Chapter XXI

An Anti-racist? Just Write a Letter to Prove it!

(a) New Dogs: Same Old Tricks

NATFHE over the coming years plodded along in a similar fashion. The situation for Black members did not alter to any great extent other than in the rhetoric of the players wearing NATFHE colours during the Weaver case. The proclamations of anti-racism became more voluble but underneath the flowing words there was little evidence of any lessons being learned. NATFHE's general response was to act as if the Weaver case never happened as the implications of the Weaver v NATFHE judgement failed to get a mention.

NATFHE's legal obligations to protect the tenure of the accused harasser at the expense of the complainant were completely ignored; as this was hardly the type of material NATFHE would be likely to incorporate into its own anti-racism policy. NATFHE had skirted around its restrictive policy on the rights of Black and women's members by hiding the policy behind a clause requiring the union to avoid a conflict of interests. The Weaver case had been an episode in NATFHE's history that required lessons to be learned but this was part of the curriculum for lecturers that would not see the light of day in the dark recesses of NATFHE's cavern.

Two highly significant cases were to follow in the wake of Weaver v NATFHE in two different lecturer's unions – (i) NATFHE and (ii) Association of University Teachers (AUT) under two new general secretaries; both of whom had been significant players in the Weaver case. In the period prior to these cases hitting the newsstands, other issues occupied NATFHE's agenda. These issues covered the internal political agenda to determine who should run NATFHE and how it should be run; but, while Black members gained some limited recognition of their existence, there was little on offer for victims of harassment. The usual NATFHE rhetoric was pumped out but now it was accompanied with reserved places on the NEC for Black members in 1991; the election of NATFHE's first Black President in 1994; and a NATFHE member chaired the TUC Black Workers Conference in 1995. *[1]

During this period the West Midlands regional official, Day, left NATFHE at the end

* This member was also general secretary of the IWA, Avtar Jouhl, who, in his lectures to trade unionists, used Weaver v NATFHE as a case study to illustrate how trade unions discriminated against Black members

of March 1992 to be replaced by Paul Mackney;[2] His performance as a lay officer on numerous committees both inside and outside of NATFHE was now receiving its reward. Dawson moved on and eventually became the London-based Euro coordinator for Education International; and Triesman became general secretary of the AUT in 1993, where his lack of 'competence' in workplace-related issues became publicly recognised during a legal case against the AUT.

Dawson's successor, Woolfe, reigned for a single tour of duty before being defeated at the election of 1994. His successor, Akker was surrounded in controversy, vilified as 'pitiful', 'negative' and 'miserable' by speakers at NATFHE's Annual Conference in 1996.[3] He reigned for an even shorter period and just before the 1997 Annual Conference at Scarborough, Akkers was suspended pending a disciplinary hearing into claims of incompetence. This action followed on from a NEC vote of no confidence, although it appeared the NEC "did not have the courtesy of discussing this with him first."[4] The decision was thought to have been political as "a number of hard-line left-wing members" of the NEC announced their intention of standing for the post. There was "a feeling that some of them have had it in for John [Akker] for a long time." A NATFHE source said that "It is quite incredible that, at a time when the sector is in turmoil and...members are fighting for their livelihoods and educational quality, the union leadership is engaged in unsavoury internecine squabbles."[5]

Akker's suspension was announced at the conference and immediately "Mackney was the first to set out his stall for election." Mackney said "NATFHE has been drifting. The absence of national strategic leadership within the union has meant that few people now listen to what it has to say. Any new General Secretary will have to work hard to ensure that NATFHE regains credibility as the principal union for new university and college lecturers." He felt the union had "let members down", "failed to prevent unprecedented level of work induced stress" and "failed to halt a sharp decline in pay and conditions."

A journalist reporting on the situation thought "it may be sometime before anyone else entered the frame officially." He did mention Barry Lovejoy as a probable candidate, but Lovejoy "has refused to declare at this stage." *[6] Perhaps, this was a sign of respect as the present general secretary's corpse had yet to be interred.

