

RE: THE UNIVERSITY AND COLLEGE UNION

JOINT OPINION

1. INTRODUCTION

- 1.1. We are asked to advise *Stop The Boycott* in relation to the legal implications of a motion ("the Motion") due to be debated at the forthcoming annual National Congress of the University and College Union ("the Union") on 28 - 30 May 2008. The Motion appears to have been proposed by the National Executive Committee and local associations of the Union.
- 1.2. In our view, for the reasons set out in more detail below, it would be unlawful for the Union to pass the Motion, in as much as the Motion calls on the Members of Union to undertake certain actions in relation to "Israeli colleagues with whom they are collaborating" as well as expressly mandating the Union via the NEC (the policy execution arm of the Union¹) to take steps towards so-called "greylisting" of another academic institution, Ariel College.
- 1.3. The legal objections to the Motion are:
- (a) First, potential breaches by the Union of the Race Relations Act 1976 as amended ("RRA"). If the Motion is passed it would expose Jewish members of the Union to indirect discrimination

¹ Union Rules §18.1.

contrary to section 11 of that Act by imposing a detriment upon them. Additionally, the Union faces potential liability for acts of harassment on grounds of race or nationality. The substance of the Motion may also involve the Union in becoming accessories to acts of discrimination in an employment context against Israeli academics.

- (b) Second, the terms of the Motion are outside the powers given to the Union under its Rules. Specifically, the Motion calls on its members to undertake acts of harassment and discrimination against others on grounds of national origins. Aside from race relations legislation, and unhampered by the need to establish that the discrimination occurs in a field in which it is prohibited under the Race Relations Act 1976² or indeed to give a statutory as distinct from an ordinary meaning to harassment, such acts are specifically prohibited by the Union's *own* rules. Overall, it is difficult to see how any of the Union's aims and purposes are furthered by the Motion.

1.4. In our view, the Union and its officers are undertaking substantial legal risks if they resolve to pursue the Motion in its current terms. If the Union is proposing to debate a motion which, if passed, would mandate unlawful action it must necessarily follow that it is unlawful for the matter itself to be the subject of a Motion. The Motion should accordingly be withdrawn or modified.

1.5. We stress that the Union and its membership are fully entitled to exercise their rights to freedom of expression to debate the political

² *R v ECO ex p Amin* [1983] 2 AC 818 at p.833G

issues surrounding Israel/Palestine question. Nothing in this Joint Opinion is intended to suggest that these rights have been curtailed by the Union Rules or general law. However, the rights to freedom of expression, whether under the Common Law or the European Convention on Human Rights, domesticated by the Human Rights Act 1998, (which are in this area co-terminous) are not limitless and necessary and proportionate restrictions may be imposed to protect the rights of others than the speaker³. Aspects of the Motion which are in substance a call to the membership to impose some form of sanction on Israeli academics and/or institutions exceed acceptable limits.

2. THE CONTEXT

- 2.1. Proposals for an academic “boycott” of Israel or Israeli academic institutions have a lengthy history which provides an important factual context to the legal issues on which we are asked to advise. The Motion and its particular language have been formulated against that context.
- 2.2. We understand that in 2005, the AUT sought legal advice in relation to a proposed boycott. The advice was not public but the indications are that the union was advised that enforcing proposed boycotts of Bar Ilan and Haifa universities would constitute a breach of the Union's obligations under the RRA
- 2.3. In 2007, Lord Lester of Herne Hill QC was consulted by the Union following the passing of a resolution instructing the NEC to facilitate and encourage a boycott of Israeli academic institutions. Lord Lester QC's opinion was not made public. However, following receipt of the advice Ms. Hunt wrote to all Union members stating that it had been

² *Derbyshire CC v Times Newspaper* 1993 AC 534 per Lord Keith at p.551

advised that "*making any call to boycott Israeli institutions would run a serious risk of infringing discrimination legislation*" and that it would also "*be outside the aims and objectives of the UCU*".

- 2.4. It is against this background of advice from specialist and experienced Counsel that a call to members by way of resolution directly to boycott Israeli institutions would be unlawful as breaching discrimination law and would also exceed the Union's constitutional powers.
- 2.5. We will turn to the language of that Motion after considering the relevant legal framework. We should state at the outset however that we share the concerns expressed by previous legal advisers and we do not consider that those concerns (based on discrimination law and the limits to powers of the Union) will be met by the new formulation even if designed to circumvent them. The potential legal liabilities in relation to which the Union appears to have been advised previously will in our view remain.

