



UNISON ELECTION OF GENERAL SECRETARY 2020

RETURNING OFFICER'S REPORT

UNISON – Election of General Secretary

Civica Election Services (CES), formerly Electoral Reform Services, was appointed as Independent Scrutineer and Returning Officer for the UNISON General Secretary 2020, in accordance with the UNISON Rule Book and the Election Procedures governing the election.

This report details the complaints dealt with by the Returning Officer in relation to the conduct of the election.

1. Complaints relating to the use of UNISON logo and corporate identity in the election

Seven complaints were received, relating to all candidates in the election, from members and candidates alleging breaches of the use of Unison logo and corporate identity. Evidence was provided by complainants in support of six of these complaints.

Para 51d of the Election Procedures provides:

“UNISON funds, property or resources cannot be used to support campaigning for any particular candidate.” The provision includes “the UNISON corporate logo or identity” in this category”.

Decision of the Returning Officer: Complaints upheld.

2. Complaints relating to allegedly incorrect claims by candidates

Two complaints were received from a candidate which questioned the veracity of claims by another candidate. The complainant was asked to provide evidence substantiating the complaint and to identify the rule alleged to be broken. No response was received to this request.

Decision of the Returning Officer: Complaint not upheld

3. Complaints re events purporting to be regional events where only one candidate was invited

Three complaints were received alleging that two meetings publicised on behalf of a candidate were meetings that were governed by para 45 and that a breach of this rule had occurred, as all candidates had not been invited to take part in the events.

Para 45 provides that:

“Any nominating body, branch or group of members that invites a prospective candidate to speak at a physical or virtual meeting or social event of the nominating body about their involvement in the election must also invite all the other candidates”

It was determined by the Returning Officer that the meetings referred to did not amount to a meeting or event of a nominating body in terms of the rule cited, but instead appeared to be campaign events where individual members of the union were invited to attend.

Decision of the Returning Officer: Complaints not upheld

4. Complaints alleging interference in the election, in breach of para 47, 48, 49, 57 and 58 involving interference from outside organisation or company

Six complaints were received from members and candidates relating to identified Facebook postings, the content of which included material in support of one candidate, alleging that paras 47, 48, 49, 57 and 58 were being breached.

Para 47 provides that:

“no nominee or candidate shall invite or accept any donation or contribution in money or kind from any outside organisation or company”.

No evidence has been provided by the complainants to establish that the candidate had invited or accepted any of the postings that are the subjects of the complaints. Additionally, the postings relied on appeared to be messages from individuals, rather than an organisation.

Decision of the Returning Officer: Complaints not upheld

5. Complaints alleging interference in the election, in breach of para 47,48,49 57 and 58 – sharing of messages of support from individuals

12 complaints were received alleging that a candidate, by reproducing and distributing materials produced by outside bodies in support of his campaign contravened paras 47, 48, 49, 57 and 58 of the procedures.

The wording of para 47 prohibits the donations or contributions specifically from an outside organisation or company. Evidence submitted by the complainant in support of the complaints consisted of images shared by a candidate of posts from individuals. It is the view of the Returning Officer that the procedures effectively restrict the application of the rule to “organisation” and “company”. As the postings relied on by the complainants were from individuals it is not considered that the actions complained of amount to a breach of the paragraph.

Decision of the Returning Officer: Complaints not upheld

6. Complaint about social media accounts interfering with the conduct of the election

A complaint was submitted on behalf of 22 members about material on specified Twitter and Facebook accounts being prejudicial to the conduct of the election, alleging specifically that “it would be reasonable to conclude that whoever is running the account has access to information and knowledge of UNISON politics and policy at a senior lay and/or staffing level”.

It was further submitted by the complainant that the matter complained of is a breach of the general rules and of the objectives of the union (those covering equality of treatment, promotion of fair values, and accountability as laid out in the rule book under such rules as: B1.2; B1.3;B1.6; B2.1; B2.2; B2.3; Rule I Grounds I2; I2.3i; I2.3ii. It was also alleged that election rule 58 is being breached.

“No UNISON member is permitted to distribute campaign materials produced by any outside organisations on behalf of a candidate in the election. If evidence is found that a member has distributed materials produced by any outside organisation they may be subject to disciplinary action under the UNISON rule book”.

