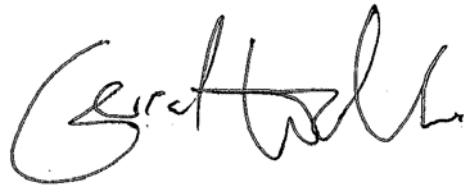
33. Section 55(1) of the 1992 Act allows applications to be made to me over an alleged breach by a trade union of the requirements to be satisfied in respect to elections covered by Chapter IV of the 1992 Act. The elections covered include those for the positions of executive member, president and general secretary. Applications can be made by a member of the trade union concerned or by a person who is or was a candidate in the election. I consider that the issue of qualification for an election covered by Chapter IV of the 1992 Act would only become relevant if a member was excluded from standing as a candidate in an election and there was not available to the Union a defence under section 47(3) (ie that the person was excluded on the ground that he/she belonged to a class of which all the members are excluded by the rules of the union). This office has not been provided with any evidence of such an election. Further Mr Mathewson was not able to produce submissions to establish that there exists a statutory or rulebook requirement that should the qualification criteria for standing for office not continue to be satisfied after the election, that that person should cease to hold office, before the end of the elected term. Alternatively, section 47(3) provides for a union to identify a class that can be excluded. However, this is not what Mr Mathewson's complaint refers to, rather he seeks to show that the NEC as a class ceased to exist. For the above reasons I find that Mr Mathewson's complaint 8 has no reasonable prospect of success or is otherwise misconceived. I order the complaint to be struck out pursuant to section 256ZA of the 1992 Act.

Observations

34. Decisions 1-7 hinge on the preliminary issue of what is the relevant rulebook in relation to the complaints. I have not set out here all the rules from the 2011 rulebook that Mr Mathewson refers to in his complaints. Having said that, I think it would be useful to note a salient difference between the Union's 2011 rulebook and the 2014 rulebook. This is in the categories of membership in rule 5.A of each of the

rulebooks. A noticeable difference is that rule 5.A (x) in the 2014 rules, which is not in the 2011 rules, states that eligible for full membership of the Union are, "With the express permission of the NEC any other person not falling within one of the above categories". The effect of this change appears to be to broaden the scope of those who can be accepted into membership of the Union compared to the earlier rules, allowing any person, with the permission of the NEC, to become a full member of the Union.

35. In paragraph 28 I set out an extract of a letter from Mr Mathewson in which he alleges bias, on the part of the Certification Officer, against anyone who submits a complaint against the National Union of Mineworkers or its National Officials. He suggests that in some way the Certification Officer is determined to protect the NUM National Officials. I note that Mr Mathewson gives no reasons as to why I or my predecessor David Cockburn (who made the decision referred to in paragraph 29), would be biased against anyone making complaints against the National Union of Mineworkers or its National Officials. I do not accept this assertion.

A handwritten signature in black ink, appearing to read 'Gerard Walker', written in a cursive style.

Gerard Walker
The Certification Officer