3. THE LEGAL FRAMEWORK

- 3.1. The Union was formed on 1 June 2007 upon the merger of the AUT (Association of University Teachers) and NATFHE (National Association of Teachers of Further and Higher Education). It represents over 120,000 individuals working in higher or further education institutions based in Great Britain or Northern Ireland (Rules 3.1.1.1). Members of a union of this size and with such membership will naturally have professional academic links and associations with colleagues in Israeli educational institutions, and with those institutions themselves.

³ ditto p.550-551

- 3.2. The Union is a "trade union" within the meaning of section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992, and is also more specifically an "independent trade union" section 5 of that Act (in other words, not a union under the domination or control of a single employer). By section 10(1) of the 1992 Act, the Union, even though not a body corporate, has the capacity to make contracts and can sue or be sued in respect of torts and other causes of action.
- 3.3. The scope of the Union's aims and objects and its lawful functions are, like any other union, to be found in its governing document or "constitution" - the Rules of the Union dated 1 June 2007.
- 3.4. With emphasis supplied, these Rules provide in the Aims and Objects section as follows:

"2 Aims and Objects

- 2.1 To protect and promote the professional interests of members individually and collectively, to regulate the conditions of their employment and the relations between them and their employers, and to safeguard their interests;
- 2.2 To promote Adult, Further and Higher Education and research;
- 2.3 To provide and maintain such services to members as may be approved by National Congress or the National Executive Committee from time to time;
- 2.4 To promote equality for all including through:
- i. collective bargaining, publicity material and

campaigning, representation, Union organisation and structures, education and training, organising and recruitment, the provision of all other services and benefits and all other activities;

ii. the Union's own employment practices;

- 2.5 To oppose actively all forms of harassment, prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital status, sexuality, disability, age, or other status or personal characteristic;
- 2.6 To pursue political objects including those under the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 as set out in these Rules;
- 2.7 To affiliate to the Trades Union Congress and to cooperate, where appropriate, with it or any of its affiliated unions;
- 2.8 Notwithstanding any other provision of these Rules no part of any fund of the Union, or of any local branch/local association, shall be used for, or with a view to, affiliation to any political party;
- 2.9 To do all such other things as may in the opinion of the National Executive Committee be incidental or conducive to the attainment of these objects."

3.5. Clause 6.1 of the Rules provides:

“6. Obligations of Members

6.1 All members and student members have an obligation to abide by the Rules of the University and College Union, and shall refrain from conduct detrimental to the interests of the Union, from any breach of these Rules, Standing Orders or directions (properly made in accordance with these Rules or Standing Orders) and from all forms of harassment, prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital status, sexuality, disability, age or other status or personal characteristic”.

3.6. Clause 16 of the Rules provides:

“16. National Congress and Sector Conferences

16.1 National Congress and Sector Conferences shall be the supreme policy making bodies of the Union for those areas defined in Rules 16.2 and 16.3 respectively.

16.2 National Congress shall decide policy on all matters that are not particular to any Sector.

16.3 Sector Conferences, subject only to any fundamental principles of policy appropriate to and established by National Congress, shall decide policy for all professional and employment matters which are particular to the Sector.

16.4 National Congress and Sector Conferences shall have annual meetings, which shall meet in the same time period, between 15 March and 15 June. Sector Conferences shall normally be allocated approximately half, and National Congress approximately half, of the time available.

- 16.5 By the same procedure as is required to alter Rules, the annual meeting of National Congress shall adopt (and may amend) Congress Standing Orders to regulate the transaction of the business of Congress and Sector Conferences and the operation of the Congress Business Committee. Sector Conferences may propose by resolution amendments to Congress Standing Orders to the next National Congress.
- 16.6 Motions for National Congress, and amendments thereto, may be proposed by the National Executive Committee, branches/local associations, specialists committees set up under Rule 24 and National Equality Standing Committees. Each branch/local association shall be entitled to submit one motion and one amendment to National Congress”.
- 3.7. Under section 30 of the RRA, it is unlawful for a person who either has authority over another person or in accordance with whose wishes that other person is accustomed to act to instruct him to do anything which is unlawful by virtue of Part II or Part III of the Act, or to procure or attempt to procure the doing by him of any such act. Under section 31(1) of the RRA it is unlawful for a person to induce, or to attempt to induce, a person to do any act which contravenes Part II of the Act. Section 33(1) provides that a person who knowingly aids another person to do an act made unlawful by the RRA shall be treated as himself doing an unlawful act of like description.
- 3.8. Part II of the RRA deals with discrimination in the employment field.
- 3.9. Under section 11(3) of the RRA, Trade Unions are prohibited from discriminating against members by imposing a *detriment* upon them. Discrimination in this context includes indirect discrimination which occurs when a provision, criterion or practice is applied to all members but it is such that it will put particular members at a disadvantage

because of their race, ethnic or national origins. There is an exception to such prohibition if the provision, criterion or practice is a proportionate means of achieving a legitimate aim. As we explain below in §6.4, we do not see how this exception could be engaged in the present case.

- 3.10. Trade Unions are also prohibited from harassment. (s.11 (4), 3A) defined to mean (so far as potentially material) (1) *“unwanted conduct related to racial or ethnic origin (taking) place with the purpose or effect of (a) violating the dignity of a person or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment”*. (2) *“Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of sub section (1) only if, having regard to all the other circumstances, in particular the perception of that effect on other persons, it should reasonably be considered as having that effect”*.

4. THE MOTION

- 4.1. The Motion to be debated on 28-30 May 2008 is in the following terms (emphasis added):

SFC10 Composite: Palestine and the occupation *University of Brighton – Eastbourne, University of Brighton – Grand Parade, University of East London Docklands, National Executive Committee*

Congress notes:

- the continuation of illegal settlement, killing of civilians and the impossibility of civil life, including education;
- humanitarian catastrophe imposed on Gaza by Israel and the EU;

- apparent complicity of most of the Israeli academy;
- legal attempts to prevent UCU debating boycott of Israeli academic institutions; and legal advice that such debates are lawful

Congress affirms that:

- criticism of Israel or Israeli policy are not, as such, anti-Semitic;
- pursuit and dissemination of knowledge are not uniquely immune from their moral and political consequences;

Congress resolves that:

- **colleagues be asked to consider the moral and political implications of educational links with Israeli institutions, and to discuss the occupation with individuals and institutions concerned, including Israeli colleagues with whom they are collaborating;**
- UCU widely disseminate the personal testimonies of UCU and PFUUPE¹ delegations to Palestine and the UK, respectively;
- **the testimonies will be used to promote a wide discussion by colleagues of the appropriateness of continued educational links with Israeli academic institutions;**
- UCU facilitate and encourage twinning arrangements and other direct solidarity with Palestinian institutions;
- **Ariel College, an explicitly colonising institution in the West Bank, be investigated under the formal Greylisting Procedure.**

SFC10A.1 Compositing amendment: *University of Brighton Eastbourne,*

University of East London Docklands

Point 3, delete 'apparent'

SFC10A.2 Compositing amendment: *University of Brighton – Eastbourne*

Add new point 6: 'a boycott of all Israeli academic institutions at this time is unlikely to maximize and unify international solidarity.'

SFC10A.3 Compositing amendment: *University of East London Docklands*

Delete point 10, replace with "Ariel College and similar institutions in the Occupied Territories are illegal and will be investigated under UCU's Greylisting Procedure".

(our emphasis)

- 4.2. There is little doubt that the Motion has been drafted in an attempt to circumvent the legal restrictions on the powers of the Union to mandate a direct boycott of Israeli academic institutions (the subject of the Gill and Lester advice to which we make reference above).
- 4.3. In our view, this attempt at circumvention fails.
- 4.4. After seeking to construe the Motion, we will first address the effects of anti-discrimination legislation and then the issue of the Union's constitutional powers.

5. MEANING OF THE MOTION

- 5.1 It is necessary at the outset to construe the Motion.
- 5.2 There are, in our view, no particular principles of construction particular to motions put before Union bodies any more than to rules

of the Union themselves. *“While it cannot be said that the rules are a fine example of legal drafting, I do not think that because they are rules of a Union, different canons of construction should be applied to them than are applied to any written document. Our task is to construe them so as to give them a reasonable interpretation which accords with what in our opinion must have been intended”*: *British Actors Equity Association v Goring* [1978] ICR 791 per Viscount Dilhorne at p.794-5⁵ (on the rules of the organisation Equity).

5.3 Accordingly the motion must be read *“as a whole”* and one should avoid *“over-elaborate analysis and also too literal an approach”*: *Bonnick v Morris* [2003] 1 AC 300 at p.303.

5.4 Applying these several tests it is clear that the object of the proponents of the motion is not merely to encourage a dialogue by Union members with *“individuals and institutions concerned”* – the exact dimensions of this group is obscure, but it includes at least representation of Israeli institutions and members’ Israeli colleagues - over the merits of the *“occupation”*. It goes in our view further than that.

5.5 We observe that the severing of links with Israeli institutions, which is mooted in the Motion, cannot logically be dependent on whether those parties do or do not accept the wrongfulness of the occupation. Either links with such institutions are appropriate: or they are not. Indeed

⁵ See further *Cowley v Heatley* TR 2 July 1986, Sir Nicholas Browne-Wilkinson (on the rules of the Commonwealth Games Association) *“one had ... to inquire beyond the language and see what the circumstances were with reference to which the words were used, and the object appearing from those circumstances which the person using them had in view”*.

members are asked to consider the moral and political implications of such links independently of the discussions which are also proposed. See first bullet point of Resolution which has demonstrably two limbs.

- 5.6 On the assumption that the parties with whom such discussion is to take place do not accept that “occupation” aptly describes the acts of the Israeli Government or that, if it does accurately so describe such acts, such acts cannot be amply justified, it is implicit that some further detrimental action be taken against those parties whether by way of ostracism or otherwise. To test them for their views on the Palestinian issue would otherwise be pointless.
- 5.7 In any event, those who propose the motion are clearly opposed to continued educational links with Israeli academic institutions.
- 5.8 This appears unambiguously from the partisan way in which the factors which Congress is asked (at the outset of the Motion) to note are described. The proposers wish to secure support among the Union membership as a whole for their views that such links are inappropriate. Whether or not more is contemplated in the wake of the discussions proposed may be obscure: that at least is clear.
- 5.9 Vis a vis Ariel College, the thrust of the motion is also clear. The first steps are to be taken towards blacklisting it. The description of it as “an explicitly colonising institution in the West Bank” again is an objective indication of the subjective perception of the proponents of the motion.

6. THE RACE RELATIONS ACT 1976

- 6.1. Subject to how the facts may develop, in our view there are at least

three objections under discrimination law to the Motion. We will address each in turn below but they may be summarised as follows: (a) an encouragement to Union members to discriminate against Israeli academics in an employment context; (b) subjecting Jewish Union members to a detriment based on racial grounds; and (c) harassment of Jewish members on racial grounds.

- 6.2. As to the first objection, in our view, the substance of the Motion amounts to an encouragement or invitation to members of the Union (many of whom will be in positions where they employ or are in positions where they recruit academics) to discriminate against Israeli academics. In blunt terms, the intended effect of the Motion is to require Union members to “discuss” what we will neutrally term the Palestinian issue with Israeli academics (including those presently employed in Great Britain or Northern Ireland) with a view potentially to severing educational links with them subject to the outcome of those discussions. No doubt, if such Israeli academics speak in favour of the Palestinian viewpoint they will be immune from further action; if they are against it or possibly even non-committal they and their institutions are to be considered potentially unsuitable subjects for continued association.
- 6.3. The area of the RRA which is engaged by the above objection is that which deals with employment. Were an Israeli academic to lose the ability to take up employment with an English university or be subject to other detriment in any employment context because the individual recruiting that person is acting under directions derived from the Motion, there is a substantial risk that the Union itself would incur liability under sections 30 and 31 of the RRA on the basis that it

instructed or induced acts of discrimination against such persons on grounds of nationality if the causal link could be established between passage of the motion and detriment to the Israeli academic.

6.4. As to the second objection, we consider that the purport of the Motion is a call by the Union on all members to take certain action. The Union will accordingly be adopting a provision, criterion or practice which will put Jewish members at a particular disadvantage compared to non-Jewish members. That is because Jewish members are much more likely to have links with Israeli academics and institutions than non-Jewish members. To require Jewish members to act consistently with the Motion (if passed) would be to impose a professional detriment upon them as Union members which is based on their race⁶. If they acted inconsistently with the Motion, we infer that they would also be subject to disadvantage or sanction under the Union rules or practices – an alternative detriment. We do not see how any such detriment would be justified as pursuing a legitimate aim. No proper Union purpose is promoted by imposing this detriment on certain members. Thus the Motion will have the effect of indirectly – and unlawfully – discriminating against Jewish members of the Union.