The complainant provided the Returning Officer with no verifiable evidence from which it would be possible to identify those individuals responsible for operating and controlling the Facebook page/Twitter accounts referred to, thereby failing to establish that the sites complained of amounted to a breach of the election procedures.

In relation to the allegation that para 58 is breached the complainant has not demonstrated that the operator of the Facebook and Twitter accounts amounts to an “outside organisation” as defined in the procedures.

Decision of the Returning Officer: Complaint not upheld

7. Complaint about social media accounts interfering with the conduct of the election

Two separate complaints were received by the Returning Officer alleging that an identified Facebook page, which included messages in support of a candidate, gave the impression that the site was an official UNISON page. The complainants did not submit any evidence that would enable the Returning Officer to identify the operator or controller of the site and accordingly failed to establish that the sites complained of breached any election procedure.

Decision of the Returning Officer: Complaints not upheld

8. Complaint about individual who is not a member of the union, supporting a candidate in breach of paras 47 and 48

A complaint was received from a candidate alleging that para 47 was breached by a candidate in that the payment of campaign advertisements on social media by an individual who was not a member of the union amounted to an acceptance of a “donation or contribution in money or kind” from an “outside organisation or company”.

Evidence was provided by the candidate to the Returning Officer which demonstrated that the candidate had reimbursed the individual in respect of costs incurred in arranging the advertisements.

Decision of the Returning Officer: Complaint not upheld

9. Complaint about attendance of a member at a union workplace and the distribution of hard copy campaign material produced by an outside organisation

A complaint was received by the Returning Officer in relation to the reported attendance of a supporter of one candidate who distributed campaign material at a union workplace, alleging a breach of para 58 which provides:

“No UNISON member is permitted to distribute campaign materials produced by any outside organisations on behalf of a candidate in the election”.

The matter was brought to the attention of the candidate concerned who notified the Returning Officer that they had dissociated themselves from the breach and had taken steps to prevent a recurrence of the breach, as required by them in terms of para 57.

Decision of the Returning Officer: Complaint upheld

10. Complaint in relation to conduct of a hustings event held by a branch

A complaint was received alleging that a candidate representative was excluded from participation at a hustings event, in breach of para 45 which provides:

“Any nominating body, branch or group of members that invites a prospective candidate to speak at a physical or virtual meeting or social event of the nominating body about their involvement in the election must also invite all the other candidates. Candidates can appoint a representative to attend these meetings and speak on the candidate’s behalf”.

The Returning Officer requested a report from the branch secretary in relation to the arrangements followed at the meeting. Taking into account all the evidence available it was determined that the procedure was not breached.

Decision of the Returning Officer: Complaint not upheld

11. Complaint about conduct of UNISON NEC Nomination meeting, 16 September 2020

A complaint was received on behalf of twenty two members relating to the process followed at the meeting of the NEC where the nomination was to be determined, specifically in relation to the adoption, following a vote at the meeting, of a preferential voting system to select the candidate. The complainants claim that the NEC nomination process used was an abuse of power designed to favour one candidate. It was alleged that the NEC nomination vote cannot be said to have met any of the tests of good practice, in terms of the operation of the meeting or the breaching UNISON's own guidelines on meeting accessibility and election rule 10D.

The Returning Officer was provided with a copy of the minutes of the meeting which confirmed that a vote was taken by members of the NEC to choose the voting method to be applied in determining the candidate to receive the nomination and that the vote took place in accordance with the procedures followed at such meetings. Nominating bodies, including the NEC, are entitled to select the voting system to be used to select a candidate. No evidence was submitted by the complainant to support their contention that the decision was not properly determined at the meeting of the NEC.

Decision of the Returning Officer: Complaint not upheld

12. Complaint in relation to paid staff Twitter accounts.

A complaint was received on behalf of twenty two members alleging that paid staff of UNISON standing for general secretary have an in-built advantage in that they prepare, cultivate and expand personal social media used for their work role over many years. The complaint alleged this "meant there was not a "level playing field" and that "it also breaches Rule 1 which does not allow the use of UNISON resources in campaigning".