When the five candidates for election were announced, an agreement was reached for

* Lovejoy was another West Midlands Broad Left Coalition and REC member during the Weaver case. He did not become one of the candidates for the post

candidates not to "derogate any other candidate, member of the union, or employee of the union."[7] Mackney's platform was based on four top priorities: (i) modernisation while retaining the union's founding principles; (ii) making a new start with employers; (iii) negotiating new partnerships with other unions; (iv) ending the use of temporary contracts and the 'abuse' of part-time lecturers and agency staff.[8]

Mackney, described as a moderate,[9] became general secretary with 38% of the vote. * His election was welcomed by Triesman of the AUT, who said "For the first time in quite a while a strong personality has emerged in further education, steeped in its traditions, who can address the needs of that beleaguered sector. Those of us in Higher Education can look forward to a productive working relationship."[10]

A TES journalist, who interviewed Mackney a month after his election described NATFHE as "notoriously fractious and factional", financially in the red, with membership falling, and engaged in bitter disputes. Mackney, "a professional union leader for the past 17 years" was dubbed by his Birmingham colleagues as "Deals on Wheels." He was "suited to the modern age of partnership, co-operation and approachability," who wanted to take "the FE sector forward and get rid of its rather sleazy image." ** Mackney was emphatic in dealing with bullies, who "need to know that there is no place to hide. We will track them down…" *** However, he was referring to employers, such as those in Stoke-on-Trent, and not members of the union. Mackney was "regarded as a genuinely nice man [and] broke off his interview to introduce himself to the woman, who came in to clean his office." ****[11]

With Mackney as general secretary, how would the race issue fare in New NATFHE bearing in mind it was outside the top four priorities, unless by some strange logic it might be accommodated in one of those four priorities. However, NATFHE did have numerous problems, therefore, it could be expected to await its turn in the queue, which might be a step forward from its existing position. Under the previous administrations at national level and in

* The turnout was only a 29.3%, therefore, the successful candidate had attracted 11.16% of those entitled to vote

** This sleaziness had been essential for NATFHE in Birmingham in its deals and arrangements with the Birmingham Labour council over the Weaver racial harassment case and in parts of London over the Fernandes affair and the Shahrokni race discrimination case. For the Shahrokni case see this chapter section c (i) & (ii)

*** This might have impressed members, such as Bis Weaver and Gil Butchere, if he had acted on this premise in 1985/6

**** Bearing in mind his lack of interest in the many difficulties faced by a woman lecturer looking for assistance from him in Birmingham, a cynic might be excused for drawing the conclusion that Mackney's consideration to the cleaning woman, in front of the journalist, had the appearance of a public relations exercise

the West Midlands, racial harassment/discrimination did not even qualify for a place in the queue to the kitchen door. Would NATFHE's previous 'indifference' in practice be discarded and would the new administration actively and purposefully address this issue? As a first step, Mackney might suggest the NEC strengthened Rule 8 and extended its remit to allow race cases to be heard, as Mackney, in 1986, thought Rule 8 was not fit for purpose. However, action on NATFHE's inadequate procedures was to be taken out of its hands as a result of a decision in an Industrial (Employment) Tribunal case, which delivered its first judgement on NATFHE shortly after Mackney took over in December 1997 with other judgements to follow in 1998 and 1999. These were the Shahrokni judgements.

(b) NATFHE Signs Up to Anti-racism – At Last!

Five months before the Shahrokni decision was delivered, NATFHE appeared to be hedging its bets as it began a process to reiterate its 'commitment' to anti-racism whatever the outcome of the Shahrokni Appeal might happen to be. NATFHE supported the report *Ethnicity and Employment in Higher Education* undertaken by the University of Bristol.[12] Sir Herman Ousely, CRE chief executive, said of this research that it

> carries the authority of its sponsors and cannot be ignored. It makes uncomfortable reading. Higher education leaders must now demonstrate their resolve to ensure that unfairness and discrimination do not distort their sector by implementing the report's recommendations without delay.

The leading figures in the two principle further and higher education unions lost no time in supporting the CRE's request. Paul Mackney, of NATFHE, said:

> Years of good intentions have not been enough. NATFHE will be seeking clear targets and published performance indicators to help tackle discrimination. Black staff must be guaranteed an equal chance of fair appointment, promotions and an anti-racist environment in all UK higher education institutions.

David Triesman, AUT general secretary, also made his views known, when he said:

> Institutional racism in higher education, as in other sectors of society, cannot surprise anyone. The joint effort required to get this research off the ground shows how we all share awareness of the problem and the need for action. The association's starting point is a programme of training for local representatives in October, enabling them to tackle racism more effectively.[13]

This was true to form from the doyens of anti-racism in the educational sector. The report concerned institutional discrimination, placing the onus on educational institutions to change their practices, which was the line taken by NATFHE, whose members were

responsible in part for the conditions within these institutions. It was also difficult to see where Mackney's conclusion of 'years of good intentions' came from. There seemed to be little of that in NATFHE as Fernandes, Bis Weaver and Shahrokni would attest alongside the many other Black members, whose experiences at the hands of NATFHE never reached a Tribunal or the press but were well known to those posing as anti-racists in the areas where these experiences were nurtured.

Three months later and still awaiting the Shahrokni judgement, NATFHE, along with the Association of Colleges and six trade unions, agreed an *Equal Opportunities Policy for Employees.* The objective of the policy was to provide a basis for building effective policies and procedures.[14] But it was after Shahrokni that NATFHE put its head down to produce a report headed *Learning the lessons of racism,* which received its baptism of faith in NATFHE's in-house Journal as "the union's moves to tackle racism." In the article, Mackney did not intend to "examine the details of events [in the Shahrokni case] which stretch back some six years but to look at a few of the important lessons to be drawn."

This had been a long time coming as the lessons had already been learned by NATFHE's Black members not from the last six years but for many years even before the Weaver racial harassment/discrimination case, which had confirmed those lessons. However, the 'activists' in the West Midlands and at head office, only too aware of their own inaction during and after the Weaver case, had apparently learned little or nothing except not to mention it.

Mackney referred to the Stephen Lawrence inquiry as having "led to NATFHE re-examining its procedures and practices in an attempt to eliminate institutional racism," and taking on board what was concluded from that inquiry, namely, "that 'a racist incident is any incident which is perceived to be racist by the victim or any other person.'" This recognition cut the ground from all those Broad Leftists who had dogmatically refused to accept Bis Weaver's perceptions of racist behaviour and mistakenly defined it as an interpersonal dispute. But it was unlikely they would recognise their own inadequacies.

Mackney mentioned that "during the course of the year...[the union] will be updating guidelines for branches on race equality in further and higher education" and sixteen months later these guidelines were presented to the union. These guidelines

> stress that branches should not 'fall into the mistake of judging for themselves whether the allegations made by a complainant are true and then acting accordingly by either, for example giving support to the person against whom the complaint is made, or otherwise discouraging the complainant from continuing their allegations. Such action by a branch can lead to the union itself being adjudged to have victimised the complainant.'

> Branches must respect the rights of the complainant to raise complaints of unlawful discrimination. Passing a hostile or critical motion, seeking to influence a member not to exercise their statutory rights under the Race Relations Act, or refusing to co-operate with union enquiries on a member's behalf cannot play any part in the union's proper role of assisting the complainant.
> The new legal scheme now specifies that 'applications are considered without regard to the fact that the person(s) against whom complaints are made by the member applying for legal assistance are or are not themselves members of the union.'
> I am very conscious that hard-pressed branch officers should feel supported in assisting any members complaining of discrimination and would emphasise the importance of their seeking the advice of regional office immediately, whether or not they personally feel the claim has merits.

He also drew on

> the history of the 20th century, [which] teaches us...that the rights of minorities, or even of less powerful majorities, are an important component in any definition of democracy. Discrimination is by its very nature often against people who cannot obtain a majority of the votes. *

Did this mean that the *all or none* informal requirement had been finally abandoned?

The amnesia still persisted because the proposal on the new legal scheme was a non-starter when it applied to an accused person who was a member of NATFHE. NATFHE was lifting its head out of the sand but not far enough.

After mentioning a number of proposals, including discussions "with the employers, [of] mechanisms to look into issues of discrimination in universities and colleges," he referred to NATFHE's 'aims and objectives'. ** These required NATFHE 'to protect members who are individually or collectively discriminated against on the grounds of colour, ethnic origin, gender, disability, age or sexual orientation'; and 'to promote policies directed towards the elimination of behaviour, attitudes or practices that discriminate against people on those grounds.' He recognised "NATFHE will make mistakes in the pursuit of these objectives; but it is more honourable to be criticised for trying to achieve them than to play the safe, complacent game of inaction." The 'safe, complacent game' was the only game played by NATFHE in Mackney's old stamping ground in the West Midlands between 1985 and 1988.

Mackney, always ready to quote from informed sources when the occasion required, quoted from the Stephen Lawrence inquiry, where it said "it requires 'co-operation on all

* As Mackney well knew from the Bournville branch's motion removing Bis Weaver's rights when she was pursuing a complaint of racist harassment against a branch officer.
** These 'aims and objectives' had been in the Rule Book and, therefore, on NATFHE's agenda since 1986 and NATFHE was now going to do something about them

sides to combat racism. Surely there must be hope and optimism that this will be achieved.'[15] He was writing on the Shahrokni case but he could have been writing about the Bis Weaver case and the inaction or, more appropriately, the direct and indirect antagonism of officials and local officers, who had ignored problems of a similar complexion taking place in their own backyard!

(c) The Cuckoo's Nest Re-visited

(i) Shahrokni v Kingsway College

Shahrokni began working at Kingsway College as a part-time lecturer in the Maths Unit in February 1982. (10 – 10 – 1) * In December 1990, Shahrokni presented an IT 1 alleging race discrimination when he was not reappointed. The respondents were the London Borough of Camden (representing the interests of Kingsway College), Ms Haikin (Principal), Ms Barker (Vice Principal) and Dr Eames (Head of the Maths Unit). (11 – 10 – 3) The case was resolved in Shahrokni's favour with a cash settlement of £4,000. Kingsway College also gave an undertaking to "invite the CRE to discuss the operation and implementation of the College's equal opportunities policy with [Shahrokni's] involvement in those discussions." (11 – 10 – 3) Subsequently, Shahrokni presented a further four IT 1s against Kingsway College and individual respondents. He also filed IT1s against NATFHE and its officials and officers.

At the time of that first Tribunal hearing, Shahrokni was not a member of NATFHE due to the unsatisfactory way he considered NATFHE dealt with issues affecting Black and ethnic minority lecturers. ** However, after his success at the Industrial Tribunal, his initial reluctance to join the union was put aside and he joined NATFHE in March 1992. (11 – 10 – 4) After Shahrokni presented his second IT 1 against Kingsway College and the same individual respondents in October 1992, *** the Kingsway NATFHE branch chair, Ms McAnespie, was one of the few NATFHE officers who assisted him. However, "by 19 February 1993, [he] "rightly or wrongly, had become unhappy with the quality of assistance…from her." (11 – 10 – 6/7)

* The bracketed numbers refer to the page, section and points in the Industrial Tribunal Report[16]
** Another Black and ethnic minority lecturer to add to the growing list of those dissatisfied with NATFHE's approach to race issues
*** