Chapter XV

NATFHE Tolls its Own Bells

(a) Preparing for NATFHE's main course

The day the news reached us of the NATFHE illuminations at Blackpool, the next item on Bis Weaver's ever expanding agenda in search of redress was a conference with counsel.

In preparation for the meeting, I dropped Tony Rust a note about Gates' performance at NATFHE's Annual Conference and the resultant outcome to see if it offered any advantage for her case.[1] Several meetings had already taken place between Tony Rust, Rambi De Mello - the barrister, Bis Weaver and me but this was the final one before a major public battle with NATFHE was embarked upon. This was David versus Goliath and the David was not David Triesman – despite NATFHE's reconstruction and misrepresentations that presented Bismillah Weaver as a Goliath-like figure striking fear into all inoffensive and reliable officers and officials carrying out NATFHE's anti-racism work.

The key areas of NATFHE's defence based on its written submission were that:

(i) Mrs Weaver's complaints were investigated by NATFHE's regional official, who found no evidence of racial harassment and concluded it was a minor professional dispute between colleagues;

(ii) Mrs Weaver did not raise racial harassment as an issue prior to the regional official's enquiry and it was only introduced after the release of the official's findings, therefore, the allegation of racism lacked substance;

(iii) NATFHE's policy of protecting tenure was not a blanket policy applied across the board. When a complaint was deemed to have merit NATFHE considered that to be an extraordinary reason for not applying its standard policy and, therefore, complainants were offered advice and assistance.

The first two grounds were being used by NATFHE to support its claim of no merit residing in her allegations of racial harassment, therefore, there were no extraordinary reasons for not applying its policy of protecting the tenure of Gates, Cave and Hartland while refusing her representation. To reaffirm that it had never considered racism as a factor in the behaviour of these three members towards Mrs Weaver in the workplace, NATFHE asserted that Triesman's advice for her to go to the CRE, which released her from the restrictions imposed by Rule 24, was to seek advice for a claim of defamation against the regional

official and not for a complaint of racial harassment. *

To counter NATFHE's claims Mrs Weaver would argue that:

(i) the union's investigation dealt only with Gates and incidents in 1985 whereas the grievance to the governors in 1986 covered additional incidents and involved two other participants;
(ii) the issue of racial harassment was raised prior to Day's investigation as the documentary evidence would establish;
(iii) there were considerable deficiencies in Day's investigation as shown in her critique, including his failure to investigate the allegation of racism;
(iv) Gates' behaviour and that of the other two was consistent with the definition of racial harassment in trade union and local authority guidelines for dealing with racist behaviour;
(v) the reluctance of NATFHE officials (Day and Triesman) to investigate racist motives, during and following the initial enquiry, could be inferred as a possible motive for Gates' behaviour, which these two officials wished to avoid examining.

This rebuttal evidence would show that merit could be accredited to Mrs Weaver's grievance, which should have qualified her for advice and assistance from NATFHE. However, to challenge NATFHE's defence effectively would depend on the amount of background information the Industrial Tribunal would allow into the proceedings.

At the pre-Tribunal consultation, after her legal team explained how the case would be presented and what was required to establish that NATFHE acted in breach of the Race Relations Act, attention turned to whom NATFHE might call as witnesses. Day and Triesman were two obvious participants. Day to explain: (i) his part in the initial investigation; (ii) the reason for ignoring racial harassment as a factor; and (iii) his role at the LEA grievance hearing. Triesman to account for: (i) his role after Day's enquiry; (ii) NATFHE's policy on tenure, which had somehow changed between his letter to Bis Weaver on the 8th July 1986 and NATFHE's submission of the 15th October 1986 when the 'merit' factor suddenly appeared; and (iii) how NATFHE arrived at the conclusion that Mrs Weaver's grievance lacked merit.

As NATFHE's defence hung on 'no extra-ordinary reasons', that is, no merit in Bis Weaver's grievance, it might be expected for NATFHE to call a specialist in the field of racism to provide competence in race matters that Triesman declared was lacking in the

* The CRE's advice to Mrs Weaver was to use the LEA's grievance procedures and, having been advised by Triesman to seek this advice from the CRE, that should entitle her to union assistance as she was acting on the advice of a union official. If it had been to seek advice on a libel issue, why would the CRE advise her to use the local authority's grievance procedures? NATFHE knew the implications created by this advice from Triesman and in an attempt to remedy this situation constructed this absurd defence

union. The specialist's role would be to explain why racism was not a feature of Gates' behaviour. It could also be expected that NATFHE would call Gates, Cave and Hartland: (i) to establish those credentials NATFHE had lauded in its submission, that is, their 'long history in the anti-racist movement'; and (ii) to offer up credible non-racist reasons for their behaviour towards Bis Weaver in order to show that her grievance did not have merit. In fact, Gates, Cave and Hartland should insist on appearing as witnesses to present their individual cases as to why they considered their actions were not racist, especially as Hartland and Cave had expressed concern during the *Beider affair* about being discussed all over Birmingham as racists. This was their chance to broadcast to all and sundry in Birmingham that they were not racists and provide the reasons why their explanations for their behaviour should be accepted. Yet their appearance might place NATFHE in some difficulty because Gates would be wide open to cross-examination focussing on his behaviour towards Bis Weaver over those sixteen months – IPDism would hardly be considered a serious explanation for what Bis Weaver faced during that time; and Cave and Hartland would have to explain the reasons for their complicity in some of these acts. Gates' recent assault on a woman NATFHE member would also question his credibility. NATFHE officialdom and/or NATFHE's legal team were unlikely to want to find out how Gates would respond to cross-examination as he was seen as something of a loose cannon – abusive and rude, as Triesman was to refer to him during the Tribunal hearing. This was hardly a scenario NATFHE would welcome.

A consensus among the four of us was that NATFHE would not call 'this all conquering hero', on whom Day placed so much confidence, as one of its witnesses. If Gates was not called then neither would Cave nor Hartland.

NATFHE knew what it was doing and did not call any of the Bournville 'trio'. Perhaps, NATFHE never contemplated calling any of them because, apparently, NATFHE believed Bis Weaver did not have a strong case against the union.[2] Instead, Triesman was to take on the responsibility for promoting Gates' commitment to anti-racism using an extremely novel assessment technique, which was further proof, if any was needed, of Triesman's lack of competence in dealing with issues involving racism. As for Ms Deeson, she had ruled herself out as a witness but NATFHE might want to call her to give 'evidence' to substantiate its claim that racism was never raised when Bis Weaver initially discussed the complaint in June 1985. If she was put forward as a witness, her 'evidence' could easily be rebutted with copies of her actual notes and the questionnaire, which might make it difficult for her at the Tribunal.

Six stressful months since the original date was fixed, and after four postponements, the Industrial Tribunal hearing was to go ahead without further delay.

(b) The Industrial Tribunal Hearing: NATFHE's Submission Implodes

On the morning of the 8th June, with the sun shining brightly the outlook was favourable weather-wise but would the storm that raged against her for two years blow itself out by the end of the case. She did not harbour great hopes on that score but at least she would have her day in court – her 'fifteen minutes' of fame, and it was a chance to present her case without the dismissive, disruptive and threatening tactics employed by head office officials, the regional official and lay-officers of the Broad Left Coalition in the West Midlands REC and Birmingham liaison committee. Having witnessed at close quarters their lack of commitment to defend victims of racist harassment, today was the day when attention would shift to NATFHE. The focus would be on its reluctance to combat racism in its ranks and, better still, it would take place in a public arena, where the *all or none* condition did not apply. This was no union meeting where union hacks determined what was discussed, who was allowed to discuss it and what the outcome of the discussion had to be. Nor was it a smoke-filled bar in a public house, with its back slapping; under-the-counter dealings; where reputations were enhanced or ruined. Nor was it some seminar room where theoretical concepts were over-intellectualised while racism flourished around these over-active minds. We, and the Black Lecturer's Group, knew that NATFHE's commitment to anti-racism was like chaff in the wind but would the Tribunal decision be sufficient to blow this chaff to the four corners of the trade union and labour movement.

Bis Weaver and I made our way to Phoenix House, Birmingham, where the application was to be heard – appropriately named, for she was eventually to rise from the ashes of NATFHE's self-cremated anti-racism policy. With her solicitor, barrister, two witnesses, me (as scribe and aid) and a couple of supporters, Bis Weaver made her appearance at the Industrial Tribunal. NATFHE's contingent consisted of Triesman, Day, another official, a barrister, a Black stenographer and a liaison committee officer, who was attending as an observer for the local union but there was no 'specialist' in racism, no Gates, no Cave, no Hartland, nor anyone else. Shortly before the hearing commenced both sides exchanged their 'bundle' of documents. The three members sitting in judgement then filed into court with those in the room showing due respect to the chair and his two colleagues – a male trade unionist and a female member of the business community. During the course of

the hearing, no flowing rhetoric was to be heard. All those giving evidence went out of their way, some without success, to show how reasonable were their actions over the previous eighteen months to two years. Too much was at stake to do otherwise – the outcome of this hearing was to set the seal on union policy on race harassment/discrimination that is still applicable to this day - those nineteen words in Harvey on Industrial Relations and Employment Law. *[3]

Bis Weaver began her examination-in-chief by explaining the reasons for submitting her complaint to the union; and she provided details of her meetings with Ms Deeson and Day. Documentary evidence was introduced establishing that racism and sexism were raised as motives with both of them. The evidence consisted of Ms Deeson's notes; the questionnaire given to Gates by Ms Deeson; and the *aide memoire,* containing six references to racism referred to in her meeting with Day. The *aide memoire* established: (i) that part of NATFHE's Industrial Tribunal submission was false; and (ii) that Day ignored her allegations and deliberately avoided addressing racism as a motive for Gates' behaviour. This documentary evidence caused a stir among NATFHE's contingent as they witnessed one of the pillars in its defence come tumbling down.

Within minutes NATFHE's attempt to stigmatise Bis Weaver as a person prepared to use the colour of her skin as the basis for making unfounded allegations branding a colleague a racist was back within the darkened corridors at NATFHE head office where it originated and where it belonged. How would Day and Triesman, acting on behalf of NATFHE, extricate themselves and the union from this disastrous start without the opportunity to pull a few strings? This part had been much easier than previously thought - not a bad opening to her case as NATFHE was being hung by its own petard.

She then referred to: Day's enquiry and her critique of his 'report'; Triesman's offer of another enquiry and her suggested amendments; the lengthy correspondence and eventual meeting with Triesman; the consequences arising from the meeting, including his advice to go to the CRE and waiving Rule 24; and of being informed of NATFHE's policy protecting tenure when it was mentioned in Triesman's letter, of the 30th June 1986, which dealt with Triesman's meeting with the branch committee on the 12th June. She thought the policy had been deliberately contrived after NATFHE head office became aware of her grievance to the governors to avoid providing her with advice and assistance. Unlike Gates, Cave and Hartland, who received representation from the union at the grievance hearing, she had to

* It also applies to sexist harassment/discrimination, homophobia and disability discrimination

rely on a rank and file member to represent her as a 'friend' at the hearing.

During the course of Bis Weaver's evidence, NATFHE's counsel, listening to the crumbling sound of the main pillar of NATFHE's case as it collapsed, tried to halt the flow of her evidence by claiming that "the Applicant was not entitled to rely on those background elements" in the case of racial discrimination against the union. The chair, however, "insisted on receiving that…evidence because it is…essential in any race relations case to look at the totality of the evidence."[4] Having made the unsustainable claim in its submission that the Applicant never mentioned racism until after the completion of Day's enquiry together with other dubious claims, NATFHE could not reasonably object to the introduction of rebuttal evidence. *

NATFHE may have had free rein to determine the ground rules in its own *Kangaroo courts* but this was an entirely different ball game and was not subordinate to the interests of NATFHE officers and officials.

When the cross examination began, the union's 'no merit' defence was moribund – another bad bill of goods sold by NATFHE, on this occasion to its own barrister. NATFHE's counsel was put in a difficult situation and appeared unable to reassemble his strategy because he continued along the lines of what must have been his original formulae for tying up the case against her. He was not now able to question her on the argument put forward in NATFHE's submission that she had not mentioned racism prior to the completion of Day's enquiry and he was left to pursue what looked to be his follow up question in his original strategy. Counsel asked why she failed to mention racism immediately after Day released his 'draft' report in her first letter to Day, dated the 5th November 1985, when she rejected the report. This point was irrelevant but counsel, acting as if the rebuttal documents had not been introduced and NATFHE's claim still had some life left in it, continued to pursue this point despite Bis Weaver telling him on more than one occasion that it was mentioned in her second letter after she had carefully scrutinised the report. ** Counsel's insistence on repeating the question, as if no answer had been forthcoming, brought in the chair, who told him that Mrs Weaver's answer had dealt with the point.

* As one scholar commented in a different but not dissimilar situation, "The only plausible conclusion [arising from such objections] is that it is the very idea of subjecting evidence to rational enquiry that is outrageous, when it yields conclusions that they would prefer not to believe"[5]

** After Bis Weaver received a draft copy of the 'report', the first letter sent to Day was to reject the draft in an attempt to prevent the regional official from releasing it as a final version as it appeared he intended to do. In fact, he did release the report despite her objections

The compilers of NATFHE's submission were trapped in a time warp of colonial perceptions; operating on the assumption that Black/Asian complainants were predisposed to view every White person with whom they came into conflict as likely to be racists - stereotypes seemed to take a long time to disappear in NATFHE. How beneficial it would have been to NATFHE if the *Beider affair* had gone against Bis Weaver and NATFHE's counsel had a document in front of him showing she was in the habit of calling everyone racists, although that, in itself, would not establish the probity of NATFHE's policy on tenure. The Beider claim fitted comfortably with the earlier claims in NATFHE's submission, coming as it did just before the original Industrial Tribunal was due to assemble. Was the *Beider affair* a conspiracy to assist NATFHE at the Industrial Tribunal?

Tied down to NATFHE's submission, counsel trod the path implied by it, namely, that the Applicant accused people of racism when things did not turn out as she would have wanted and he went on to address a series of questions on that point. He wanted to know if she thought Day and Triesman were racists. Her case was about the union's racially discriminatory policies, not about the attitudes of individual officials, and she was not about to be drawn into a discussion on the underlying attitude towards Black people held by either Day or Triesman. She responded by saying she believed Day to be biased against her and while not accusing Triesman of being a racist, she thought he was implementing racially discriminatory policies. * The chair followed up by asking what she thought Day's motives were for not representing her at the hearing and received the reply that it might be because she was Black, or a woman, or a rank and file member of the union whereas the other three were union officers. This clearly indicated that she had thought through Day's and Triesman's actions and carefully assessed their behaviour as she had done with Gates' behaviour, and eventually Cave's, Hartland's and other officers/officials in the region and nationally. How different this was to NATFHE's submission, which sought to label her as someone unable or unwilling to make an assessment of the situation and then accuse her of playing the race card (the 'skin game') – an accusation usually hoisted by those on the political right to belittle Black people's claims of racism. In some respects NATFHE's counsel, by using this tactic, had enhanced her claim of harassment against Gates, if any was needed, because the answer demonstrated she was not in the habit of accusing all people

* Bis Weaver thought racially discriminatory policies had been inadvertently applied by Triesman as a form of institutional racism, especially, as he, by his own admission, lacked competence in dealing with racism. She had not realised that Triesman, when denying her assistance and when giving his evidence to the Industrial Tribunal, should have known that advice, assistance and representation had been provided by the union to a number of victims of harassment.[6]

‘racists’ with whom she had serious disagreements. The two NATFHE officials who had ‘dealt’ with her complaint had learned nothing about her from her extensive correspondence or from their meetings with her; nor did they know much about Black people or the race issue, as Triesman had admitted in February 1986.