The complainant did not provide evidence to support the contention that the matter relied on amounted to a breach of any rule or procedure.

Decision of the Returning Officer: Complaint not upheld.

13. Complaint relating to the sharing of a social media posting by Community Service Group

Four complaints were received by the Returning Officer, including one complaint submitted on behalf of twenty two members, in relation to the sharing of a post on the Community Service Group Facebook page of the social media of a candidate, alleging a breach of para 51, i.e. the use of UNISON resources. The post being shared called for a vote for the candidate and included a link to the social media/website of the candidate.

The Returning Officer determined that the action amounted to a breach of the cited provision and the post was removed. Confirmation was provided by the union that the offending post was removed as soon as was practically possible and that 39 views of the posting had been recorded before the post was taken down.

Decision of the Returning Officer: Complaints upheld.

14. Complaints relating to the publicising of national union website content in branch websites

Two complaints, one of which was submitted on behalf of twenty two individual members, were received alleging, inter alia, that a range of branch websites have been set up explicitly by the national union with the purpose of publicising national website content (including details of the nomination of the NEC and the endorsement of the National Retired Members' Committee). The complainants reported that there were at least nineteen instances where the NEC nomination were visible on the branch website and thirteen in respect of the National Retired Members' Committee endorsement. A list of these branches involved was provided in evidence. It was questioned by the complainants whether the branches affected have any control over this content. It was suggested that the matter complained of represents "a significant and serious organised breach of the rules" and is evidence of organised rule-breaking from within the union.

The Returning Officer requested a response to the complaints from the union. As well as providing comments the union also made available to the Returning Officer a technical report on the national UNISON news feed/ service which was prepared by the UNISON contracted web developers.

The Returning Officer was advised that the RSS feed is an intrinsic part of the union's national communications service to branches. It carries all national new stories that load automatically onto those local branch websites that have opted to use the national RSS feed (in particular, those branches who use the UNISON Branch Website platform) and provides branches and members with national union news. Because of the technical nature of the feed, local branches cannot adjust or alter the feed to choose which news stories it carries — they can either switch it on or switch it off (and in practice would be likely to need support to do that)—allowing every news story or none at all. The union maintained that branches are not 'publishing' any information with the feed, but 'opting in' to make the stream of all national news visible on their site to site visitors. It was suggested by the union that the feed accordingly is not a local branch resource. It is owned, resourced and financed by the national union.

It is the view of the Returning Officer that there has been no evidence that the appearance of the postings identified had been deliberately facilitated by either branches or UNISON staff. The use of the RSS feed is an established mechanism for the communication of information to members.

Decision of the Returning Officer: Complaints not upheld

15. Complaints concerning the inclusion of a candidate in a National Retired Members' Committee online seminar

Five complaints, including a complaint submitted on behalf of twenty two members, were received by the Returning Officer alleging that the inclusion of a candidate in a seminar organised by the Retired Members National Committee online seminar breached paras 45 and 51 of the procedures and represented a "systematic attempt to give one candidate an unfair advantage over others".

Paragraph 45 of the procedure provides that:

"any nominating body, branch or group of members that invites a prospective candidate to speak at a physical or virtual meeting or social event of the nominating body about their involvement in the election must also invite all the other candidates."

Paragraph 51 of the procedure states that:

"UNISON funds, property or resources cannot be used to support campaigning for any particular candidate."

The Returning Officer sought the view of the union and the candidate on the grounds set out in the complaint. It was stated that the candidate is the Assistant General Secretary for Bargaining, Negotiations and Equalities which includes all service groups, self organised groups, including black members, women, disabled members and LGBT+ members committees and additionally, the Young Members and Retired Members Committees. The union maintained that the candidate's attendance at, and participation in, the retired members webinar is entirely within their role as the AGS. and that the candidate had attended every retired members' conference since becoming AGS in 2017, being a keynote speaker at the event in 2019.

