

McGaughey & Blake v UCU

A SUMMARY

Background

UCU were required to defend complaints made to the Certification Officer by Ewan McGaughey and Vicky Blake, two losing candidates in the 2024 General Secretary election. Their complaints concerned matters arising during the GS election period.

The Certification Officer dismissed all complaints, upholding only a technical breach in respect of use of a piece of software named 'Streamyard' and, on that, the Certification Officer declined to make any enforcement order. It is important to note that in relation to the Streamyard complaint, UCU had accepted the error right at the start of the Certification Officer complaints process and Ewan McGaughey and Vicky Blake were fully aware of that acceptance.

The complaint process with the Certification Officer is for complaints against a trade union as a whole organisation, not against an individual. On this occasion it related to the actions of UCU staff carrying out their employed roles. Many of the elements of the complaint were either not put to UCU at any stage until the complaint was made to the Certification Officer, or there had been a refusal to supply the evidence to allow any investigation. UCU had no option but to defend the complaint and this took many hours of work and very considerable cost. The union never shied away from its responsibilities in relation to any elements of the complaint. The area where there had been an error (the Streamyard issue) was accepted and admitted by UCU at the start of the complaint process with the Certification Officer. This is the only element of the complaint where the Certification Officer made any finding of a breach of rules. Almost the entirety of the complaints made were dismissed, but only after the union had been given no choice but to expend time and money in its own defence. It is most regrettable that two union members thought putting their own union in this position was an acceptable course of action, given the nature of, and the lack of substance and evidence for, the complaints made.

Summary of complaints and Certification Officer findings

The first complaint related to an accusation that filming a campaign video within her own office resulted in the incumbent General Secretary, Jo Grady, using union resources and obtaining an

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advantage that swayed the election result and that the union enabled this. The Certification Officers judgment in not upholding this complaint states:

'I do not accept that the Respondents union's funds or resources were used, as the usage of her office was incidental and not recognisable as property of the Respondent union. There is nothing to show that it is a UCU office, no one would recognise it as the General Secretary's office unless they had visited it and the majority of Union members have never been in the UCU building, still less the General Secretary's office. In addition, there was nothing stopping any of the candidates from taking their campaign video outside of the UCU building with the very prominent signage. Further, this video was taken in November 2023 when nominations opened, many months before the ballot. It could not have had any effect on the election, as complained of. In any event, Dr Grady was the incumbent seeking re-election and therefore, would be expected and in fact she was, undertaking her role whilst campaigning for re-election.'

The second complaint was an accusation that Jo Grady had used a paid member of UCU staff to make campaign videos for her and that this was a use of union funds and resources that helped to sway the election result and the union had enabled this. In dismissing this complaint the Certification Officer has said:

'I cannot see that the making of this video entailed any use of UCU funds or resources, since Mx D confirms that she acted as a freelancer, voluntarily, using her own equipment and in an unpaid capacity to undertake this particular video footage.'

The third complaint related to the use by Jo Grady of the unions Streamyard account to stream a campaign broadcast and that the union had enabled this as a use of union resources. In upholding this complaint in part the Certification Officer in his judgement has said:

'It is agreed that the General Secretary erroneously used the UCU Stream Yard account for a campaign broadcast. Yet, I do not accept that the Respondent union enabled her to do so. Nevertheless, such is a technical breach of paragraph 7 of the Guidance Notes, in so far as UCU resources were used on this occasion. Therefore, I uphold this complaint, since on the facts an admitted breach has occurred. Yet, I do not accept that such a breach swayed the election result. For instance, this broadcast was one of many that Dr Grady produced; it was also produced some two months before the election took place; and Dr Grady did not benefit from a wider audience than she would have done if she had used her own Stream Yard account. For these reasons, this complaint is partially upheld, as a technical breach.'

The fourth complaint was an accusation that the union enabled the Jo Grady to pressure union employees to work for her re-election, particularly by making threats that if the she did not win UCU staff would be at risk of losing their jobs and that this helped sway the election result. The Applicants only presented anonymous witness statements and had no witnesses

willing to give evidence at the hearing. In dismissing this complaint the Certification Officer stated:

'...in relation to the anonymous witness statements.....it is a matter for me what weight and value I give to these. I reiterate that whilst I have seen signed versions of these witness statements, in no way am I able to verify or adjudge the credibility or authenticity of these witness statements solely by the production of a signature. There remains no statement of truth. Whilst the formalities of civil procedure do not apply before me, section 4 Civil Evidence Act 1995 provides a helpful non-exhaustive list of considerations that are relevant to weighing hearsay evidence. Applying the same, in my view it would have been reasonable and practicable for the Applicants to have produced the maker of the original statement as a witness, particularly since 2 of them were former employees and the remaining witnesses would have the protection of whistleblower safeguards and/or prospective victimisation claims should the Respondent union resort to any action against them, in which case they could have been cross examined on their assertions which would have added more weight to their evidence. In addition, these statements were not made contemporaneously with the occurrence or existence of the matters stated. In fact, they were made after the event and at the same time. Moreover, these witness statements do involve multiple hearsay. In these circumstances, on the balance of probabilities I remain circumspect as to giving these witness statements any weight and value. Therefore, these witness statements will not be relied on. Anonymous hearsay evidence is unreliable as it cannot be tested. Therefore, motivations, biases, inconsistencies or different possibilities cannot be explored. Nor can any Court or Tribunal, or Certification Officer, gain an informed impression of the testimony if the witness is not prepared to attend the hearing and have their evidence tested.'

The fifth complaint was an allegation that the union enabled Jo Grady to pressure the Head of Democratic Services into changing a ban on use of UCU social media accounts to 'raise the profile of the general secretary', following which UCU social accounts were flooded with 'good news stories' during the election campaign period for the benefit of the incumbent. In dismissing this complaint the Certification Officer has stated:

'As Ms Wilkinson explained in her evidence before me, the final instruction to all UCU staff was after considerable debate amongst the SMT, excluding the incumbent. Furthermore, the incumbent General Secretary, Dr Grady, explained that she had to continue in her role and undertake her normal day to day duties on behalf of the Respondent union during the election period. There was no evidence of any pressure being applied by Dr Grady. Moreover, the social media posts relied on by the Applicants were not adduced in evidence before me. In any event, according to Ms Sherrardthere was no change in the volume, tone or content of the social media posts by the Respondent union during the election period. For these reasons, this complaint is not upheld.'



The sixth complaint was that the union enabled the incumbent general secretary to send multiple emails to all members on essentially contested issues in the election, calculated to raise the incumbent’s profile, for campaigning. In dismissing the complaint the Certification Officer held:

‘In evidence before me, it became a recurrent theme that the Respondent union and its incumbent General Secretary had to continue ‘business as usual’ during any elections. Moreover, it was plain from the emails listed that the same issues were emailed about before and after the election From the questioning of this evidence before me, it became self-evident that these were not campaigning emails in their content or tone, as these emails provided information to members about work by the union and called members to action. Therefore, such multiple emails were sent to continue the union’s work and activities as opposed to raising the incumbent’s profile and/or her campaigning on election issues.’

The final complaint was that the union had allowed use of email lists and hustings opportunities to Jo Grady and not the other candidates. On this the Certification officer, in dismissing the complaint, stated:

‘...these events were not solo hustings. Therefore, no breach has occurred. For these reasons, this complaint is not upheld.’

Having dismissed nearly all the points made in the complaints raised by Ewan McGaughey and Vicky Blake, the Certification Officer addresses in his judgement whether any enforcement order is necessary due to the technical breach on the Streamyard point. He concludes that no enforcement order should be applied and states this:

‘...I must consider whether to make an enforcement order. Having done so, I am satisfied that it would be inappropriate to do so. This is because, in my view having heard the totality of the evidence, steps have already been taken to prevent usage of Stream Yard in future, particularly during General Secretary elections, where an incumbent is seeking re-election. Above all, I am satisfied that the election complained of was so conducted to be substantially in accordance with the law as to elections that the act or omission did not affect its result. Notably, I remain unconvinced that the election outcome was swayed in any way; given that the incumbent, Dr Grady, had a clear winning margin in the first round of voting. In any event, the incumbent’s erroneous usage of Stream Yard would not substantially impact the election outcome.’