The other limb in NATFHE’s defence, at least until NATFHE officials and counsel had the opportunity to discuss the damage done to their defence and to change its strategy, concerned the union's policy of protecting tenure. Counsel insisted Bis Weaver was informed about NATFHE’s policy by Triesman, at the 12th June meeting, which she refuted. Counsel queried her response and asked why, if Triesman did not raise it, did she not dispute Triesman’s 30th June letter in which he referred to NATFHE’s policy being discussed with her? He drew attention to her lengthy correspondence, in which it could be seen she had commented on the contents of every letter sent by Triesman prior to that date. He drew the inference from her failure to challenge the letter that she had accepted the contents as accurate. Her response was to say she found it unnecessary to send any reply as the content did not describe Triesman’s meeting with her but appeared to deal with his meeting with the branch committee.

This line of questioning was difficult to understand since if the policy contravened the law it did not matter whether or not she knew of it; the policy would still be unlawful. By generously pointing out that Bis Weaver challenged every point made by Triesman in her correspondence, counsel had inadvertently debunked Triesman’s claim of telling her of the union’s policy on tenure on the 12th June. If Triesman had revealed this policy on that date, Bis Weaver would not have missed the opportunity of placing on record such an important disclosure of a potentially racially discriminatory policy. When she wrote to Dawson providing details of Triesman’s advice, on the 12th June, for her to go to the CRE, such important information as the union’s policy on tenure, had it been revealed to her, would certainly have been included. Bis Weaver would also have told the CRE when she contacted that Commission. That she neither recorded it in a letter nor mentioned it to the CRE was sufficient confirmation that Triesman did not reveal that policy to her on the 12th June 1986.

She was then asked if she thought allegations of racism might lead to dismissal and she agreed it might do but that the prospect of Gates' dismissal had not crossed her mind because Bournville management had been fully aware of her difficulties over a long period of time and had done nothing about it. Her reason for submitting the grievance to the governors was to ensure that other staff would not have to suffer the kind of treatment she had been forced to endure and that appropriate action would be taken against any harasser in the future.

Counsel's pursuit of this line was curious because even if Bis Weaver thought Gates would be dismissed this would not affect whether or not NATFHE's policy was racially discriminatory.

After completing her evidence, Bis Weaver wondered what the Black woman stenographer, brought along by NATFHE, felt listening to how NATFHE officials and officers treated another Black woman trying to do her job; and the insensitivity of NATFHE to expose her (the stenographer) to this experience by including her as part of the NATFHE team. Her presence in NATFHE's team, under these circumstances, seemed a hallmark of NATFHE tokenism.

In the afternoon, the first of Bis Weaver's witnesses, Dhesi, whom her legal team had decided to call, took the stand. Dhesi confirmed he was present as an observer on the 12th June 1986 and that Triesman had advised Bis Weaver to go to the CRE waiving Rule 24 in the process. He could not recall the advice having any link to a complaint of defamation. Nor did he recollect Triesman mentioning the union's policy on tenure. Under cross-examination, Dhesi became hesitant and unsure of what was said at the meeting and the Tribunal chair was later to describe Dhesi as "confused in his recollection."[7] Dhesi's performance did not come as a surprise to either of us even though all that was required was for him to stand by his initial statement of evidence given to Tony Rust and refer to his contemporaneous notes. For some reason Dhesi failed to bring those notes with him, which would have strengthened the weight of his evidence had he done so. Maybe it was the occasion that caused him to wilt under cross-examination or the presence of NATFHE officials and an officer from the liaison committee of which Dhesi was also a member, or, as he told her six months earlier, he did not know where he stood on the issue. Bis Weaver and I felt that our earlier misgivings aroused by his previous vacillations over where he stood on the case and in being a signatory of the 'Birmingham NATFHE Six' letter had, unfortunately, been confirmed. * Nonetheless, his 'confusion' was not fatal since, as pointed out above, it did not alter the unlawfulness or otherwise of NATFHE's policy whether or not Bis Weaver knew of its existence. Yet, unassailable evidence from Dhesi would have gone some way towards challenging the credibility of Triesman's evidence.

The second witness, appearing as a Bournville branch member, called to provide

* Eighteen days before the Industrial Tribunal hearing, I dropped a line to Tony Rust to say that, after considerable thought, we had reached the conclusion that it was not advisable to call Sardhul Dhesi as we considered he would not be a strong enough witness.[8]

evidence of NATFHE representing both parties, cited a grievance between Gates and himself, which went before the governors. However, when the identity of the NATFHE officer, who represented the witness at the governors hearing was disclosed, NATFHE's local observer, leaned forward and spoke to Triesman and NATFHE's counsel. There was little doubt in my mind watching this performance of what he had just revealed. * Sure enough the barrister, when cross-examining, revealed to the Tribunal that the witness's representative was Gates' partner, Ms Pattinson, and she would hardly act as a representative against Gates if his tenure was being put at risk. Counsel drew a distinction between NATFHE's policy on tenure and this kind of representation that did not put a member's tenure at risk. The Tribunal came to the conclusion that this case could be distinguished from Bis Weaver's as Gates' tenure could not have been at risk in the cited case. This was undoubtedly a valid point, yet Day, who knew of Ms Pattinson's relationship with Gates, ** gave her responsibility for selecting the witnesses to be interviewed by Day in the Weaver v Gates complaint. ***

Despite her witnesses not providing anything substantive, the day had gone well and she looked forward to the next morning when the hearing would resume and NATFHE's witnesses would be in the box. We wondered how NATFHE would reconstruct its evidence now that its pre-Tribunal defence based on merit was virtually dead on its feet.

The core of NATFHE's defence was made in statements from Triesman in July 1986 and in NATFHE's October 1986 submission. Triesman had made it clear in the July letter that NATFHE's principal policy was to defend tenure and left little, if any, doubt that the Bournville 'trio' as defendants would receive representation in accordance with this policy and she as the complainant would not. The October submission amended that line by introducing a qualifying clause of merit to determine representation. However, Bis Weaver's evidence had shown that NATFHE's claim of no merit in her complaint could not be relied upon for not representing her and its failure to represent her and to exclusively represent the

* The liaison observer was sitting immediately behind NATFHE's counsel and parallel to me. As pointed out earlier, he was known to Bis Weaver and me in the early 1960s during the anti-Vietnam War protests and the anti-racism campaigns of that period. Now in the late-1980s, he had been part of the West Midlands delegation when Gates physically assaulted Julie Frew and he was now listening to the evidence from Bis Weaver that showed NATFHE's submission to be a mass of falsehoods. Yet, despite his own 'long history in the anti-racist and radical movements', he was still prepared to aid and abet the union bureaucracy in defending its potentially discriminatory policies. Having this type of 'long history' was no guarantee of consistent anti-racist action

** Bis Weaver had brought this to Day's attention on the 28th August 1985 [9] to show the likelihood of bias if he involved Ms Pattinson in the procedures. She had asked Day not to involve Ms Pattinson because of this relationship. [10] Day ignored Bis Weaver's request

*** Using the same criterion as NATFHE's counsel, Ms Pattinson would hardly have done anything to jeopardise Gates' position or reputation in the union when choosing witnesses for Day's enquiry

'trio' became a lodestone hanging around NATFHE's defence.

NATFHE's witnesses would have to explain why they claimed that racism was not raised until after the completion of the enquiry. This was a task that would fall to Day, as the obvious contributor of this claim in the submission. It would also be up to Day to explain why racism was ignored in his enquiry. Day was in a difficult situation due to the documentary evidence showing racism was brought to his attention during the enquiry. In fact, Day knew racism was a factor in Bis Weaver's complaint as early as the 15th June 1985 when he was shown the questionnaire Ms Deeson had given to Gates.

Now that NATFHE's claim of no merit was unsustainable as no investigation into racism had been carried out by any NATFHE official, Day, together with Triesman, had to justify NATFHE representing Gates, Cave and Hartland at the LEA hearing while refusing representation to Bis Weaver. This would fall on Triesman because he was the official in charge of case work and had pointedly refused assistance to Bis Weaver on 'policy grounds', although evidence would come to light to show Triesman was playing second fiddle to Day in matters relating to the grievance.

Triesman would also have to explain: (a) the evolution of NATFHE's policy between the 30th June 1986, when he unambiguously stated representation was only for those members whose tenure was at risk, and the appearance in NATFHE's submission in October 1986 of 'extraordinary reasons' as a codicil to that policy; (b) why he failed to inform Bis Weaver when he had the opportunity sometime between January and June 1986 that he considered her complaint to lack merit and her request for assistance was disqualified for not having merit; and (c) where this policy originated from since NATFHE rules make no reference to assistance in racial harassment/discrimination cases being subject to a policy based on security of tenure. NATFHE had been caught on the hop and it was evident that cross-examination of Day and Triesman by Bis Weaver's counsel would focus on these issues. NATFHE was in a dilemma and would have to conjure up something to explain why the three received representation while she did not. So what would NATFHE's legal team come up with to overcome these deficiencies? Like rapidly multiplying bacilli NATFHE's policy evolved overnight and both Day and Triesman came up with entirely new explanations when performing in the witness box. These new accounts differed considerably from the claims NATFHE had paraded in its submission.

The attempt to solve the enigma that NATFHE faced led to a claim that nobody was represented at all. This was hardly a plausible explanation and in its submission, NATFHE had not entered a defence of not representing Gates, Cave or Hartland, even though its

submission did not reach the Office of Tribunals until two weeks after the LEA's grievance hearing. The union had ample time, if it had not represented the 'trio', to submit that as a defence but it did not.

(c) The Industrial Tribunal Hearing: The Scorpion and the Frog *

The turn out on the second day was much the same as the previous day, except I took the place of Tony Rust in assisting the barrister.

The union's first witness, Day, struggled as he tried to accommodate to a new version of events conjured up to explain: (a) his actions between June and November 1985 when conducting the enquiry and reporting back on Bis Weaver's complaint; and (b) his role in the LEA's grievance hearing between June and October 1986. In Day's hands the new versions contained glaring inconsistencies and did nothing to arrest the rapid decline in NATFHE's credibility. Day experienced a difficult time in the witness chair as his attempts to show his actions were those of a reasonable investigator fell like seeds on barren land and his obstructive manner brought a reprimand from the chair.

Day began his evidence-in-chief with a description of how he dealt with the brief assigned to him by the general secretary, namely, to carry out what he described as an informal enquiry into allegations made against Mr Gates by Mrs Weaver. ** He asserted that when taking up the task, he had no inclination to decide in favour of either party. His programme was to meet both parties, having no detailed knowledge of the issues involved, except: (a) what was told to him by Mackney; and (b) that Mrs Weaver had complained of being abused; sworn at; accused of lying and maltreated. Day had been anxious to deal with these issues in his enquiry and make suitable recommendations to end the matter. With that purpose in mind, he wanted to understand the prevailing situation in the college and to know the roles Mrs Weaver and Mr Gates occupied within the college structure. *** From that

* A scorpion and a frog meet on the bank of a stream and the scorpion asks the frog to carry him across on its back. The frog asks, "How do I know you won't sting me?" The scorpion says, "Because if I do, I will die too." The frog is satisfied, and they set out, but in midstream, the scorpion stings the frog. The frog feels the onset of paralysis and starts to sink, knowing they both will drown, but has just enough time to gasp "Why?" Replies the scorpion: "Its my nature..."[11]

** Day continued to masquerade the procedures for dealing with her complaint as informal. Mackney, who played a significant part in discussing with Day the procedures to be used, had stated that he understood her complaint was "to be considered in a formal way…"[12]

*** The knowledge gained of their roles was used by Day to recommend removing Bis Weaver from the post of Access coordinator for the benefit of Gates or someone close to Gates

information, he claimed to understand the issues involved and wrote to Mrs Weaver to say he was prepared to investigate the complaint and to arrange an interview. *

Day's intention of making 'suitable recommendations to end the matter' was news to Bis Weaver because Day's preliminary enquiry was explained to her, by the Bournville chairperson, as a fact-finding exercise to establish whether or not the complaint should go before a tribunal. Day did not explain why he failed to tell her that he had changed the enquiry from an initial stage to a final stage and on what grounds he decided to make this change.

Day discounted Mrs Weaver's assertion that he assisted Gates in dealing with Ms Deeson's questionnaire. He also denied discussing the case with Gates or having any recollection of speaking to Gates about the complaint on the 15th June 1985. ** He disclosed that Gates was present when "Mackney and others [Ms Welch] asked [him] to look at the issues" and when Day discussed with Mackney the procedures he (Day) would follow. *** Day's evidence suggested Mackney's role in the early stages was considerably more than Mackney had acknowledged and Mackney's reason for speaking to Ms Deeson, at Bournville College on the 18th June 1985, appeared to be to convey Day's intention to investigate the complaint and the branch was expected to go along with it.

Day claimed both parties had the opportunity to provide full details to him and he had taken documents from Mrs Weaver given to him for information. **** Day undoubtedly listened to Gates but paid little attention to Mrs Weaver as he disregarded most of the evidence provided for him, including information from her contract of employment and job description. He ignored them completely when advising the branch committee on how to oust her from her post.

* Day did not disclose from whom he obtained information on the prevailing situation in the college and their respective roles. This must have been acquired by Day between 15th June and 2nd July, i.e., if in fact he did make such enquiries before conducting the 'enquiry'

** After the Tribunal hearing was over, Bis Weaver and I were looking through Day's 'bundle' of documents submitted in evidence, and came across a copy of the questionnaire given to Gates, items 37 and 38 in NATFHE's Bundle (Day's documents) which showed Gates had provided a copy for Day, otherwise how would the questionnaire be included in Day's documents. Gates had also spoken to Day about the complaint as well as seeking Day's advice on how to deal with the questionnaire on the 15th June 1985, as Mackney mentioned in his letter of the 8th April 1986 [13]

*** Mackney had written, in April 1986, that he spoke to Day, on the 15th June 1985, "in the corridor outside the lecture theatre where Regional Council meetings [were] usually held". He did "not remember anyone else being present, though it was possible Penny Welch (NEC member) was present for part of [the] conversation" but he claimed "David Gates was certainly <u>not</u> present." (4.7) (Mackney's emphasis) [14]

**** These documents were her contract of employment; job description; and details of the incidents sent by Bis Weaver, in June 1985, to Bournville management

Day claimed to be particularly interested in enquiring into Mrs Weaver's allegations of Gates maltreating her; swearing at her; calling her a liar and being abusive, and disclosed that Gates admitted to behaving in that way. Day would know, having been provided with the records at his meeting with her, that this treatment was for a period, initially, in excess of four months, * and which any reasonable person would consider amounted to harassment. At no time during this part of his examination did Day admit that Mrs Weaver mentioned racism as a motive, even though her evidence had already established that fact.

Day had recommended an apology from Mr Gates to Mrs Weaver but she refused to accept that. For Day to arrive at such a judgement without recommending sanctions and then present his decision to the Industrial Tribunal as justifiable reeked of arrogance. However, his approach towards her complaint and his leniency towards Gates might be explained by Day's admission that he considered her to lack sensitivity, as course coordinator, for asking the union to investigate Mr Gates' behaviour. What had Mrs Weaver's post as coordinator to do with the complaint other than to show Gates' lack of respect to a Black woman in a supervisory role, which was obviously not Day's intention; and why should making a complaint against Gates be described as a 'lack of sensitivity? ** A thoroughly disdainful comment but it suggested what Day's attitude was to a Black woman complainant, as she had pointed out to Day in November 1985.[15] This was a picture of the real NATFHE and not the one paraded in its glossy journals and packs.

Day's meandering around his 'enquiry' had not introduced any light on the issue of merit or on representation. The Applicant and her team were well aware of the inconsistencies in NATFHE's Industrial Tribunal submission and the discrepancies must be seeping into the perceptions of members of the Tribunal. NATFHE's team had reconstructed its defence overnight by introducing a novel line, which became evident when Day unfolded a bizarre account of his presence at the LEA hearing.

Day's involvement in the grievance hearing, according to his account, began when the LEA phoned in the Summer of 1986 to inform him of its intention to investigate the conduct of some employees who were NATFHE officers. Therefore, Day thought it necessary to

* In Day's report, he had condensed the several incidents over a four months period, covering February to the end of May, into one meeting taking place in February 1985

** This prejudicial attitude might have been the reason for Day's advice to the branch committee to seek a new coordinator. This certainly destroyed Day's claim of 'no predisposition to reach a decision one way or the other.' Day knew of Bis Weaver's 'request' for Gates' conduct to be investigated on the 15th June 1985. Was his prejudicial attitude towards her triggered on that date, making his involvement highly suspect?

contact Haynes (LEA) and Jones (Employees Officer) about the procedures to be used. * After Day's discussion with city officers about procedures, Gates, Cave and Hartland apparently approached him to represent them but Day felt unable to act as their representative because he had already discussed the issue with two City Council officers. ** Instead Day offered to attend the hearing to observe the procedures and his only participatory role was to release the confidentiality clause in his report dealing with Bis Weaver's complaint against Gates. ***

Day also confirmed, when asked by the Tribunal Chair, that he made no other arrangements to secure representation for the three. He diverted attention to the general secretary when saying that by then he had referred the matter to the general secretary and it was up to the three members to ask the general secretary for representation.

Day's story made no sense nor was it true. If the Bournville 'trio' had not approached Day until after he had spoken to city officers that would have meant his contact with the 'trio' did not take place until around mid-August 1986. But Day was made aware of the grievance when Gates phoned him on the 27th June 1986, which Day then disclosed to Triesman, on the 30th June 1986. Day confirmed this in a letter to Triesman telling him that"Ms Weaver had initiated the Individual Grievance procedures...[and he had] asked Mr Gates to provide [Triesman] with...a copy of the procedure." **** In this letter, Day outlined the way he intended to subvert the statutory grievance procedures and disclosed that "Officers of the Authority are probably well aware of the attitude [he had] taken."[16]

* The procedures were clearly laid down in the Teachers Grievance Procedures and in the disciplinary procedures so Day would know what constituted these procedures. Day had another motive for contacting these city council officers.[17]

** It was difficult to see how discussing the procedures with City Officers would debar him from representing the Bournville 'trio'

*** There was no need for Day to release the confidentiality clause in his report because even if confidentiality had any relevance to a report containing defamatory and untrue comments, Day had circulated the report to various levels of the union - the regional secretary, Birmingham liaison secretary and the Bournville branch secretary. Day's action had given access to the report to a considerable number of committee members and ensured that 'confidentiality' was breached. The regional secretary had given a copy to a member of the West Midlands women's panel, who was not even a regional committee member, within days of Day releasing the report. Triesman had also breached the report's 'confidentiality' by authorising the Bournville branch committee to discuss it. Furthermore, Day did not contact Bis Weaver to seek her approval to release the 'report' as it was required that persons named in the 'report' needed to give permission for it to be released from the confidentiality clause

**** The immediate contact between Day and Gates, Triesman and two local officers (Evans and Doughty) was unknown to Bis Weaver or her defence team as Day's letter was not disclosed to the Industrial Tribunal. It was obtained by Bis Weaver in 1988

This was the first version put forward by Day to claim he had not represented the 'trio'. Two others versions would be introduced during cross-examination. Day was painting himself, and the union, into a corner and the Applicant's barrister was to make sure he stayed there.

Under cross-examination, Day's account became even more incredulous. Counsel began by showing that Day's explanation of his early involvement in Bis Weaver's original complaint sent to the union (10th June 1985) was less than adequate. Day was accused of failing to bring Rule 8 to Mrs Weaver attention in his 8th July 1985 letter, which Day acknowledged was something he had not done. Counsel moved on to the meeting on the 28th August and Mrs Weaver's *aide memoire* with its six different references to racism.

Day claimed never to have seen the *aide memoire* before but his failure to see it meant nothing because Bis Weaver did not wave it in front of his face. If he did not notice her referring to it during their meeting that indicated the extent of Day's interest in what was being presented to him. Day tried to wriggle out of the corner he had put himself into by making an amazing admission, representing a complete turnaround from NATFHE's submission. Apparently, about five or six weeks before the Industrial Tribunal hearing (at the end of April 1987) while reviewing his documents for NATFHE's bundle, Day came across a note written up in his car immediately after his meeting with Mrs Weaver. The note recorded a comment Mrs Weaver made with some vehemence right at the end of their meeting just as he was about to leave the house. Mrs Weaver had said that "none of this would have happened if [she] had not been a woman and a Black woman." Day passed this off as being uncharacteristic of all that Mrs Weaver said during the meeting. * According to Day, Mrs Weaver said nothing about racism during a two-hour meeting – Day's estimate of its duration, until he was leaving the house and she suddenly made this vehement statement. Day had apparently forgotten that I let him out of the house! Day's admission opened the gates and one Tribunal member, Mrs M G Cook, asked why he had not taken up what was not a casual comment by Mrs Weaver, but, in Day's own words, one vehemently expressed and of sufficient importance for Day to make a note of it. Day offered the lame excuse of the comment being out of keeping with the tenor of the meeting and there was nothing in Mrs Weaver's evidence supporting a claim of sex or race discrimination.

* The note to which Day referred was not included in NATFHE's bundle but as that particular incident had not happened it would not have been recorded on any note. However, Day did take notes during the meeting and it was obvious why NATFHE had chosen not to submit those notes as evidence. Day's note, if an accurate account of the meeting, would undoubtedly contain references to racism raised by Bis Weaver unless he deliberately ignored all her references to racism

In defending his failure to deal with possible racism, Day conjured up an even more bizarre remark. He said racism was not mentioned by himself (!) nor by Mrs Weaver (!) nor did Gates raise racism with him – as if Gates would do so and then have to put up a defence; nor did any of the people Day had spoken to at Bournville Branch mention racism – all but one selected by Gates or Gates' partner. Day's feeble disclaimer meant absolutely nothing bearing in mind he had dismissed Bis Weaver's numerous references to racism as incidental.

Counsel put several questions to him concerning the racism dimension but Day carried on as if racism had never been mentioned. Day had made a note that being 'Black and a woman' was the reason put forward by Mrs Weaver to account for Gates' harassing behaviour but he omitted any reference to this in his 'report' - a point put to Day by Counsel. Day responded by saying he had an impression that racism was not an issue but he did recognise racism was always a possibility. Nonetheless, despite racism being raised and having failed to examine it in his 'enquiry', he was firmly convinced racism did not figure as a motive in Gates' behaviour.

Following this up, Counsel asked Day if he was aware of NATFHE's policy for eradicating racism and Day confirmed he was and added that even if NATFHE had no policy his own approach was to further such a policy. * In typical NATFHE-style, Day had not considered investigating racism yet thought himself capable of offering up an opinion that racism was not a factor in Gates' behaviour. Triesman was certainly right about NATFHE lacking people with competence in race matters.

Day had been left with little choice other than to reiterate the established but bankrupt defence of 'no racism' because he had nothing substantive or convincing to offer, unless he came clean on what really happened between the 15th June 1985 and writing up the 'report'. He was another of those NATFHE officials or officers, claiming a 'long history in the anti-racism movement', and then showing his own particular way of dealing with complaints of racist harassment – deny racism was ever raised until proven to the contrary and then claim any reference to racism was merely incidental. This was another nail in the coffin of NATFHE's submission because the union accused Bis Weaver of only raising racism after the completion of Day's 'enquiry'. As a contributor to NATFHE's submission, Day had either kept the information to himself; or another official or legal officer putting the submission together had deliberately inserted a false statement. Day's failure to investigate a

* Day had an unusual way of demonstrating this commitment by ignoring all references to racism made by a complainant then providing advice on how to assist an accused White male to remove the Black accuser from her job

vehemently expressed claim of racist harassment tipped the scales in Bis Weaver's favour by offering up the probability of the claim not being investigated because of the official's belief in the veracity of that complaint – hence the need for a *Whitewash*. *

Day was asked if he had considered reopening the enquiry after receiving Mrs Weaver's critical letters pointing out flaws and omissions in the report. Day's reason for not doing so was apparently due to his enquiry being carried out to conclude the matter and to reopen the enquiry was not an option available to him as he was acting on behalf of the general secretary, to whom Day had written of his unsuccessful attempt at reconciliation. Two years on and Bis Weaver discovered that Day's 'purpose' was reconciliation and not to carry out a preliminary investigation prior to a possible union tribunal. While not opposed to a constructive resolution had it addressed the main issue of providing suitable protection for her in the future, she thought Day's method of reconciliation was peculiar and required nothing less than a complete surrender on her part; relinquishing her job; and taking the blame for Gates' harassing behaviour. If Day was acting on the general secretary's behalf and the onus was on the general secretary to decide on any further action, why did Day, after she rejected his draft' report', pre-empt a decision by the general secretary by releasing a final report and distributing it to various levels of the union. Bis Weaver could reasonably conclude that Day released the report to give the greatest possible benefit to Gates; the greatest detriment to her; and an expectation that she would be unable to muster any real challenge to it. Or was he carrying out the instructions of the official on whose behalf he was acting?

When the cross-examination turned to NATFHE's other novel creation of providing no representation for Gates, Cave and Hartland, Day concocted two different and bizarre reasons to account for his presence at the LEA hearing when the Bournville 'trio' gave evidence. Day appeared at the hearing on three separate occasions when the 'trio' attended, allegedly not to represent them but to observe the procedures. This attempted justification failed to impress counsel who showed Day a copy of the Teachers Grievance Procedures – a document independent of the union introduced in line with statutory requirements ** and, as a well-established procedure, did not require observation. Day accepted that the document bore some resemblance to how grievances should be dealt with and, when asked why it was

* The access gained to the branch file had much greater significance than either of us realised at the time and NATFHE's disingenuous submission might have created a different impression if the discovery of those documents had not taken place, especially as Ms Deeson, the originator of those documents, had become extremely hostile towards Bis Weaver for asking her to appear as a witness
** Under the 1978 Employment Protection (Consolidation) Act

necessary for him to observe these procedures, Day tried to side-track the question by mentioning disciplinary procedures were different from Teachers Grievance Procedures. Day was absolutely correct in recognising the difference but the October 1986 hearing was not a disciplinary hearing - it was a hearing under the Teachers Grievance Procedures. *

After introducing this red herring, Day went even further to claim the LEA was introducing a preliminary hearing prior to a disciplinary hearing, which had never before been introduced as part of those procedures. Therefore, said Day, it was necessary to discuss these new procedures with city officers in the interests of all members, not particular individuals. Day claimed to have been alerted to these so-called 'new procedures' in a letter sent by the LEA to Gates and the others in July 1986 "indicating they could have a friend because the enquiry could lead to disciplinary procedures." Day skimped on the contents by omitting the LEA's reference to being "accompanied at the investigation by a trade union representative or friend of your choice."[18] Day thought this warning of possible disciplinary proceedings was unnecessarily provocative and he wanted it withdrawn or for all parties to be included. ** What Day did not explain was that disciplinary proceedings were always a possible outcome from the Teachers Grievance Procedures and Day, as a union official, should be aware of that possibility so there was nothing new in the procedures described in the LEA's letter. ***

Day hoisted the introduction of 'new procedures' as his reason for attending the hearing to ensure the procedures conformed to the interests of trade unionists and he attended, as he put it, with a sense of impartiality. Day's letter to Triesman, 30th June 1986, outlining how Bis Weaver's grievance should be dealt with was also sent to the regional and liaison secretaries and to Gates. If Day had been acting impartially and in the interest of all parties, Bis Weaver would also have received a copy but he failed to send her one. Nor did Day disclose that he was the prime mover for introducing an intermediate stage between the outcome of the grievance procedure and the invoking of disciplinary procedures in his dealings

* The Teachers Grievance Procedures hearing was apparently handed over by the Bournville chair of governors to the LEA to handle in order to avoid any likelihood of bias due to Gates being a governor. Day knew that Bis Weaver's complaint had been registered under the Teachers Grievance Procedures and was originally intended to be heard under those provisions. The LEA referred to it as 'Bournville College of Further Education investigation into complaint;' not a disciplinary hearing[19]

** Day was being obtuse because disciplinary procedures were a possible outcome and it would be negligent of the LEA not to draw this to the attention of the 'trio' for them to get advice, assistance and representation, which they obviously did

*** Depending on the outcome of the grievance hearing, it might then be pursued under the disciplinary proceedings against anyone whose actions warranted disciplining - a separate and distinct procedure.

with a city council employee in August 1986. *[20] Day had undoubtedly settled on a preliminary hearing as it gave him an opportunity to influence the outcome of the hearing; as he did with Bis Weaver's initial complaint to the union

The chair of the Tribunal picked up on two points and linked them together. He noted the LEA's 'warning' was also included in the letter to Mrs Weaver, sent out on the same day as the letters to Gates, Cave and Hartland, on the 16th July 1986, and he asked Day if that 'warning' was due to Day's request to the LEA. Day replied that it might have been. ** This admission of possible responsibility for the inclusion of Mrs Weaver as a potential subject of disciplinary proceedings prompted the chair to say that if the Applicant was at much at risk of disciplinary proceedings as the others would not Day, as the union official, wish to observe the procedures when she attended.

Day's reason for not extending his impartiality to observe the procedures when Mrs Weaver attended was put down to her not asking him to do so whereas the others had. *** Day must have recognised this explanation was not convincing and dredged up another reason. He said that it would have meant attending when management witnesses were at the hearing. This weak and irrelevant response carried no weight with the chair who discounted it as not being the same situation at all.

Day's explanations apparently did not impress the Tribunal Chair, so he produced entirely new versions for not representing the three. In these versions, Day said he knew Mrs Weaver had circulated complaints about his report and had asked for his conduct to be investigated, consequently, it was not appropriate for him to represent any party so when Gates, Cave and Hartland asked him to represent them he refused. Day was attempting to display a level of integrity absent in all his dealings with Bis Weaver.

The chair queried Day's claim that authorship of the report excluded him from obtaining representation for Gates, Cave and Hartland and put it to Day that in a situation where lay officers were under threat of losing tenure, he was claiming that neither he nor the

* This only became known to Bis Weaver and I after the Industrial Tribunal hearing

** Day's admission of contact with city officers, Haynes or Jones, before the LEA letter was sent out showed that he had begun to represent the interests of Gates, Cave and Hartland prior to the 16th July 1986, and almost a month before his letter (11th August) seeking to subvert the grievance procedures as indicated in his letter to Triesman on the 30th June

*** Bis Weaver had been under the impression the LEA was applying the statutory grievance procedures so how could she possibly know that 'new procedures' were being introduced and be in a position to ask Day to observe them on her behalf. Why did Day not approach her with an offer to observe these 'new procedures'? Not only that, Triesman had made it clear to her that only those whose tenure was at risk were eligible for advice, assistance and representation and neither she nor any reasonable person would consider her tenure to be at risk

union took any steps to represent them. Having lost the ‘no merit’ defence, NATFHE was well on the way to losing the ‘threat to tenure’ defence by claiming not to have represented those whose tenure was at risk.

If Day’s original effort at justifying his alleged ‘neutrality’ sounded hollow, his next effort added a new dimension to NATFHE implausibility. He offered up the possibility of his being “called as a witness on behalf of someone” at the grievance hearing * and it would have been inappropriate for him to give advice if he was also to be a witness. **

The chair accepted it to be appropriate for Day to disqualify himself on those grounds but did not understand why, when three lay officers whose tenure was at risk asked him to represent them, all he did was to advise them to contact the general secretary. Day fudged around the chair’s attempt to secure a plausible response and came up with the answer that this was not the only reason for rejecting their request. He must have thought he was in a union meeting and could muster up any evasive response but the chair appeared unimpressed and Day incurred a severe caution to answer the question. *** The chair repeated the question as to why representation was not secured for them and why he did not see this as one of his functions. Day’s hesitant and unconvincing response was that his function was to refer them to the general secretary, who would decide what support, if any, could be arranged and it was not for him (Day) to represent or secure representation for them or to insist on the general secretary providing representation. ****

Day appeared to be passing the buck to the general secretary (and his nominee - Triesman) so if there was any fall-out from this case, the fault would not rebound on him but on more senior officials. *****

Day had hammered several nails into his own coffin as it was clear he acted

* Day showed a reluctance to use the term ‘grievance’ or ‘teachers grievance procedures’; describing it as “Mrs Weaver had lodged an application with the Board of Governors”

** Would Day’s feeling of inappropriateness at being both adviser and witness have really deterred him, after all he had previously acted in the capacity of adviser to Gates and then as adjudicator of a complaint against Gates in 1985?

*** This account does not do justice to the grilling Day received at the hands of the Chair. Day appeared very rattled and was unable to put anything together cogently, although he seemed not to have anything cogent to say anyway

**** This answer was unsustainable because Day did represent members in such cases – the Telford case, Krishna Shukla at Walsall; the Matthew Boulton case; and he chose not to represent the member in the Brooklyn case; although his performance as representative to any of those he did represent was less than adequate for complainants

***** When Triesman gave evidence, he, too, either inadvertently or deliberately, contradicted Day’s claim as to who was responsible for securing representation

inappropriately when dealing with Bis Weaver's initial complaint and would any reasonable person swallow his claim to have excused himself from representing the 'trio' on whichever of the three grounds Day put forward. This belated claim of non-representation, never mentioned in NATFHE's submission, was an attempt to claim that representation had not been provided to anyone, consequently, Bis Weaver could not have been discriminated against. Day's insistence on not acting for the three was forced on NATFHE by the evidence showing NATFHE was in no position to realistically claim there was no merit in her complaint. Had NATFHE established a case of no merit then the extra-ordinary reasons codicil would have swung into play and Bis Weaver would have to find alternative representation at the grievance hearing, as she in fact did. But as the extra-ordinary reason defence was not available to NATFHE, a plausible reason had to be discovered to explain why Day's appearance at the hearing was not to represent them. In this NATFHE failed to come up with the goods. Plausibility was not a quality to be associated with NATFHE.

Day had not disclosed to Bis Weaver any limitation on his authority when offering to investigate her complaint in July 1985. He offered a preliminary enquiry with the prospect of a hearing before a union Tribunal and then ruled out any possibility of her complaint going before a Tribunal. Triesman had complemented Day's approach by trying to dissuade her from a formal hearing. Nonetheless, their actions had enabled her, eventually, to have her complaints examined by another tribunal - an Industrial Tribunal, a form of enquiry that was not expected by either Day or NATFHE head office officials and most certainly not to their liking. As Day squirmed under the chair's and counsel's probing; and he was in no position to be as dismissive with the chair as he had been to her, she sat watching this spectacle. It had been a long time coming. As the Chinese proverb almost goes, "a dead body of an enemy had eventually floated by."

In what appeared a vain attempt to salvage an iota of credibility for Day and NATFHE, NATFHE's counsel re-examined Day on several points that had already been demolished. Out on a limb after the mauling he received, Day regurgitated his original story as if his evidence during cross examination had not been dismembered. He did add that if it was beyond his authority to represent anyone he would refer the member to the general secretary. However, he did admit it was normal for him to appear at disciplinary proceedings and had never disqualified himself before. Day's additional comments suggest, since he did not seek representation from the general secretary for the three, that he represented them as was his 'normal' practice.

Day stood down but had not yet been let off the hook. There was a surprise in store for him as would soon be revealed.

Day's evidence was so unconvincing that any observer, other than a NATFHE official or officer, would see it as a hasty and inadequate reconstruction of NATFHE's defence in the light of the documentary evidence that wrecked NATFHE's original mendacious defence. Any reasonable person might well draw the conclusion that NATFHE had little interest in complaints of racial harassment or Day was totally incompetent in dealing with this type of complaint - more than likely they might conclude it was a combination of both. This was the real face of NATFHE's 'anti-racism' not its glamourised clichéd presentation of defending the vulnerable.

Day's performance removed one pillar from NATFHE's defence, namely, the implied allegation of Bis Weaver playing the 'race card' (skin game) and in removing this pillar, the question for NATFHE to answer was why Day ignored, and Triesman avoided, the race issue. Spectators in the Tribunal room had a reasonable idea of why that was so.

Triesman was the next to take the stand. He began his account by describing his initial involvement, which he claimed was after the completion of Day's report. As a result of Mrs Weaver dissatisfaction with Day's enquiry, the union were willing to conduct a further enquiry to be carried out by himself with the assistance the chair of the Anti-Racism National Panel, Denis Baker. [21] Baker would not have taken an active part in the enquiry; his role was to act as adviser, and different from the impression originally given of him being a co-investigator, in an ad hoc enquiry authorised by the general secretary. This explanation meant that the enquiry was to have been a virtual one-man show with an adviser, who, despite having 'anti-racism' in his title, was a head office lay functionary, one of those whom Triesman had referred to as not having competence in racism matters.[22] Triesman had promoted this enquiry as providing all parties with an opportunity to state the facts of their case with Triesman having the task of assessing the evidence.

The January offer was nothing but a smokescreen - an enquiry to deal only with facts and no examination of racism, showing the inclusion of the chair as superficial icing on an inedible cake. This was another 'outside the rules' theatrical performance very similar to the one carried out by Day and vulnerable to the partisan views of the investigator. This news underlined how right she had been to treat Triesman's offer with considerable scepticism. It had been yet another snare for Bis Weaver to put her foot firmly in and on this occasion be bogged down for good.

Triesman had begun with a deft piece of window dressing to present an image of a union keen to resolve 'disputes' between members, hampered by Mrs Weaver refusing the union's attempts to achieve reconciliation.

Triesman went on to endorse Rule 8 as being applicable but described it as time consuming, just as he did in his 13th January letter. He also claimed that full-time officials possessed no powers in matters relating to complaints other than to offer informal enquiries or make recommendations to the Finance and General Purposes Committee to set up a union Tribunal. * Triesman's proposed enquiry, however, did manage to scrape into the Rule Book to obtain a form of NATFHE-style legitimacy, because, like Day before him, Triesman claimed to be acting on the general secretary's behalf under Rule 24. This 'legitimacy' apparently empowered him to find out the facts and give advice but nothing more. As usual, nothing was said about Rule 24 having no relevance to internal complaints as its 'legitimate' purpose was to deal with issues concerning members in dispute with outside bodies, especially employers, and how it tied members to abide by the union's advice and take no other action without union approval. In fact, Rule 24 acted like a strait-jacket on members because they had no redress for whatever the union decided to do, and union officials preferred to do little for members in order to maintain their cosy relations with employers. Stretching Rule 24 to include Triesman's 'one-man show' was a spurious interpretation of the rule and Bis Weaver and I wondered if he would throw up Rule 24 as covering the unwritten policy on tenure – anything was possible in NATFHE.

Triesman's 'attempt' at reconciliation was the reason he claimed for his visit to Bournville branch, described as a branch divided. His visit, apparently, was inspired by an invitation from the branch secretary to get the branch together again. ** Unity in the branch appeared to have a greater priority among NATFHE 'anti-racists' than properly investigating claims of racism, which was the cause of this particular 'division'. Describing the situation at Bournville as divided was somewhat misleading as the dividing line separated considerably uneven forces with Bis Weaver and very few supporters on one side and the overwhelming

* Triesman remained silent on the power of officials to intervene in matters relating to complaints - to authorise the release of confidential documents for branch members to discuss (Day's 'report') or to give instructions to elected NATFHE officers not to answer questions or to respond to requests for assistance from complainants (Dictat to the liaison secretary) or prevent the release of relevant documents to complainants (Instruction to the Bournville branch secretary)

** In Triesman's letter to the Bournville branch secretary, he attributed his visit to Bournville College as a result of a discussion with the branch chairperson, Ms Pattinson, at NATFHE's Annual Conference in May 1986. Ms Pattinson gave a different account saying the visit came after a suggestion made by Triesman to her some time before [23]

majority on the other.

Triesman's programme for the visit was designed for him to see the respective parties separately and then for Mrs Weaver to meet the branch committee and then Mr Gates. * Triesman then consulted his contemporaneous notes, which were extremely sparse, ** to describe his meeting with Mrs Weaver on the 12th June. He referred to the meeting as difficult, but was astute enough to put the blame not on Mrs Weaver but on to me. Like Day in his report, Triesman elided various points raised in the meeting; omitted others; and introduced points not discussed. Triesman claimed to have asked Mrs Weaver if Gates' remarks contained racist references because if they had it would mean his behaviour was racist and have consequences for his employment. *** He attributed the answer he received to this question to me. I had apparently said that Gates did not make overtly racist remarks but was abusive to her and Triesman should draw his own conclusions from that. Triesman had this wrong as it was Bis Weaver who provided an answer to this question but in a different form to the one he was putting forward.

Triesman claimed to have raised this issue again by suggesting that if Gates harassed her over a period of time and made it difficult for her to work that must be evidence of serious misconduct and was she not saying Gates was unfit to hold his job particularly in the area of teaching Black students. Mrs Weaver had, apparently, agreed that Gates was unfit to hold his job and the work relationship was unacceptable. He went on to ask Mrs Weaver if she was saying that Gates was not fit to hold his job. She responded with, "For the sake of all other women and blacks he should go; don't you think so?" However, he was given no chance to reply because Mr Weaver made a long speech about the branch committee being a disgrace and should go as well.

Triesman's evidence was inaccurate because my comments on the branch committee were made virtually at the end of the meeting and in reply to a question Triesman directed to me, asking if I thought the Branch should be disbanded and my response of a few words was

* Before he took the trip to Birmingham, Triesman knew this was not on the cards having been told that Bis Weaver had no intention of discussing any of the issues with a branch committee, under the control of Gates and the *kernels*, which had continuously attacked her for months

** Triesman's notes differed considerably from the comprehensive notes taken by me

*** Triesman appeared to be adopting the stance that to be a racist there must be evidence of racist terminology. Triesman seemed not to understand that racism is a more complex phenomenon than the use of a few racist terms. If this was part of his understanding of racism, he was more incompetent in race matters than he admitted. Enoch Powell was never quoted as using racist terminology but that did not stop his speeches being denounced as racist by liberal and leftists, including Triesman, who accused the Conservative Party of consolidating "Powellite racism into respectability."[24]

"that was up to [him] (Triesman)." Not only that, Bis Weaver did not respond to the question on Gates' fitness to work because she had no intention of discussing the complaint. She had only agreed to meet Triesman to see what the union was prepared to do to protect her in the workplace and to prevent the local union from being used against her. It was Gil Butcher, an-invited guest, who said Gates "is a disgrace; the work relationship is unacceptable. For the sake of all other women and blacks he should go; don't you think so?"

Triesman then directed himself to NATFHE's policy on tenure and recalled introducing it at the end of the meeting. He expressed anxiety that a major conflict between two or more employees might cause the employer to conclude they could not work together and remove both of them. After making this point, he guaranteed NATFHE would defend the tenure of anybody the employer sought to dismiss and knew of cases where the employer had removed both parties. * Just before the meeting ended, Triesman concluded Mrs Weaver wanted Gates dismissed from his job and he told her the union was unable to assist her in making a criticism of Gates to his employer, which he thought involved a very grave risk of Gates losing his job. ** Triesman went on to confirm that the 30th June letter accurately reflected what was said at the meeting about NATFHE's policy. ***

What was revealing about this evidence was Triesman's reference to being "unable to assist her in making a criticism of Gates to his employer." When Triesman spoke to Bis Weaver on the 12th June she had not registered a grievance with the employer about Gates and, as a consequence, had not put his tenure at risk or sought union assistance to pursue a grievance with the employer against anyone. There was no reason or logic for Triesman to make any reference to that situation, especially as Triesman erroneously believed that management might move against Gates for the disruption caused in the college, which would involve disciplinary, not teachers grievance, procedures. Triesman's claim of telling Bis Weaver of NATFHE's policy on tenure on the 12th June 1986 had no substance as Bis

* Triesman showed he had knowledge of previous cases yet, as would become known to us later, he made no mention of NATFHE's sexual harassment policy published in NJ April 1985 where NATFHE pledged to give advice to victims of sexist harassment. Nor did he reveal the advice he gave to Linda Milbourne, a woman's officer in London, that NATFHE would provide representation to both members in a sexist harassment case.[25]

** An interesting insight was revealed by this statement since it implies that Triesman must have thought Gates acted in an unacceptable way otherwise he would hardly consider the employer might accept her 'criticism' and sack him

*** The 30th June letter referred to Triesman's meeting with the branch committee because three different people received an identical letter referring to the 'meeting' – Gates, Bis Weaver and the Bournville branch secretary. These letters could not have "accurately reflected what was said at the meeting..." because to which meeting was Triesman referring?

Weaver had already pointed out during her cross-examination. If Triesman had brought the policy to her attention she would not have missed the opportunity to include it in her 25th June letter to the general secretary.[26]

In NATFHE's submission, the June meeting was described as "Mr Triesman had a personal interview with the Applicant to see if there was a possibility of resolving the matters in respect of which she was at issue with her colleagues" – no mention was made of union policy on tenure or Mrs Weaver seeking the termination of Gates' employment. Evidence as crucial as this would surely have occupied a central spot in NATFHE's submission. Nor did this account figure in Triesman's contemporaneous notes of the 12th June.

How the policy of protecting tenure operated and the circumstances in which a member's tenure could be at risk was explained by Triesman. These circumstances covered allegations of sexual discrimination, racial discrimination, theft, taking drugs, taking drink, using abuse and fighting. In general NATFHE would not assist the employer in threatening an employee's contract and would seek to defend the contract of members by considering whether there was a viable or appropriate defence. The union would defend the tenure of its members in disciplinary proceedings, other than in indefensible cases as it would not condone unlawful or unacceptable behaviour. *

Triesman was specifically referring to disciplinary procedures, i.e. employer versus employee when representation would only be required for employees. When Triesman refused to provide advice and assistance to Bis Weaver, he could not claim to be dealing with a complaint under the disciplinary procedures because at that time (late-June/July 1986) the grievance was before the Bournville governors and it was not until the 16th July that the LEA assumed responsibility for the grievance. Subsequently, NATFHE tried to disguise the LEA grievance hearing as a disciplinary procedure. NATFHE officials consistently tried to confuse issues.

Following his meeting with Mrs Weaver, Triesman went to Bournville College to address the branch committee but did not meet Gates, who, according to Triesman, telephoned him in July to complain about Triesman's failure to meet him.

When counsel's examination turned to the issue of merit, Gates became the key to the union's defence. Triesman spoke of Gates' membership of the Anti-Apartheid movement since the age of fourteen years; of fostering anti-racism courses in the college; and of being a

* Triesman's difficulty with this line of defence was in convincing any reasonable person that sixteen months of harassment was not unacceptable behaviour with or without a sexist or racist motive

close friend of the Weaver's since 1980. Sitting there listening to this commendation, Bis Weaver thought that if the type of behaviour Gates showed to her over a period of sixteen months was that of a committed anti-racist then she was glad not to have been confronted by someone who did not have any commitment. Despite NATFHE's apparent confidence in Gates' anti- racism record, it was not prepared to call him as a witness to attest to his background. This commendation for Gates was soon to be disclosed under cross-examination as bordering on the fatuous.

The news of Gates working on anti-racism courses in the college was also news to Bis Weaver, unless Triesman meant he was moonlighting at other colleges, because promoting anti-racism and anti-racism courses was her specific area of responsibility at Bournville College and Gates had worked to undermine her efforts in the college.[27] The point about a friendship first surfaced in NATFHE's submission and Triesman would regurgitate it *ad nauseam* over many months to come when trying to extricate NATFHE from the shambles its officials and officers had created over the Weaver case. From stating Gates was a personal friend of the Weavers in NATFHE's submission, Triesman now extended it to 'close friends since the 1980s'. * Triesman had also conveniently failed to take into account that any friendship with Gates did not offer protection against his attitude and behaviour. Only two weeks before Gates' friendship with Julie Frew ** had not prevented him from physically assaulting her. Perhaps, that 'close association' involving Gates was something else Triesman knew nothing about! Furthermore, people deeply committed to the anti-Apartheid Movement would be aware of Black people in South Africa being treated as second class citizens; had no rights or representation except in the Bantustans; and were consistently intimidated, abused, harassed and much more without any redress. People with long histories of involvement in anti-racism would surely know how vulnerable Black people were to those in White-dominated power structures. For this anti-Apartheid supporter, there appeared to be a wide divergence between speech-making and practice.

Triesman then raised Gates' letter of apology sent to the LEA in March 1987, which

* This had been another piece of news for us when it first surfaced and we wondered why Triesman had not raised this 'friendship' with Bis Weaver in June 1986 and why the regional official made no mention of it when trying to *Whitewash* Gates behaviour. For the record, the first time I met Gates was at a social/political event organised by the Communist Party in late 1982 and I met him later at a couple of other events. During the Miners' strike in 1984/5, I was involved in the branch's action in support of the miners, along with Gates and others but that hardly qualified him as a friend. Bis Weaver's contact was similar plus working contact when Gates became a tutor on Access in 1984

** Ms Frew with her partner, Lovejoy, had an association with Gates and his partner, Ms Pattinson, in the Broad Left Coalition, much closer than Triesman 'believed' ours was supposed to be

was news to Bis Weaver. However, it was not specifically an apology to her but to the LEA for his behaviour to Bis Weaver and others. This expression of regret had taken a long time to appear and seemed the price Gates was asked to pay to leave Bournville College with nothing of the grievance on his employment record. It could also be used by NATFHE to show the Tribunal that the harassment was considered relatively insignificant by the employers, who were prepared to accept a simple apology covering others besides Bis Weaver. Two shoddy goods for the price of one!

Triesman was in no doubt that Gates could be very rude and had been rude to him (Triesman) on a number of occasions. He went as far as to claim that Gates had been ruder to him (Triesman) than "he had been to anybody sitting in this room today." An 'anybody' sitting in the room included Bis Weaver. Did Triesman really consider his experience to be worse than the experiences of Bis Weaver? For Triesman to make that comparison was an example of Triesman's insensitivity to others and his complete ignorance of other people's perceptions of their particular experiences. Triesman was presenting himself to the Tribunal as the yardstick against which Gates' behaviour should be assessed. His highly subjective assessment of how she might have felt about Gates' behaviour towards *her* was not really a surprise to either of us.

This hardened union official (Triesman) used to the cut, thrust, conflict and bellicosity of union meetings was comparing his own experiences with Gates' in an occasional union meeting to her experiences with Gates. Bis Weaver was a solitary Black woman facing Gates day-in and day-out over a period of sixteen months in a workplace environment dominated by this White male union officer, noted for his powerful physique [28] and having considerable influence at all levels of the union, supported by a powerful clique in Bournville College – *the kernels,* and by the Broad Left Coalition in Birmingham and the region.

Triesman went further and said he did not believe Gates would be rude to anyone because of their race. He drew this conclusion from being the target of Gates' tongue in the past, which he interpreted as having nothing to do with his being Jewish. Therefore, he ruled out Gates being anti-Semitic. He supported his interpretation on the grounds that being Jewish, he was in a position to judge whether or not a person was being anti-Semitic. Triesman was applying his own experience of being Jewish to interpret Gates' unacceptable behaviour as not being anti-Semitism. Yet he seemed incapable of appreciating that Bis Weaver's experience of being an Asian/Black enabled her to interpret Gates' behaviour as racism. Triesman may have been right about Gates not being anti-Semitic but anti-Semitism is one form of racism and not the be-all-and-end-all of the phenomena. Triesman was

apparently unaware that people who are not anti-Semitic can be racist against Black and/or Asians and vice versa. In its submission, NATFHE accused Bis Weaver of playing the race card. Could it be that the Tribunal spectators were witnessing NATFHE using the race card in a different way to bolster its rapidly fading defence?

Triesman had arrived at his conclusion that Gates' behaviour to her was not racist in April 1986. Having made this declaration, Triesman now had to explain why he failed to inform Mrs Weaver, especially as he met her in June 1986, of this conclusion. Triesman admitted it was usual when complaints were judged to lack merit for the complainant to be told straight away but in this particular situation – described by Triesman as a continued state of embattlement at Bournville College, he wanted to go that extra mile to reconcile the groups in the college. To have told Mrs Weaver of his decision would have closed down the possibility of a resolution - another first for Bis Weaver's ears since Triesman knew reconciliation and resolution were not on the table when she agreed to meet him in June. What she wanted was an impartial investigation of her complaints, although by then she was in no doubt this was not available and was searching elsewhere for justice.

As far as she was concerned, Triesman's performance during his visit to Bournville branch was not a demonstration of going an extra mile but of not budging an inch since January 1986. She thought it a bit rich for Triesman to claim to be making this 'generous' concession of reconciliation and resolution considering he had closed down every avenue to her in the union and for months had left her to the mercy of the *kernels* in the branch. Nor did Triesman's story explain why the alleged lack of merit in her complaint and the 'extraordinary reasons' concerning merit in the union's policy was not mentioned when he refused her request for union assistance in his letter of the 8th July. There was no reason for him to hold back, not even an inch, because by the 8th July he must have been aware she had submitted a grievance to Bournville governors. Furthermore, as she had not previously made a complaint against either Cave or Hartland, how could Triesman assume her grievance against them lacked merit?

Appearing unconvinced by Triesman's answer, the chair wanted an explanation of why he failed to inform Mrs Weaver the union saw no merit in her complaint. Triesman referred to his letter of the 30th June but this did not provide the answer to the chair's query as this only disclosed the union's policy on tenure while avoiding any mention of merit. After further prompting by the chair to answer the question, Triesman sought permission to refer to his contemporaneous notes of the 12th June. He meandered his way through the notes touching on several points not relevant to the question nor did those points accurately reflect

what was said in the meeting. * Either Triesman was trying to jumble it all up to avoid answering the chair's question; or his notes were in a chaotic state; or perhaps it was both. Triesman had still not answered the question, so the chair insisted that he did. Eventually, Triesman conceded never having spoken to Mrs Weaver about her complaint being without merit "in those terms." His reluctance to tell her was attributed to eagerness on his part not to close the door on the possibility of bringing people together again – an eagerness he now considered to be misjudged.

NATFHE's counsel brought up what he described as "Mrs Weaver seeking legal assistance for a purpose other than in the context of her complaint." Counsel presented an alternative version of her claim that Triesman advised her to go the CRE for advice on pursuing a complaint of racial harassment. Triesman expanded on NATFHE's submission by alleging Mrs Weaver used the words "subject to defamatory statements" to describe Day's comments in his 'report' and wanted legal advice from NATFHE to pursue this allegation. Triesman said he told her that the union cannot get into defamation issues because of the expense. He then cited Mr Weaver as saying that Mrs Weaver and himself could not afford legal action. Not wishing to prevent anyone from taking legal action, Triesman replied that "it must be the right of a citizen to go to the courts" and he waived Rule 24 in order for this advice to be sought. Triesman was certainly displaying a level of magnanimity at this Tribunal unseen at any time previously in Bis Weaver's dealings with him.

Triesman, and his advisers, had not really thought this through since why direct her to the CRE for advice on defamation against Day, when the commission's role is to provide specialist advice on race issues. **

* Triesman mentioned an exchange of words with Mr Weaver after I had told Mrs Weaver not to respond to one of Triesman's questions. He referred to me relating to him four particular incidents in the complaint – but this never took place. I made no reference to any incident in the complaint, other than to tell Triesman she had no intention of discussing them. He then accused me of having a very abrasive style but had not interpreted that behaviour as racism. He omitted that he said people might think I was anti-Semitic for being abrasive to him, for which he received an answer he did not expect. Mrs Weaver had then made her first comment to Triesman, namely, he should not mistake abrasive for abusive and Triesman apologised. In fact, he also apologised for saying "what did [she] expect" in reply to Bis Weaver telling him that the 'trio' made false allegations against her over the HMIs visit

** It was not necessary for Triesman to waive Rule 24 if this had been the purpose for sending Bis Weaver to the CRE because she had not registered a complaint of defamation against Day nor agreed to abide by Rule 24 for this non-existent complaint. Nor did I speak about this issue on the 12th June or about financial resources – the issue of defamation was mentioned during a telephone conversation with Triesman on the 4th June and it was not in the form Triesman was now claiming. Triesman raised the issue of a law suit with me by saying that "the union could not sue itself", which seemed tinged with a hint of sarcasm. Perhaps Triesman was unaware that a considerable sum had already been spent on bringing NATFHE to an Industrial Tribunal and free legal advice played no part in Bis Weaver's pursuit of justice

The Tribunal chair was apparently not satisfied with Triesman's explanation for advising Mrs Weaver to go to the CRE. The chair understood why Triesman might suggest a law centre for advice on defamation but failed to see the relevance of the CRE for that type of advice. Triesman changed the reason for advising a trip to the CRE by acknowledging that from the context of Mrs Weaver's discussion with him she was "indeed concerned about racial harassment." Another element in NATFHE's defence sank without trace. With NATFHE admitting racism was mentioned as a motive before Day's enquiry; Triesman was now admitting his advice to go to the CRE was based on a claim of racial harassment.

In concluding the examination-in-chief, Triesman spent some time dealing with the issue of representation. He claimed the correspondence from Day, Cave, Gates and Hartland concerning the grievance to the LEA had been routinely passed to his office and he was confident in not having received any application for assistance from the three accused. Triesman was putting forward the proposition that Gates, Cave and Hartland, who were facing a grievance serious enough for Triesman to consider all three could be dismissed, had not applied to the union for assistance. This was stretching the bounds of reason to the limit. When Day allegedly told the three he could not represent them and the reasons why, they apparently accepted that and did not bother to contact the official responsible for providing representation. Instead, facing a severe risk of dismissal, they turned up without representation at the LEA hearing with the regional official sitting there as a spectator. This presented an image of Day and the Bournville trio that was totally at odds with all their previous actions. The general secretary might not have received an application for representation because Day had taken on that role as Day's contact with local authority officers in July 1986 would attest.

Before being handed over for cross-examination, Triesman confirmed that NATFHE's policy on tenure applied irrespective of whether or not the complainant of racist behaviour was Black or White but the union "would not assist in the defence of a person whose behaviour was manifestly racist." NATFHE still clung to merit as a qualifying factor in determining union representation because it still had a few necks to protect and one other particular neck it had been trying its hardest to wring - Bis Weaver's.

Triesman had shown himself to be a more capable witness than Day but even he had an *Achilles heel*, which, when exposed during cross-examination, resulted in an extraordinary claim that demolished all credibility in NATFHE's submission and enabled Triesman to outshine even Day in the league table of sub-standard methods employed by NATFHE to assess merit in a complaint of racial harassment or racial discrimination.

The cross-examination began with Rule 8 and its unsuitability for dealing with complaints of racial discrimination as drawn to Bis Weaver's attention by Mackney and Ms Whitbread. Triesman, claiming a greater knowledge than those two lay officers, rejected their assessments and, as secretary of the National Rules panel, he considered it suitable for this type of complaint. *

Triesman was unaware as to whether or not Rule 8 was brought to Mrs Weaver's attention prior to his own involvement but claimed that his January 1986 offer to her was a better option than Rule 8. When reminded the option was outside the rules, he, not unexpectedly, claimed it to be within Rule 24. This was irrelevant as Rule 24 had no real bearing on the procedures used in internal union complaints. Day introduced additional and *ultra vires* clauses to Rule 24 in 1985 now Triesman was doing the same two years later.

Counsel went on to the second option, in the January 1986 offer, of an enquiry to be conducted by Triesman and Baker; and of Mrs Weaver being prepared to accept the enquiry if the panel included an equal number of Black members – a request also put forward by the REC. He argued that these two requests were clearly not what Triesman wanted since his (Triesman's) offer gave him overall control to do anything. Triesman recalled rejecting an enquiry with 50% Black membership as being inappropriate because it trespassed on the NEC's authority since only that committee had the appropriate powers to determine the composition of a panel and that was under the provisions of Rule 8. Triesman reiterated that Rule 8 was the next best option to his offer as it had never been known to fail or be criticised for inadequacy.

If Triesman really believed what he was saying then it was unfortunate that, as secretary of the Anti-racism Panel, he had not attended the anti-racism conference at Middlesex Polytechnic in December 1985, because numerous Black members did not share Triesman's confidence in these so-called fool-proof and uncriticised procedures. However, Triesman's myopia did not explain why, if Rule 8 was fool-proof and the only procedure possible under the rules, he offered Mrs Weaver an alternative procedure and asked her to sign away her right to Rule 8. **

The manoeuvrings of Day and Triesman, when Bis Weaver's complaint was in the

* Despite his exalted position, Triesman was in error as a proposal to include racist offences under Rule 8 was rejected by NATFHE's 1978 Annual Conference, [29] which Triesman, as NATFHE's current rules secretary, could be expected to have known

** Rule 8 was in reality a disciplinary procedure rather than a member's grievance procedure; no wonder NATFHE officials were confused by the distinction between the LEA's disciplinary procedures and the statutory Teachers' Grievance Procedures

union domain and their evidence at this Tribunal left little doubt that NATFHE had no procedures for dealing with cases involving racism. NATFHE officials conjured up policies and rules when it suited them and Triesman was well on the way to producing the most significant policy before his cross-examination was completed.

Bis Weaver's counsel pointed out that Triesman's had failed to inform Mrs Weaver, on the 12th June, that the general secretary had no powers to authorise an enquiry in the form requested by both her and the REC. All he had revealed was his intention to recommend that the general secretary rejected the REC's proposal, implying that authorisation or rejection of enquiries was in the domain of the general secretary. * Triesman did not comment on this observation but reiterated his earlier reply that his own proposed enquiry would have been directed to obtaining any facts overlooked by the regional official, after which his remit was to offer advice only and not to adjudicate on the complaint. This admission made his own 'enquiry' anything but an enquiry ** - it was a 'fill-in-the-blank-spaces-left-by-Day's-enquiry' without making any judgement at all. Triesman's enquiry would have been even less than Day's enquiry turned out to be and for this, Bis Weaver, encouraged by Triesman, would have signed away her rights to the procedures that Triesman was now describing as fool proof. Triesman certainly had a knack of springing novel variations to his proposed enquiry on the unsuspecting Bis Weaver. This was confirmation of her view that Triesman's enquiry would have been no better than Day's *Whitewash.* In effect, she would have been well and truly stitched-up. ***

Having informed the Tribunal of forming no opinion whatsoever on Gates' guilt or innocence when making his judgement-free offer to Mrs Weaver in January 1986, Triesman was asked if he felt competent to analyse Gates' motives as he had, apparently, formed a judgement by April 1986 that Gates' behaviour was not racially motivated. Triesman confirmed this to be so. Between January and April 1986, Triesman's unpardonable disability for a secretary of an anti-racism panel, namely, lack of competence to determine racist

* Day gave a slight variation of this upon the completion of his 'enquiry'. In his 'report', he stated "the responsibility for enquiring into the complaints rests solely with the Regional Official acting on behalf of the General Secretary"[30]

** Given the critical disembowelment of 'Day's enquiry and report' by Bis Weaver, Triesman would not have been able to perform a top-up on that 'enquiry and report'. What it required was a complete re-investigation

*** It would soon become transparently clear by the way the general secretary dealt with Bis Weaver's complaint against the regional official that there was no restriction whatsoever on what full-time officials could do and they did anything they liked while using Rule 24 as a cover to impose compliance on complainants

motives, had apparently been overcome. Neither Counsel, nor Bis Weaver nor I were convinced of Triesman's incredible metamorphosis.

Counsel drew Triesman's attention to his 18th February 1986 letter, in which he admitted to not having competence in race issues and he asked Triesman how he arrived at the conclusion Gates was not motivated by racism. In something of a cleft stick, meandering around the question, Triesman referred to his offer of a fact-finding enquiry, adding that it was not in his professional competence to judge motives when there was no evidence to do so – overlooking that his lack of competence prevented him from determining whether such evidence was available or not. Notwithstanding this, Triesman had made a judgement on Gates' motives sometime between February and April 1986, so what evidence and recently acquired skills came Triesman's way between those dates. Counsel put Triesman on the spot by asking him if he conducted an investigation into possible racism in Gates' behaviour between those dates.

NATFHE's claim of no merit, already smouldering, went up in smoke when Triesman revealed the means by which he had arrived at his conclusions. Triesman admitted that his 'racism-free' assessment of Gates was not the result of any investigation but was based on a letter Gates sent to NATFHE (Triesman) in April 1986 espousing his commitment to anti-racism. * The content of the letter was uncorroborated as NATFHE chose not to include it in its bundle of documents or to present it for inspection during the proceedings. Yet to Triesman, this letter was evidence of Gates' long history in the anti-racism movement and of Gates' total opposition to racism. Triesman was showing considerable faith in the word of an old comrade of his in the Communist Party, who had been openly referred to as a liar by a senior NATFHE regional lay officer (Mackney) in a letter included in Bis Weaver's bundle to the Tribunal.[31] Triesman, following in Day's path, had claimed not to have seen any evidence of racism - not surprising given the absence of any enquiry on his part and his professed lack of competence. Yet despite these deficiencies in methodology and analytical skills, Triesman decided Gates' behaviour did not fit into the category incorporating racially motivated behaviour. The basis of NATFHE's 'no merit' defence was floundering in a sea of ineptitude.

Triesman's implausible conclusion displayed a remarkable insularity to the vast

* How could anyone seriously conclude a person was not a racist without carrying out an investigation of the evidence? South African, Terre Blanche of the AWB, a supporter of apartheid, insisted that he was not a racist or an anti-Semite.[32] Did anyone believe Terre Blanche's protestations and, if so, who were they?

amount of detail provided by Bis Weaver; and an equally dismissive attitude towards her by discounting her experience and knowledge of racism, which he was aware extended over twenty five years at the 'pit-face'. Instead, he placed great trust in a single self-exonerating letter provided by Gates claiming the equivalent of 'I am not a racist.' The evidence had shown harassment, intimidation, humiliation and foul mouthed abuse but, in spite of this evidence, the word of the perpetrator - acknowledged as a very rude male; described as a liar by one senior local officer; yet Triesman was relying on this letter to support NATFHE's claim of no merit. If Triesman had been worth his salt, as secretary of the Anti-racism National Panel, it should not have been difficult to see Gates' behaviour fitting into definitions of sexist and racist harassment produced by the labour movement and Labour-controlled councils. Was Triesman merely incompetent? Would that be enough to explain why Triesman believed a few well-chosen words of a White male with so much evidence against him while taking no account of the substantive evidence provided by a Black woman with a wealth of experience and knowledge of racism? If that was not treating the expertise and competence of a Black professional person less favourably than a White professional person, what was? The reasonable person should be asked to decide what Triesman's attitude and conclusion represented. No wonder Triesman kept this conclusion to himself. He could not possibly expect Bis Weaver or any other anti-racist or the CRE to accept such a ridiculous method for determining racism and racists. Triesman's explanation of the method employed to judge Gates' behaviour was a real gem cast in 24 carat plastic. *

As she listened to Triesman, Bis Weaver thought that he had solved the universal problem of investigating racism and determining who was or who was not a racist. He had revolutionised the judicial process under the Race Relations Act – no more lawyers, judges, courts, legal procedures. In future, all that was required was to ask the accused person if he or she was a racist and then make a judgement based solely on what the accused said - no need to listen to the victim; or assess the evidence; or carry out an investigation. NATFHE's evolution in dealing with complaints of racism was now complete. However, a number of

* Having listened to the 'explanations' as to why an investigation of racism did not figure in Day's 'enquiry' or would not have figured in Triesman's 'enquiry', the words of Upton Sinclair came to mind: "It is difficult to get a man to understand something when his salary depends on not understanding it"[33]

organisations committed to the struggle against racism, as well as the judiciary eventually, * might have something to say about the novel method used by the secretary of NATFHE's Anti-Racism National Panel for dealing with racism and suspected racists. **

NATFHE had expended considerable time and money producing an anti-racism pack; the CRE had put a great deal into producing guidelines on racism, which had been 'adopted' by NATFHE, and this was the best that Triesman could conjure up. Triesman's approach was hardly in line with the CRE's recommendations for investigating accusations of racism but it did show the way NATFHE officials avoided investigating claims of racism and concocted implausible reasons for not doing so.

Triesman's evidence provided more information on what his involvement did not deal with rather than what a reasonable person might consider it should have been. Triesman's role was not to produce a favourable end to satisfy the interests of justice; or relieve Bis Weaver of the stress she had endured; or rectify Day's attacks on her competence and integrity. It was aimed at salvaging something for the union from Day's *Whitewash* by re-directing her complaints into a backwater where it could do the union no harm. Triesman had been less than open with Bis Weaver throughout his involvement beginning with his January offer, which he did not disclose would be an 'advisory, judgement-free investigation', a 'fill-in', 'top-up' examination of Day's enquiry. All he did was to tell her that the 'investigation-cum-examination' would not deal with accusations of racism nor with the irregularities surrounding Day's enquiry. The trip to Bournville College appeared to be for a purpose other

* Within five years of the Weaver v NATFHE case, Lord Justice Neil, delivered a judgement on racial discrimination. He said "More often racial discrimination will have to be established, if at all, as a matter of inference...The process of inference is itself a matter of applying common sense and judgement to the facts, and assessing the probabilities on the issue whether racial grounds were an effective cause of the acts complained of or were not. The assessment of the parties and their witnesses when they give evidence also form an important part of the process of inference. The tribunal may find that the force of the primary facts is sufficient to justify an inference of racial grounds. It may find that any inference that it might have made is negated by a satisfactory explanation from the respondent of non-racial grounds of any action or decision."[34] By the same legal logic, any inference may be upheld by an unsatisfactory explanation or non-explanation. There was never an explanation given by Gates either to the LEA enquiry or to the union

** Triesman's lack of competence in the area of racial discrimination was recognised by the courts twelve years later after Triesman gave evidence in another racial discrimination case - Deman v AUT. Triesman, who was then general secretary of the AUT, was judged to have "displayed a surprising degree of naivety and ignorance as to the reality of discrimination on the shop floor. His evidence that everything was satisfactory in race terms within the AUT apart from the applicant's complaint, displayed a surprising degree of ignorance and complacency: it does not follow from the fact that no one else had raised a racial grievance under the rules – unlike the applicant – that all ethnic minority members are happy with the state of affairs in the union." Triesman was advised to meet with and pay heed to the views of members like Mr Saha [who when]…asked why he had not raised an internal grievance, his telling reply was, "Then I would have ended up like the Applicant (Dr Deman)."[35]

than to tackle Gates' harassment of her and the branch's acquiescence; the apparent purpose was to tell the branch committee that management was likely to intervene; the REC motion would be rejected; to withdraw the branch motion for a national enquiry; and for the committee to discuss Day's report in a branch meeting – very much like washing NATFHE head office's hands off the complaint and the consequences arising from it.

Triesman never told her he thought her complaint lacked merit; nor revealed Gates' self-exonerating letter; nor disclosed his conclusion on Gates' racist-free behaviour allegedly based on that letter - described by her counsel as 'infringing Mrs Weaver's right to natural justice'; nor did he tell her about union policy on tenure until he became aware of her grievance to the governors; nor about the 'extraordinary reasons' codicil necessary for union assistance until it was included in NATFHE's submission four months after she requested assistance.

Triesman certainly kept his marked cards close to his chest; at least insofar as it affected this Black woman member. His failure to disclose his findings on Gates' behaviour or any other pertinent information to Bis Weaver was a *volte face* from his radical 'freedom of information' days when his position was that access to information was the right of any party to a dispute and all information should be released to interested parties. *

NATFHE's defence, centred on the extra-ordinary reasons or merit codicil, had taken a mauling during the time Day spent in the witness box but it was Triesman's evidence that delivered the death blow to NATFHE's anti-racist posturing.

With Triesman's revelation of his investigating technique bringing sighs of disbelief from those in the spectator's area, he went on to speak of NATFHE as a union committed to eradicating racism from its structures and referred to NATFHE's Anti-racism Pack, although he did not have a copy to show the Tribunal. This was no hindrance as Triesman was confident he "could remember it by heart," which was not a vain boast as it would not be a difficult task for anyone since it contained little of substance in the struggle against racism. This Pack was stillborn the moment NATFHE distributed it to the branches in January 1986, at the time when Triesman was trying to fob off Bis Weaver with a 'racism-free form of investigation.' Even though Triesman did not produce a copy of the Pack, Bis Weaver's counsel did and read out some parts of NATFHE's aims and objectives, which sounded trite

* Triesman severely criticised the authorities at Essex University for not applying the normal disciplinary procedures but instead had used the Vice Chancellor's personal powers to investigate three students, one of whom was Triesman. Triesman's criticisms led to a committee of inquiry consisting of an equal number of staff and students.[36]

and hypocritical when viewed in the context of NATFHE's submission. The Pack mentioned nothing about any restrictions on complainants when registering complaints involving racism, that is, nothing on NATFHE's policy on tenure or the extra-ordinary reasons codicil.

Triesman had already claimed during his examination-in-chief that he made a record, in his contemporaneous notes of 12th June 1986, of a discussion he had with Mrs Weaver about NATFHE's policy on tenure. Counsel asked to see the notes, which, like Day's notes of his meeting with Bis Weaver, had not been included in NATFHE's 'bundle'. A short adjournment was granted while all four of us – Counsel, Tony Rust, Bis and I retired to the Applicant's room to examine what turned out to be very sparse notes and, not surprisingly, there was nothing to support the claim of informing her of the union's policy. Back in the hearing when asked to point to the union's policy of not assisting complaints against other union members, the resourceful rules secretary failed to do so but came up with another novel explanation for its absence, namely, that it was incorporated in his final point which read "General Secretary would hear all arguments meantime Bournville acts as a proper branch." This had no bearing on NATFHE's policy nor was it confirmation of Triesman's claim of discussing its policy with her but Triesman was adamant the policy was covered by this comment.

Despite counsel's continued assertion that the policy had not been mentioned, Triesman insisted "it certainly was" as he "was fearful that Mrs Weaver's tenure was at risk" and it would be "negligent if [he] hadn't told her that." He had to concede, however, he had not mentioned in his 30th June 1986 letter that the union might deviate from its general policy on tenure in exceptional circumstances (extraordinary reasons). Triesman also claimed that might some issues were discussed with Mrs Weaver on the telephone. This was another attempt by Triesman to distract attention from the inadequacy of his contemporaneous notes. The notes taken by me would also have affirmed the inadequacy of Triesman's memory of that telephone conversation. * Triesman had mentioned nothing at all about union policy on the phone nor did he do so at any other time. Considering Triesman's fears of management intervention; knowledge of the complaint being widely known; and the significance of the union's unwritten policy on tenure; surely he would have made a special note of NATFHE's policy had he disclosed it. Triesman's note for the general secretary to hear all arguments was hardly an appropriate record of such an important disclosure but this was how Triesman

* I had spoken first to Triesman on the telephone while Bis Weaver listened in on the extension taking notes. When Triesman asked to speak to her, she did so while I listened and took notes.

tried to pass off his claim of revealing a major union policy!

Day's report briefly came under the spotlight to see how this ill-produced, misleading document was viewed by Triesman. He did not disappoint the audience. He described it to be a "thorough report, very typical of Mr Day, very meticulous" prior to Mrs Weaver's criticisms being received. Triesman did not volunteer an opinion on the 'report' after reading Mrs Weaver's' criticisms and Counsel did not seek one as Day's 'enquiry and report' had already been exposed as a fraud. But Triesman's opinion was captured when asked if he thought Gates had done nothing seriously wrong. His assessment consisted of Gates using bad language but his offence did not call for serious disciplinary action. Triesman must have read the critique of Day's 'report' and just dismissed it as he seemed to have discarded everything else that she brought to the union's attention. Apparently, the reason for NATFHE not following through with action against Gates was due to Gates being told "not to use that language to other members of staff or indeed to Mrs Weaver again." This caution to Gates had not figured in Day's 'Summary of Recommendations' nor had Bis Weaver been told about it, assuming this instruction was delivered to Gates. Nonetheless, NATFHE was shown to have an interesting way of dealing with several months of abuse, intimidation and harassment.

Representation of members was the next item on the agenda. Council suggested that in the 30th June letter Triesman was referring to his meeting with the branch committee and not with Mrs Weaver. Triesman rejected this interpretation by claiming to have made the same points to Mrs Weaver as he did to the branch committee as it was relevant because her tenure might also be at risk. But nowhere in his letters of either the 30th June or 8th July 1986 had he made any reference to Mrs Weaver's tenure being at risk. In fact, as Counsel pointed out, Triesman's reasons for not offering her assistance were: Gates was junior to her and the union never assisted senior members of staff against junior members; the union did not generally represent staff in grievance procedures; the grievance could lead to Gates' dismissal and the union would not assist a member in seeking the dismissal of another member. This latter reason was the most significant as there could be no plausible reason for the union to withhold representation for Gates and the other two as their tenure was certainly at risk as Triesman had made only too clear. Nowhere, in his letters, had Triesman even implied Mrs Weaver's tenure might be at risk or explain the conditions under which the union would abandon the policy on tenure. Triesman's explanation also demolished Day's claim of not representing anyone since NATFHE's policy described in those letters referred to protecting

tenure; identified Gates' tenure as potentially at risk; and spelled out the reasons for not assisting her.

Triesman was now on the verge of jettisoning 'extra-ordinary reasons' as a codicil to NATFHE's policy on tenure. By now he must have realised NATFHE's policy on tenure with its alleged concession on merit had sunk without trace, torpedoed by his comments in those two letters and his novel technique for investigating claims of racist harassment. Or was it an impulsive response to being caught in a cleft stick because out of the blue NATFHE's main plank in its defence was abandoned. Triesman changed the whole direction of NATFHE's defence by stating that the policy on tenure applied across the board and in all circumstances. Counsel, probably as surprised as both Bis Weaver and I, specifically asked Triesman that "if a member such as Mrs Weaver were to bring a case based on race such as to put another member's tenure at risk, [the union] would not provide representation." Triesman categorically stated that security of tenure applied across the board to cover all possible forms of misconduct, such as fighting, theft, drunkenness and discrimination. If any member sought union assistance against other union members for complaints covered by these headings they would not be eligible to obtain it. * They would be told that in no circumstances would the union assist any member putting another member's tenure at risk and it would be up to the complainant to find alternative representation if they wanted assistance. This policy applied irrespective of the merit in any member's complaint. **

The performances of both Day and Triesman had led to the abandonment of their previous claims in an attempt to salvage the case even if not the union's reputation. Triesman had ripped the heart out of NATFHE's own submission, emptying it of any content – the indelible ink NATFHE had used to underwrite the policy on tenure was in fact soluble. With this policy, NATFHE could never take action against a racist since any accused lecturer would probably be a NATFHE member and would undoubtedly deny harassment, consequently, the harasser would be the party eligible for union assistance? This was virtually creating open season on vulnerable members who had the misfortune to come up against

* Triesman was taking a chance when he retracted the claim of 'merit' made in NATFHE's submission by stating the policy had blanket application because evidence acquired after the Tribunal hearing showed NATFHE did not have a blanket policy and this was another policy that Triesman, as rules secretary, should have known

** Triesman's policy revelation was akin to the position adopted by Willie Whitelaw, Tory Home Secretary, who refused to follow the Scarman recommendations to terminate the employment of any police officer found guilty of racism. Triesman and NATFHE had climbed into bed with the Tory administration and police when it came to taking action against racists.[37]

abusive, crude, intimidating members of the union. *

Counsel raised the prospect of members of ethnic minorities being excluded from assistance in all of the four areas specified by Triesman if their complaints threatened another member's tenure whereas White members would only be excluded from three of those areas. Triesman accused Counsel of having 'tangled up several things' because discriminatory behaviour occurred against women and White ethnic minorities as he himself had experienced being Jewish but, even in those circumstances, the union would not seek to do the employer's job by getting people dismissed. In trying to justify non-assistance to meritorious claims brought by Black ethnic minority members, Triesman extended NATFHE's policy to embrace women and all ethnic minorities.

Counsel then referred specifically to the situation at Bournville College where out of a staff of 130 only three were members of ethnic minorities. He pointed out these three members would be more likely to complain of racial harassment from White staff than vice versa. In other words, NATFHE's policy disproportionately affected members of ethnic minorities, thereby, discriminating against them.

Triesman acknowledged the disproportionate effect but did not accept it put the complainant at a disadvantage because a complaint could be made to an employer and for the employer to remedy the situation as it was not up to the union to do this. ** Triesman added that Mrs Weaver, in March 1985, took the complaint to the employers and they did nothing. Triesman's description of this incident was in error as no complaint went to the employer in March 1985: merely a request to her line manager for advice on dealing with Gates' attempts to discredit her as Access course coordinator. *** Triesman had managed to dig out from his memory one point in a copy of a letter given by Ms Weaver to Day on the 29th August 1985 and had misrepresented the content but seemed unable to remember the many other incidents comprising her complaint.

Triesman was asked if his judgement on Gates played any part in formulating NATFHE's policy on tenure – suggesting that it was a policy specifically fabricated to justify

* A CRE spokesperson was to comment later on NATFHE's policy, saying "The victims of racial discrimination are now defenceless...Any union member guilty of racial abuse would know that the union would not help the victim."[38]

** Was Triesman admitting the union had no role to play in dealing with racism in the workplace?

*** On that occasion, Gates had circulated a document making false allegations against her, which she had brought to management's attention but did not register a complaint. However, it seems that if Triesman had been correct and management had ignored a complaint of harassment, the union's position had been to rally to the harasser and try to remove the complainant from her job. Hardly the action a complainant should expect from the union!

NATFHE's determination not to assist Mrs Weaver in her grievance to the governors bearing in mind no such rule existed in NATFHE's rule book. Triesman fell back on NATFHE's claim of no merit in Mrs Weaver's case – the rhetoric and dogmatism of the bureaucrat had re-emerged. He added that even if the employer judged Gates to be a racist, he (Triesman) would have stood by his own judgement that Gates was not – interestingly, a self-exonerating letter from Gates overruled a full-scale enquiry by the LEA. Was Triesman saying 'yes' or 'no' to the question? Triesman was still not finished and added that even if he believed there was merit in Mrs Weaver's allegation, the union would not have pursued her case because it would have led to the loss of tenure for another union member. Triesman was seeking to have his cake and to eat it after already throwing it away.

One of the Tribunal members, Mrs M G Cook, queried why the policy was not in the union's rule book. Triesman trotted out another reason for this omission by explaining that, although not in the rule book, the policy was a practical way officials set about their work and was generally known to members; it not only guided NATFHE's policy but was also the policy of every trade union in the country. * These reasons hardly explained why it was not in the rule book, and the response of a significant number of activists, albeit not in the West Midlands, when the Tribunal decision became known, showed it was not known to NATFHE members either.

Counsel picked up on the possible risk to Mrs Weaver's tenure, mentioned by Triesman, and yet the union failed to provide assistance. But there was no need for concern as Triesman let it be known that when the risk to her tenure materialised assistance would have been provided. Triesman rejected assistance to both parties on practical grounds - NATFHE was a trade union, said Triesman, and it would end up like the legal profession retaining advocates on each side and battling it out with each other. ** Triesman's 'admission' that Mrs Weaver would receive assistance should the need arise was bizarre since any threat to her tenure could only arise during or after the LEA's enquiry and the union would be representing or had already represented Gates, Cave and Hartland against Mrs Weaver's grievances. *** Was Triesman suggesting the union would switch sides once her tenure became threatened?

NATFHE officials certainly did not think through what they were saying but, of

* It was certainly not the policy of all trade unions as generally unions represented members during grievance procedures & disciplinary hearings[39]

** As would be discovered later NATFHE, at least in the Inner London area during Triesman's stint as regional secretary, did represent both sides[40]

*** With this response, Triesman was more than implying that the union represented the 'trio'

course, for the first time in the Weaver case, they had their backs to the wall and they could not refuse to provide an answer.

The only route available to victims of racist and of sexist harassment, according to Triesman, was the employer's grievance procedures or NATFHE's Rule 8. Routes that created considerable difficulties for complainants since using the grievance procedures meant no assistance from the union unlike the accused parties, who could depend on full union support. Triesman argued that not obtaining union assistance in the LEA's grievance procedures was not fatal to complainants. However, Triesman's optimism did not resolve the problem of countering the union's influence on: (i) the type of procedures used or (ii) the findings of any enquiry. NATFHE had shown this to be the case when Bis Weaver had no choice but to use the employers' grievance procedures. The so-called option of Rule 8 - an internal procedure, was not an option at all because of the decision of the 1978 Annual Conference. What an indictment against a trade union pledging to eradicate racism and sexism from the workplace to tell complainants that procedures external to the union were available to them but without union assistance. Of course, there was also Triesman's third option offered to Bis Weaver, in January 1986, which was not to pursue the complaint.

NATFHE's approach created a paradox because a survey by NATFHE women members into the situation of women in the workplace had identified harassment as often becoming so intolerable that victims were forced to leave their employment. * Yet while victims of harassment lose their jobs, the union offer support to harassers to protect their tenure. The union had become enmeshed in the web of pretence woven around the Weaver case and Triesman's and Day's evidence was looking somewhat tawdry.

Mr G W Hands, the other Tribunal member, asked what a member could do when receiving a letter of grievance putting his/her tenure at risk. Triesman replied that if the member contacted head office, the letter would be passed on to the regional official and the member would be encouraged to get in touch with the regional official, who had knowledge of the colleges in the region. Triesman was passing the buck on to Day, who had claimed representation fell within the domain of the general secretary – each official seemed to be fighting their own corner. The onus had been placed on Day as the person responsible for providing representation for the three officers and, if discrimination was found to have occurred, Day would carry the can – the Scorpion and the Frog!

* Was Triesman also lacking competence on issues concerning women such that he was unaware of the article published in NATFHE Journal, which also stated representation was available to both the complainant and the accused?[41]

The cross-examination of Triesman had established that the union's policy, without any consideration of merit, applied across the board irrespective of whether the complaint was racist or sexist discrimination, theft, drugs and drink, abuse and fighting. With this policy there was no credible reason for NATFHE not to have represented Gates, Cave and Hartland at the LEA grievance hearing despite NATFHE denying to have represented anyone. By transforming NATFHE's policy from the one expounded in its submission, Triesman had backed himself, Day and NATFHE in to a corner.

NATFHE's counsel with the agreement of Bis Weaver's counsel did not call NATFHE's other witness, who was there to support Triesman's version of the 12th June meeting. His contribution meant little because whether Triesman had told her about NATFHE's policy or not would make no difference if the policy was unlawful. With that settled, given that Day's evidence had already shown an indisputable lack of credibility, Bis Weaver's counsel dropped a bombshell. Catching the majority in the hearing by surprise, he asked for a short adjournment to consider amending the application to include a charge of direct racial discrimination against Day.

All eyes turned to Day, a rather dismal sight as his jaw visibly sagged in what looked like disbelief, accompanied by a low gasp, at the prospect now facing him when he was not in a position to dismiss with a postcard any criticism of his actions. After a brief adjournment, the Tribunal resumed and some discussion involving both counsels and the chair took place. Bis Weaver's counsel decided not to pursue the amendment. Nonetheless, the brief excitement it caused was not without some merit for those in the Applicant's corner as they watched the man who had caused so much distress to Bis Weaver waiting anxiously for the outcome of a decision over which he had no control.

The case was about to reach its climax with both counsels ready to present their legal arguments. NATFHE's counsel, first in to bat, argued there could be no possibility of discrimination in law because the union: (i) had a general policy of not providing this particular service to anybody; (ii) could not possibly be expected to help a member pursue a complaint that it did not consider to be well founded; and (iii) could not appear on both sides to help in the dismissal of another member. Counsel's argument also pointed out that it was not always Black or women members who made complaints. On these grounds, the union was left with no choice but not to support her.

To onlookers and those who were to become familiar with the case, NATFHE's defence followed its submission with an emphasis on 'no merit' even though Triesman had jettisoned it and NATFHE's counsel had moved it from 'no merit' in her complaint to

NATFHE's belief that there was no merit. This was a change of emphasis that carried little weight bearing in mind no reliable investigation had taken place. What was also surprising was NATFHE counsel's reliance on 'evidence' already discredited and his attempt to make this acceptable by claiming Mrs Weaver's complaint against Gates did not mention racism; that whatever Mrs Weaver said to Day about racism was only an afterthought; and Mrs Weaver did not consider the complaint a serious matter. Ms Deeson's notes (10th June 1985) and her questionnaire containing references to racism and sexism, * and Bis Weaver's *aide memoire* with six references to racism; were completely ignored by NATFHE's counsel. If counsel's assessment of Bis Weaver's attitude to the complaint had been true, why had she taken on the union for two years with all the aggravation and stress that entailed; and in the process spending a considerable amount of money? For a whim or fifteen minutes of fame!

NATFHE's counsel continued along the line of 'racism being an afterthought' by claiming she made no mention in her letters of Gates being motivated by racism but only of her being deeply embarrassed and concerned with the effect that Gates' behaviour had on her. On top of this, counsel maintained that she alleged this was worse for her because she was Black.

Like NATFHE officials, counsel had no appreciation of the subjective element in harassment recognised in trades union and local council guidelines combating harassment in the workplace and soon to be adopted by the courts.

Counsel argued that Triesman looked at Mrs Weaver's letters and Day's report, saw no reference to racism and took the view that Day had carried out a careful investigation. For Triesman to adopt that position, he had to ignore Bis Weaver's critique of the report; be extremely selective in his choice of the vast quantity of incisive correspondence sent to head office; and be exceedingly inept.

Counsel's next comment gave the impression that he was not entirely convinced by his own attempts to minimise the all-too-obvious deficiencies in Day's report when he pointed out that Day's report did not have to be of the standard of High Court proceedings. This was undoubtedly true but it could be expected that the enquiry, and its subsequent report, would rise above the level of a tabloid scandal sheet and be free from the trappings of misfeasance where the adjudicator gave advice to the accused before agreeing to carry out the

* After the hearing, we discovered Ms Deeson's questionnaire in Day's documents in NATFHE's bundle and was available for NATFHE's Counsel. Whoever put NATFHE's bundle together did a shoddy job in providing evidence to scuttle NATFHE's defence of racism never being brought to the union's attention until after Day's enquiry; unless the person compiling the bundle was trying to be ultra-honest!

enquiry; and then allotting the role of witness selection to the accused's partner. Certainly not High Court, more like Casey's Court!

Counsel turned to Mrs Weaver's request for Black members to sit on any investigating panel and dismissed it by saying that no Black person can insist on only Black people sitting on a tribunal. The chair intervened to remind Counsel that it is a statutory right in complaints of racism to have one member experienced in race relations on any panel. Despite the chair's comment, Counsel interpreted Bis Weaver's request as casting doubts on the integrity of members of a union panel by assuming they would not treat her fairly. Nor should it be allowed for her to cross-examine members of committees before a hearing.

Counsel ignored the fact that Bis Weaver had not asked for 'only Black people' but for an equal number. He also misinterpreted the reason for her request. She wanted some people in what she thought would be an adjudicating role with real experience and expertise in race issues and Black members with these skills were available on the ARNP. It was difficult to see why he drew the conclusion Mrs Weaver sought to 'cross examine members' of any committee. In January 1986 she was prepared to accept Triesman and Baker without questioning their suitability. It was Triesman who admitted to not having competence and had said nor did anyone else, which must have included Baker. When Black people ask for Black participation, whether on an adjudicating panel or as officers on an anti-racism committee, why do certain White people assume it is an attack on their integrity?

Counsel acknowledged that Triesman's view of 'no merit in her complaint' was not conveyed to her but Triesman did write to her about the union's policy on tenure (30th June 1986). This had no weight whatsoever since the claim of 'no merit' or even the 'extra-ordinary exception'' codicil was not mentioned in that letter either. Was counsel of the opinion that just mentioning the letter was sufficient explanation even though Triesman had not brought such significant information to her attention? He then tried to divert attention by bringing in the misleading claim of Bis Weaver not challenging the contents of this letter while ignoring that she had already given an adequate reason for not doing so. Yet another irrelevant point, as it had absolutely nothing to do with Triesman failing to inform her of his 'judgement' on Gates.

He then turned to the issue of proportionality in the Race Relations Act. He submitted that if the Applicant was relying on the policy having a disproportionate effect she had to show she was a member of a racial group that was considerably smaller than any White group affected by the policy. He claimed that this was not established. Considering that only three out of 130 staff members at Bournville College were members of Black/ethnic minorities and

NATFHE's Black membership was 1% of total membership, how many members of this minority group would there have to be to qualify as being smaller. However, he was apparently comparing Black/ethnic minority to White members not on the basis of complaints involving racism but on the basis of complaints involving theft, or drugs, or fighting or discrimination, which, to say the least, was an unusual way of classifying people in terms of the Race Relations Act. But he was not making such a classification since he was claiming the Race Relations Act did not apply to this case. As a backup in the event that this defence did not convince the Tribunal, counsel added that if the union's interpretation of its policy was in error, it did not accept Mrs Weaver could rely on this as the union rejected the validity of her complaint, which was yet again trying to invoke the already discredited and jettisoned 'no merit' defence. Did counsel think that no one had heard the details of the harassment or Triesman's statement that merit was not a factor taken into consideration when applying the union's policy on tenure? Perhaps, NATFHE's counsel was caught on the hop by Triesman's about turn.

Counsel ended his presentation by stating NATFHE's justification for applying this policy, which was: (i) in order to avoid a conflict of interests; (ii) that NATFHE would be in breach of contract by not promoting Gates' professional interests, which said nothing of the victim's own professional interests; and (iii) the Applicant failed to satisfy the requirements of proportionality.

NATFHE's counsel might not have taken on board the fact that the issue of merit had been abandoned by NATFHE but Bis Weaver's counsel did when he began his summation by drawing specific attention to it. He formulated the argument that to obtain assistance from the union a member must fulfil the condition that the complaint must not be one of racial discrimination putting another member's tenure at risk. As a Black person, she was more likely to suffer racial discrimination than a White person, therefore, the policy imposed greater difficulty on Black members to satisfy its requirements. Relying on the principle of proportionality within the Race Relations Act, counsel used Bournville College as a yardstick to argue that in the college's staff of 130, the three 'non-white ethnic minority members' would be more likely to complain of racial harassment against the other 127 White members than the 127 would complain against the three. NATFHE's policy would, therefore, disproportionately affect the three ethnic minority members by debarring them from assistance than vice versa and, as such, was discriminatory under the Act. Counsel asked the Tribunal to find that racial discrimination had taken place when the union refused to assist Mrs Weaver in pursuing a complaint to the governors.

With the hearing almost at an end, the chair asked the parties if they wanted the decision to be delivered the next day with the written report sent in a couple of weeks' time or did they prefer waiting for the written decision to be sent through the post. NATFHE's Counsel, after consulting Triesman, asked for the decision by post; Bis Weaver's counsel, after consulting her, expressed a preference to hear the decision the following day. The Tribunal conferred and the chair announced the decision would be given on the next afternoon at 2 pm.[42]

As we left the Tribunal, 'our team' thought that from the way the hearing had gone, she was in with a chance of the decision going her way. The NATFHE contingent, as we were to hear shortly, thought NATFHE had lost.

On the final day, after a few phone calls made the previous evening to mobilise more Black friends and colleagues, the public gallery was packed with people 'cheering' for the Applicant. NATFHE's contingent was minus Day, not surprising after the mauling he received the previous day from the Tribunal chair but, perhaps, more important union business had first call on Day's time. Tucked in the corner was a representative from the local press, who had also responded to my telephone call.

The Tribunal members entered the room to an air of buoyant expectancy radiating from the assembled spectators. In delivering the decision, the chair severely criticised the union for the way it dealt with Mrs Weaver's original complaint, selecting Day for a particular dose of condemnation. A complex legal argument was presented, which, apart from the lawyers, went way over the heads of most of us and at the end of an extended deliberation, the chair informed the assembly the application was lost. * The decision would be confirmed within a few days. We would have to wait for the written report before having a chance to understand the legal grounds for the rejection of her application but one thing we grasped was the union's policy of refusing assistance to victims of racial harassment had been upheld by the law.[43]

NATFHE officials and officers with long histories in the anti-racism movement were undoubtedly elated to have won a 'great' victory over this solitary Black woman. NATFHE's achievement was to have its racially discriminatory policy flagged up as legitimate but we doubted that many real anti-racists would be lining up to salute NATFHE's new motto embroidered on its flag. The union's 'policy' had ceased to be an alleged custom and practice

* What was picked up during that legal exposition was that NATFHE's policy had a racially discriminatory impact but we would have to wait to see how that fitted into the overall judgement.

way of dealing with race issues; instead it was in the process of becoming part of the legal fabric in race relations law as it still is to this day a quarter of a century on, although NATFHE has continually tried to conceal its negative contribution to the 'anti-racism' cause throughout the succeeding period of time. *

The decision in favour of NATFHE was a loss for Bis Weaver but NATFHE's policy was an affront to Black people and also to women. The most vulnerable union members in the workplace, Black people and women, paid their union dues but could not get support against those who were prepared to abuse, harass and intimidate them, even to the point of using physical violence as recently demonstrated at Blackpool. NATFHE's success was hardly a promotional advert for NATFHE to broadcast to the public, which was about to come into being courtesy of the Weaver pen.

NATFHE was in a cleft stick since no possible grounds now existed for it to claim the status of a credible anti-racist trade union unless it misrepresented the implications arising from the Tribunal's decision and repeated the false claims in its submission, which was in fact the way NATFHE tried to deal with it. Senior head office officials were unable to assess racism, other than to ask the accused if he/she was a racist and make the judgement on the answer. As a consequence, NATFHE showed that it did not to know what constituted a racist act or who was or was not a racist. Since it is difficult for people to realistically oppose an act they cannot identify or condemn those who perpetrate an indeterminate act, it was impossible for NATFHE to have an anti-racism policy.

NATFHE was soon to set the process in motion of trying to rectify this problem - not the 'racist' policy but NATFHE's image, by working on a new anti-racism strategy with Triesman, alongside the IPDist, Penny Welch, given responsibility for drawing up NATFHE's guidelines on racial discrimination and harassment. Triesman had just demonstrated how suitable he was for this task in a manner that would hardly impress anyone outside the NATFHE coven. Could anyone really take NATFHE seriously on its claim to be committed to anti-racism?

After the hearing, the room reserved for the Applicant was packed with Bis Weaver's supporters; disappointment and anger erupted all around the room. While these friends were making their views known about the decision and about NATFHE, I got hold of the Birmingham Evening Mail's reporter to provide him with the background to the case. At least

* In 2007, a request for information from NATFHE on the Weaver v NATFHE case brought an evasive response from a significant figure involved in the debacle [44]

her complaints and the Tribunal's assessment would have a 'public airing' without NATFHE officers and officials issuing dictats as a form of censorship or passing motions – one avenue that NATFHE officers and officials could not close down. Over the next couple of weeks, half a dozen items were published in the press, including one with the headline, "union closes ranks to defeat Black lecturer" - succinctly summing up in seven words, twenty four months of union duplicity.

As the gathering began to disperse we went with Tony Rust to a nearby café. We had known from the outset the likelihood of winning was not high but we felt she had come so close to winning after NATFHE's submission was exposed as nothing more than a cocktail of misrepresentations and falsehoods. The Tribunal was aware that racism was raised with Day prior to the enquiry; the defence of no merit based on Triesman's novel way of assessing racism was too ludicrous to be sustained and led Triesman to abandon it; and union representation was provided for Gates, Cave and Hartland because the union recognised their tenure was at risk - all providing additional weight to Bis Weaver's complaints against the Bournville 'trio'. Another bright spot was the severe criticism NATFHE came under for its treatment of Bis Weaver and we would wait with anticipation to see if these exposures and criticisms were included in the report.

Tony Rust proposed that when the written decision was received he should look into the possibility of making an appeal; Bis Weaver agreed and then we left. I took NATFHE's 'bundle' of documents with me to look at when the immediate disappointment had subsided.

> The Moving Finger writes, and, having writ,
> Moves on; nor all thy Piety nor Wit,
> Shall lure it back to cancel half a Line,
> Nor all thy Tears wash out a Word of it.[45]

Triesman's finger or, in this case, his fist, had encumbered the trade union movement with a policy that was to be shown in the Tribunal report to have a racially discriminatory impact.

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[1] GW to AR 4 June 1987 File H 11
[2] Liaison Observer at IT to SD 10 Jun 1987; related by SD to GW 11 Jun 1987 File Y 11
[3] Smith I & Osman C, Harvey on Industrial Relations and Employment Law, Q 90 (Q 213)
[4] Industrial Tribunal Report, 1987, Weaver v NATFHE, No 4/297/225, Birmingham, p3 s4
[5] Chomsky N [1989] Necessary Illusions: Thought Control in Democratic Societies, Pluto, London
[6] NJ April 1985; LM to AR 26 Oct 1987 File J 22 - 25
[7] I T Report, p8 s5 (g)(i)
[8] GW to AR 21 May 1987 File H 7
[9] BW *aide memoire* 28 Aug 1985 BW IT Bundle 12

[10] Ibid
[11] Ancient fable attributed to many authors
[12] PMc to BW 5 Jul 1985 BW IT Bundle 9
[13] PMc to DE, with copies to DTr & others, 8 Apr 1986 BW IT Bundle 55
[14] Ibid
[15] BW to AD 22 Nov 1985 BW IT Bundle 15
[16] AD to DTr 30 Jun 1986, with copies to DE, RDty & DG, File D 37 - 38
[17] AD to RJ 11 Aug 1986, with copies to DTr, DE & RDty, NATFHE IT Bundle 185
[18] GH to DG, NC & BH 16 Jul 1986 BW IT Bundle 85/86/87
[19] LEA to BW 29 Sep 1986 File N 15
[20] AD to RJ 11 Aug 1986, with copies to DTr, DE & RDty, NATFHE IT Bundle 185
[21] DTr to BW 13 Jan 1986 BW IT Bundle 32
[22] DTr to BW 18 Feb 1986 BW IT Bundle 42
[23] Notes BCtte Mtg 9 Jun 1986 File Q 31 - 35; DTr to B/V Br Sec 4 Jun 1986 BW IT Bundle 70
[24] Triesman D, Times 15 Jun 1970
[25] NJ April 1985; LM to AR 26 Oct 1987 File J 22 - 25
[26] BW to PD 25 Jun 1986 BW IT Bundle 7
[27] Mgt to NC, DG, BH & DH, 9 Jul 1986 File D 50
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