Considering all the evidence presented, it is the Returning Officer's view that that the candidate's participation in the seminar can be regarded as properly being carried out in the course of their normal duties and responsibilities as AGS and that the candidate had not been invited to participate in the event as a candidate. No evidence was presented to suggest that the candidate performed any campaigning at the event. It is accepted that the fact an employee of the union is standing as a candidate does not require them to cease activities which fall within the remit of their role and that they would customarily participate in. It is the view of the Returning Officer that the event should not be regarded as a meeting of a nominating body where the candidate was invited to "speak about their involvement in the election". The complainants have not established that a breach of paras 45 and 51 has been committed. This assessment is consistent with past precedents developed and followed in previous UNISON General Secretary elections.

Decision of the Returning Officer: Complaints not upheld

16. Complaints concerning the inclusion of a candidate in seminars – Disability Live and LGBT+ Live events.

Complaints were received by the Returning Officer from four members, one of which was submitted on behalf of twenty two members, alleging that disability and LGBT+ members received publicity about a candidate and invitations to separate events at which a candidate was scheduled to speak, in breach of para 45 and involving use of UNISON resources, breaching para 51.

It was alleged that disabled members received publicity about the candidate and were invited to a high-profile UNISON event at which the candidate would speak, which entailed the use of UNISON resources in breach of para 51.

No evidence was submitted to suggest that the candidate took part in any campaigning activity at either event. It is the Returning Officer's view is that the candidate's participation in each of the events referred to can be regarded as reasonably within the performance of their duties and responsibilities as AGS of the union. This assessment is consistent with past precedents developed and followed in previous UNISON General Secretary elections.

Decision of the Returning Officer: Complaints not upheld

17. Complaints relating to communications sent by two candidates to branch secretaries containing requests to forward communications to members.

Four complaints were received alleging that an email communication sent by a candidate to branch secretaries requesting that they forward the communication to members amounted to a breach of para 44 of the procedures. Para 44 provides:

"Nominating bodies must not allow prospective candidates, or their supporters, to have access to our electoral roll. This means that branch or workplace registers of members, including phone lists, email lists, home addresses or any other contact details provided by or stored by UNISON or an employer

cannot be used for election purposes. Any unauthorised use may breach data protection requirements.”

The Returning Officer determined that the email issued to branch secretaries inviting them to circulate what is clearly an election communication to members in the branch might be interpreted as amounting to an incitement to branch secretaries to breach procedures. It was considered that although the communication did not constitute a breach the request was inappropriate.

A second complaint submitted by two members concerned an email sent by a candidate to branch secretaries requesting that they forward a communication to the Retired Members’ secretary of the branch, where one existed. In this instance the message did not ask branch secretaries to send the email or any other information to branch members.

Following the receipt of these complaints the union was requested to issue guidance to candidates clarifying the scope of the rule.

Decision of the Returning Officer: Complaints not upheld

18. Complaints relating to Retired Members’ National Committee nomination

Eleven complaints, including one complaint submitted on behalf of twenty two members, were relation to the reporting of the decision of the Retired Members National Committee to endorse a candidate on the UNISON national website.

It was alleged that this publicity was a clear use of UNISON “funds, property or resources” to campaign in support of one candidate in the General Secretary contrary to para 51 of the General Secretary election procedures, by reporting and explaining the decision of the National Retired Members’ Committee to “endorse” a particular candidate. It was further suggested that the reporting included an incitement to members to use UNISON resources to communicate this endorsement, implicitly using UNISON resources, as it was alleged that branch and regional retired members’ groups were asked to communicate this decision to their members.

In response to inquiries from the Returning Officer an explanation was provided on behalf of the Retired Members Committee. It stated, although not a nominating body, the Committee had, as in previous General Secretary elections and in common with other national UNISON committees representing self-organised groups/equality groups, endorsed a candidate in the election. A decision was subsequently taken to inform retired members of the committee’s decision by their usual method of communication, UNISON’s national website. The National Officer for the committee confirmed that at no point did they speak to or liaise with any of the candidates regarding this posting. It was further stated that the National Officer was under the mistaken impression that, as the election procedures did not specifically forbid a self-organising group from advising members of the endorsement, their actions in publicising the endorsement did not amount to a breach.

The Returning Officer determined that the action complained of did amount to a breach of the procedures. Confirmation was received by the Returning Officer that the post was removed on the 22nd September. The number of unique views of the post was reported to be 225.

Decision of the Returning Officer: Complaint upheld

19. Complaint concerning candidate involvement in online events

A complaint was received alleging that, by involvement in a series of online union events, a candidate was in breach of the election procedures in that UNISON resources were being used in support of a candidate.

Evidence was submitted by the candidate that the events referred to were properly in pursuance of the candidate's role as Assistant General Secretary for organising and recruitment within the union.

Decision of the Returning Officer: Complaint not upheld

20. Complaints concerning the publication and distribution by East Midlands region of "The Campaigner" Magazine"

Five complaints were received from a candidate and four members, one of which was submitted on behalf of twenty-two members, in relation to the distribution of a publication to union activists in East Midlands. It was stated that this magazine was a completely new publication and could not be regarded as "usual means of communication" by the nominating body, in breach of procedures s51a.

The Returning Officer sought evidence from the East Midlands Regional Secretary who was responsible for the publication. In their response it was submitted, inter alia, that the publication had been in contemplation for a number of months prior to the commencement of the election process and was intended to be a regular means of communication between the region and activists, with further issues planned to be distributed.

Decision of the Returning Officer: Complaints not upheld

21. Complaints relating to the use of videos / digital flyers by branches informing members of their nomination.

Three complaints, including a complaint received on behalf of twenty two members, alleged breaches by two branches that nominated different candidates. Each complaint alleged that the branches had breached para 51a in that they did not seek to limit their nomination statement to a 100-word statement but instead used a video format to communicate the reasons for the nomination.

It is evident from the Twitter feed of one of the branches complained of that Twitter appears to be a usual communication method used by the branch. It is the opinion of the Returning Officer that the content of the video did not breach the rule in that the message amounted to the communication of the reasons for the nomination.

In relation to the second complaint again the branch communicated the 100 word statement in a video format accessible via the branch website. It is the opinion of the Returning Officer that the communication of the statement in video format on the branch website can be regarded as a "usual method of communication" in this instance did not breach the procedures.

Three separate complaints were received in relation to the issue by a branch of a digital flyer explaining the reasons for their candidate nomination. It was alleged that, along with the cover email issued the word count exceeded the allowable limit of 100 words. It was also alleged that this was not the branch's usual means of communication. It was accepted by the Returning Officer that the email text should not form part of the 100 words and that the flyer could be regarded as "usual method of communication".

Decision of the Returning Officer: Complaints not upheld

22. Complaint that candidate using external organisation to support campaign by advertising an event, in breach of para 47.

A complaint was received alleging that an external organisation had been supporting a candidate by promoting details of a campaign event on a social media site. The candidate provided an explanation

to the Returning Officer that there was no involvement by an “outside organisation” as defined in the procedures and that the Facebook page identified by the complainant was set up and controlled by an identified volunteer.

It was accepted by the Returning Officer that there was no evidence that a breach of para 47 had been established.

Decision of the Returning Officer: Complaint not upheld

23. Complaints re ruling that Margaret Greer nomination invalid

Thirteen complaints were received by the Returning Officer relating to the assessment by the union that Margaret Greer did not satisfy the eligibility criteria to be a prospective candidate, as set down in the election procedures.

Having considered all the evidence presented Returning Officer upheld the assessment by the union that the individual was ineligible.

Decision of the Returning Officer: Complaints not upheld

24. Complaints relating to campaigns advising members to issue reasons for the branch nomination more than once.

Six complaints, including complaints submitted on behalf of twenty-two individual members, were received in relation to the publication by nominating bodies of reasons for their nominations to members on multiple occasions, alleging that this constitutes a breach of para 51a.

It is the view of the Returning Officer that the procedures do not limit the number of occasions the communication can be issued.

Five complaints were also received alleging that branches supporting different candidates had used the same communication to members encouraging them to participate in the election whilst also reminding members of details of the branch nomination, suggesting that this was a breach of para 51a.

It was the view of the Returning Officer that these communications were permissible in terms of the rules and accordingly the reported communications did not amount to breaches.

Decision of the Returning Officer: Complaints not upheld

25. Complaints relating to use of press publicity and social media postings by union to support a candidate.

Three complaints were received alleging that the issue of press releases and social media postings by the union amounted to a breach of para 51, in that UNISON resources were used to publicise activities of a candidate.

The union were asked to comment on the allegation. Based on all information available to the Returning Officer it was accepted that, in relation to the matters publicised, these involved the candidate acting in the course of their role within the union and that the press publicity and social media involved amounted to normal reporting of the actions of the employee.

Decision of the Returning Officer: Complaints not upheld

26. Complaints concerning multiple breaches by nominating bodies supporting one candidate on social media

Complaints were received by the Returning Officer from one member between 24 September and 20 November 2020 identifying apparent breaches of procedures by nominating bodies in support of one candidate, Christina McAnea. A further complaint was submitted to the Returning Officer on the 4th December sent on behalf of twenty-two members which, inter alia, supported all the complaints submitted by the earlier complainant.

The breaches submitted all allege that the actions violated para 51d. The complaints can be categorised under the following headings:

1. Complaints about branches and one national sector committee publicising the nomination decision of another nominating body on their social media platforms, in breach of paragraph 51a of the election procedure.

There were 38 reported instances.

Decision of the Returning Officer: 34 complaints upheld

2. The inclusion on branch social media platforms of links to the candidate's social media and other campaigning material – examples include images of candidate from social media campaigns / graphics of candidate / calls on members to vote for the candidate / campaign tweets.

A total of 59 instances were reported on the following branch platforms; branch website – 4; Facebook – 31; Twitter – 24. Two instances of postings representing single breaches on UNISON official social media platforms were reported and are included in this total.

3. Retweet of a campaign tweet on branch's twitter account – 9 instances
4. Report of a branch using more than 100 words to publicise nomination- 1 instance (107 words used)

In each case the nominating body was contacted as soon as practicable and advised to take steps to remove the postings complained of without delay and evidence was provided to the Returning Officer that retractions of material in the vast majority of the instances reported had taken place.

Decision of the Returning Officer: with the exception of two instances all complaints submitted were upheld.

In addition, eight complaints were received from other members alleging similar breaches by branches in respect of postings on social media platforms involving other candidates, in breach of para 51– complaints were upheld in relation to five reported breaches. Again where a breach was determined, the nominating body was advised to take steps to retract the material as soon as possible.

Decision of the Returning Officer: complaints upheld

Further investigation by the Returning Officer

The incidence of the reported procedural breaches by nominating bodies was of concern to the Returning Officer. It is clearly necessary to ensure that the election procedures were being adhered to by nominating bodies in the election. It was important to ascertain whether there was any evidence of breaches in the social media activity of any nominating bodies in the election and, if it was established that there was, to take steps to ensure that any breaches were addressed straight away. To this end a search was carried out on candidates' social media platforms using the campaign identities of all candidates. A significant number of instances which amounted to breaches were subsequently identified involving breaches found on social media platforms across branches supporting all candidates – around 250 possible breaches were evident, implicating branches

nominating all candidates - breaches included instances of campaign postings being liked, shared and retweeted by branches – all activity amounting to breaches of para 51d which prohibits the use of UNISON social media in support of a candidate. Once identified and to ensure these breaches were addressed immediately the branches concerned were notified and instructed to take steps to immediately remove the postings. Confirmation was received by the Returning Officer that steps would be taken to ensure that any breaches had been removed.

The complaint received on the 4th December included an assertion that the reported breaches by the candidate Christina McAnea represented a “systematic abuse of the rules by one candidate’s campaign”. It was also suggested that the complainants had seen “no similar evidence of abuse of the rules by other candidates, let alone widespread rule-breaking on this scale”. The identification of breaches across branches in support of all candidates in the election would suggest that the breaches of para 51d were not confined to one candidate in the election.

27. Complaint about the nomination meeting of Yorkshire & Humberside Regional Council

A complaint, submitted on behalf of twenty-two individual members, questioned the fact that the nominating body did not hold a candidate hustings or hold a meeting of its full regional council. The Returning Officer determined that there is no requirement in the procedures for a hustings to take place and it is permissible under Rule F 5.1 of the union’s rulebook for the decision to nominate a candidate to be taken at a committee meeting where a full regional council meeting is not scheduled. Accordingly, in terms of this rule, regional committees may have the delegated authority of regional councils.

Decision of the Returning Officer: Complaints not upheld

28. Complaint about Scottish Region staff

A complaint, submitted on behalf of twenty-two individual members identified concerns about a perceived unfairness in the actions of three regional councils, including the Scottish Region. The Scottish complaint relied on the content of a publication issued to activists which included an article about the regional council nomination. It is suggested that the wording included in the document circulated - “Use these stories in your branch newsletter or circulate the pdf version to members” constitutes a breach of para 51. It was also suggested that the publication was evidence of systematic breaches of the election rules organised by paid staff of the union to further one campaign.

It is claimed that this is “well illustrated by many of the complaints which should not in complainants’ view be treated as ‘individual missteps’ by branches but rather as organised and systematic abuse of the rules”

There is no suggestion by the complainant that the issue of the magazine itself to activists breached procedures. The region is entitled to produce and distribute the publication to members and to determine the content and format. The encouragement to activists to “*Use these stories in your branch newsletter or circulate the pdf version to members*” was a general encouragement to activists to share stories in the publication with members. Although a number of branches did publicise the Scottish Region nomination and were subsequently found to be in breach of the procedure the complainants have provided no specific evidence to demonstrate that branches went on to share details of the Scottish regional nomination acting specifically on the wording used in the magazine.

It is the view of the Returning Officer that a breach has not been committed by the Scottish Regional Council in this instance – if a branch did go on to share details of the regional nomination then this action may amount to a breach by the branch under para 51.

A similar allegation was made by the complainant in relation to the reporting of the nominations of other nominating bodies by three branches in the Northern Ireland region. No evidence to substantiate the claim that this amounted to “an organised breach of the rules rather than a one-off honest mistake” was provided.

Decision of the Returning Officer: Complaints not upheld

29. Complaint about the conduct of the South East region in relation to the Regional Council nomination

A complaint was received on behalf of twenty-two members which reported the different ways regional councils communicate details of regional nominations with members – it is alleged that the differing ways adopted by regional councils of communicating details is not consistent with “usual methods of communication” and that this was an unfair exercising of staff’s power as gatekeepers to prejudice the chances of one campaign and to boost that of another.

The Returning Officer understands that, in respect of the methods used by regions to publicise a nomination this is a delegated responsibility to regions and the regions operate autonomously when determining how this should be done.

There is no evidence provided by the complainants in this instance that the conduct referred to has broken any procedure or rule governing the election.

Decision of the Returning Officer: Complaints not upheld

Conclusion

This report sets out the Returning Officer's determination of complaints submitted in relation to the conduct of the election.

In relation to the complaints upheld it is the responsibility of the Returning Officer to consider the impact of these breaches on the actual votes cast by members in the election.

The overriding question that must be considered is - did the commission of those breaches upheld by the Returning Officer influence the votes cast by members to the extent that they affected the outcome of the election – i.e. were they material in having an impact on the result of the contest so that the candidate securing the most votes would not have gained this level of support and consequently won the election had these breaches not occurred. It is simply not possible to say with a degree of certainty what the direct impact of these individual breaches amounted to but we consider, in assessing their possible influence on the result, that there are a number of factors that are relevant to take into account.

The General Secretary election is a statutory ballot and is accordingly governed by the provisions of TULCRA 1992. The legislation imposes certain requirements on the union – one of which is that eligible members must receive a postal voting pack that includes the election statement booklet. This booklet contains a 500 word statement from each candidate, providing them with opportunity to set out in detail why members should vote for them, the purpose being to enable members to make an informed choice when casting their vote. Importantly, the statement booklet also contains full details of the nominating bodies – the NEC, regions, service groups and branches who have decided to formally support their respective candidate. The legislation thereby ensures every member eligible to vote receives, at the beginning of the ballot, the same level of information about each candidate.

The Returning Officer upheld branch breaches where the nominations of other nominating bodies were publicised. Although these actions breached the procedures they involved only around 17% of the branches who nominated the candidate concerned. It is relevant to bear in mind that, as stated above, the details of these nominations are contained in the hard copy election statements booklet issued to every member, along with the voting paper, at the commencement of the election.

In respect of the upheld breach relating to the publicising of the Retired Members' Committee endorsement – it should be noted that this posting was removed over a month before the voting period opened, mitigating any potential impact. In considering this particular breach we were also mindful of the fact that Christina McAnea states in her election statement that is issued to all members that she has the support of the Retired Members committee and she is entitled to do this. It was reported to the Returning Officer that at the time the article was taken down only 225 unique views had been recorded on the union website. We note that the news item which erroneously appeared on the national website may have been available to some members due to the RSS feed and reports were submitted in respect of 13 sites to support this, there is no evidence to support the contention that the national retired members committee, "using inappropriate publicity in collusion with at least staff who operate the national UNISON website, to confer an advantage on one campaign".

The breaches of para 51d mainly consisted of the promotion of a candidate on branch social media platforms. In assessing the impact of these breaches on the result the Returning Officer has taken into account the following factors:

- in many of the cases reported the breach by the branches amounted to a single occurrence on a nominating body's social media platform

- once reported to the Returning Officer the offending postings were quickly highlighted to branches who were advised to have these removed as soon as possible
- there is clear evidence that breaches of this nature were not confined to the social media of one candidate – there were over 250 incidences identified on branch social media accounts which involved the promotion of a candidate - if it is argued that any benefit was enjoyed by candidates from their unauthorised promotion in the manner relied on then it follows that all candidates were favoured as a result of these breaches.

After consideration of these factors it was the Returning Officer's view that the breaches were on the lesser scale of seriousness and that their prompt removal minimised any impact.

It has been suggested in complaints that the breaches by branches highlighted should not be regarded as isolated incidents but the deliberate outcome of systematic breaches by branches and staff designed to promote the candidate who received the highest number of votes. The evidence available to the Returning Officer, in our opinion, does not support this claim – it is noticeable that when considering where the breaches occurred there does not appear to be a consistent pattern to the activities – the breaches are linked to branches across every region and service group within the union. No evidence has been provided that these postings were part of any co-ordinated campaign to aid the electoral chances of any particular candidate and there is very limited evidence submitted that would suggest that any candidate was aware of the breaches. Responses received from a number of branches secretaries following intimation of the breaches highlight a possible degree of misunderstanding on the part of branches as to what is and is not allowable on social media, in terms of the rules – this is supported by the pattern of breaches identified in branch activity supporting all candidates. It would have been extremely helpful to nominating bodies for the union to have provided comprehensive and practical guidance setting out definitively the intended scope of the rule. The existing wording in the procedures is lacking in specification and clarity is required to ensure branches and their officers are fully aware of what is and is not allowable. It is apparent that this must be addressed for future UNISON elections as social media is an increasingly important tool utilised by branches to communicate with members.

The Returning Officer is required to consider the breaches and any impact in the context of the overall result of the election. Whilst we acknowledge that there have been more breaches by branches and nominating bodies supporting the successful candidate than other candidates, Christina McAnea did receive 18,600 more votes than the runner up in the election. It is the view of the Returning Officer that this margin is too great to be attributable to any suggested benefit achieved by the actions constituting the breaches upheld in this report. Analysis of the votes cast demonstrates that Christine McAnea received the most votes in 11 out of the 12 regions and that she received the most votes or was tied for first place in 694 of the 848 branches involved in the election. Even if vote share in Scotland (which was the subject of potentially serious alleged breaches by the union – which were not upheld) was adjusted to apportion the vote share in that region commensurate with the share of vote in the remainder of the country, Christina McAnea would still have secured a majority of around 14,000 over her next placed opponent.

In conclusion it is the finding of the Returning Officer that, notwithstanding the breaches that were upheld in the election, all of which related to the actions of nominating bodies or individuals and none of which were the result of direct actions of the candidate, we do not consider that their impact was material to change the final standings of the candidates in the election. It is the opinion of the Returning Officer that the outcome of the election accurately reflects the views of the members of the union.



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The Returning Officer would like to thank all members, candidates and staff at UNISON who helped to ensure the election process ran smoothly, in challenging and unprecedented circumstances.