6.5. Before explaining the third objection, we should say that we have carefully considered whether the Union itself could be in breach of the RRA by permitting a Motion which was, in a broad sense, pro-Palestinian and anticipated action adverse to Israeli institutions or academics could be itself considered as harassment under RRA s.11(4) (read with s.3A). Such a claim would be based on the fact that the

⁶ Jews are protected as an ethnic or racial group under the Act *Seide v Gillette Industries Ltd* [1980] IRLR 427.

Union's action in allowing the Motion to be debated would be perceived by Israeli or Jews as hostile to them. Given the importance of political freedom of expression, merely having the Motion on paper as a matter to be debated would not be unlawful.

- 6.6. There is an important qualification to this last point which amounts to our third objection: if the discussion at the meeting descended, to the advance knowledge of the Union based on earlier experience, into an attack on Jews generally under the guise of a debate on the Palestinian question and that the effect was to create a intimidating, hostile and degrading atmosphere for Jewish Union members the Union could be held liable for harassment (within section 3A(1) of the RRA) (See *Gravells v London Borough of Bexley* UKEAT/0587/06/LEA). Axiomatically whether the statutory test is satisfied in any particular context is necessarily a question of fact and degree.
- 6.7. We understand that from the history of the boycott issue that there is evidence before the Union of the effects that previous debates have had on Jewish members. Indeed, it appears that many members resigned from the Union because of the anti-Jewish atmosphere created following the previous boycott motions. No person should have to resign their membership of a union on grounds of feelings of humiliation or abasement related to their race.
- 6.8. The Union is ultimately an organisation for protecting the rights of its members including Jewish members. It cannot create a situation where a part of its membership is subjected to harassment on grounds of race. While the Palestinian issue is clearly an important matter of political debate the Union must not allow such debate to become a pretext for

harassment of part of its membership. If it does allow this to happen it and its officers may act unlawfully and violate the Race Relations Act 1976.

7. CONSTITUTIONAL POWERS OF THE UNION

- 7.1. While there is no doubt that the Union can properly debate political matters and indeed pursue political objects (see §2.6 of the Rules) these must be undertaken in furtherance of the Union's express overall aim and object of promoting members' interests in the professional field (§2.1 of the Rules). The ability of the Union to pursue political objects cannot as a matter of principle be uncontrolled by the primary purpose for which the Union operates. The Union is an employees' organisation and not simply a political party⁷.
- 7.2. As we have already indicated, the purpose and effect of the two most objectionable parts of the Motion⁸ (apart from the investigation of greylisting of Ariel College which is addressed separately below) is to require members to discuss the "occupation" with colleagues with the

⁷ Clause 2.6 is principally intended to permit the Union to use its funds in furtherance of political objects as identified further in Clause 36 by reference to section 72 of the Trade Union and Labour Relations Act 1992. The purpose of Clause 2.6 is to allow contributions to UK political parties within the section 72 regime: see *Harvey* at para. 469. We do not say that the Union might not pursue other political objects (see *Paul and Fraser v National and Local Government Officers' Association* [1987] IRLR 413 and *Harvey* at para. 1861) but these must be directed to the primary aim and object of the Union, namely furtherance of the professional interests of members and the promotion of further and higher education, and must not require action contrary to the other express provisions of the Rules

⁸ This is the part which provides that colleagues be asked to consider the moral and political implications of educational links with Israeli institutions, to discuss the occupation with individuals and institutions concerned, including Israeli colleagues with whom they are collaborating; and that UCU widely disseminate the personal testimonies of UCU and PFUUPE delegations to Palestine and the UK, respectively; and that the testimonies will be used to promote a wide discussion by colleagues of the appropriateness of continued educational links with Israeli academic institutions.

concomitant suggestion to members that (subject to the outcome of the discussion) the members sever links with Israeli academic institutions. The wording “appropriateness of continued educational links” with these institutions is expressly used in these parts of the Motion. What is to be recommended or directed by the Union if the Motion is passed is in essence no different to that which the Union were previously advised was unlawful. In simple terms, members are being asked to boycott these institutions whether or not depending on the outcome of these discussions they have with Israeli colleagues. Form may have changed: substance has not.

7.3. It follows that, Union members are being exhorted by the Motion to undertake conduct which both directly violates Rule 6.1 of the Rules and promotes (rather than opposes) a form of harassment or unfair discrimination on grounds of national origin against Israeli academics (whether working in the United Kingdom and Northern Ireland or Israel) and Israeli institutions contrary to the clear and general language Rule 2.5.

7.4. Under either Rule, it is clear that it is only Israeli colleagues who are singled out for possible sanction in the form of severing of links. Members are being asked to engage such colleagues in discussion and to vet them for their views. If those colleagues are found not to align themselves with criticism of Israeli policy towards the Palestinians they are to be sanctioned. In our view, this by itself constitutes discrimination on grounds of national origin. Since, we repeat, it is only Israelis who are being singled out for this treatment.

- 7.5. Further, to ask Union members to engage in a discussion of the Palestinian issue with such academics with a view to possible severing of links, if they do not subscribe to a criticism of Israeli governmental policy towards the Palestinians, with them or the Institutions to which they belong, is to subject those persons to a form of harassment in its ordinary meaning. Rule 2.5 makes it a primary aim and object of the Union to actively *oppose* harassment and discrimination on grounds of national origin.
- 7.6. It is no answer to these objections to say that that the Motion merely states that members “be asked to consider” taking certain steps and that it is for members to decide what they will do and whether they engage in any discussions. Conscientious members of a union will follow the directives of their unions. The Union is not entitled to ask its members (on a mandatory or voluntary basis) to do acts which are outside the Union’s powers to suggest.
- 7.7. There is yet a further reason why we consider the Motion is contrary to the Rules of the Union. Under Rule 2.1 of the Rules the primary aims and objects of the Union are to “...promote the professional interests of members individually and collectively...”; and under Rule 2.2 a further aim and object is to “promote Adult, Further and Higher Education and research” (emphasis supplied). The Union has also committed itself on its website to the principle of academic freedom and the need to resist attempts to erode academic freedom. Against this background, we do not see how it can be consistent with the Union’s Rules to pass a resolution mandating certain actions by its members including potential severance of links with other academic institutions. That does nothing to promote the interests of members at professional level or to

promote academic freedom. Indeed it points in the opposite direction.

- 7.8. As regards the aspect of the Motion which mandates investigation of Ariel College under the “greylisting” procedure, the Union’s publications suggest that greylisting is a precursor to the boycotting of an institution. If, as the Union has been previously advised, boycotting is impermissible and contrary to the Union’s Rules (which is with respect clearly correct), then a step preparatory thereto cannot be lawful. To put it another way it cannot be lawful to embark upon an investigation towards greylisting with a view to a boycott if the ultimate act of boycott (the end point) cannot be lawfully undertaken.
- 7.9. For the above reasons, and in addition to the discrimination law issues, we consider that the Union would be acting unlawfully if it passed the above Motion.
- 7.10. As to remedies, the Union Rules represent the terms of a contract⁹ between the members and it is accordingly open to any member to bring a private law claim restraining the debating of the Motion (since the proposer seeks the passing of a resolution mandating action by the Union which is unlawful if the Motion was passed).
- 7.11. It is uncontroversial that a member can bring a private law action to ensure that his Union acts in accordance with its governing constitutional document represented by its Rules: see *Goulding v National and Local Government Officers’ Association* [1972] 1 WLR 130; *Taylor v NUM (Derbyshire Area)* [1985] IRLR 99; and *Wise v Union of Shop, Distributive and Allied Workers* [1996] ICR 691.

⁹ *Faramus v Film Artistes’ Association* [1964] AC 925.(HL) and *Cheall v Association of Professional, Executive, Clerical and Computer Staff* [1983] ICR 398 (HL).

- 7.12. Further Section 16 of the Trade Union and Labour Relations Act 1992 enables a member of the Union to apply to the Court to restrain compliance by the Trustees of the Union with any unlawful direction which has been given to them having regard to the Rules of the Union. Thus, for example, any expenditure of sums towards the investigation of the greylisting of Ariel College could be restrained and indeed the trustees could be held personally accountable to repay wrongly defrayed funds.
- 7.13. There is a yet further remedy provided by section 108A(1) of the Trade Union and Labour Relations Act 1992. This provision enables a person (a member or a former member of the Union: section 108A(3)) to apply to the Certification Officer for a declaration relating to breach or threatened breach of the Rules of the Union. Section 108A(2)(d) specifies that one of the matters in respect of which such an application can be made is “the constitution or proceedings of any executive committee or of any decision-making meeting”. Under section 108A(14) an application to the Certification Officer cannot be made if there has already been an application made to the Court.
- 7.14. There are accordingly several different remedies available to members of the Union to restrain the proposed unlawful acts.

13th MAY 2008

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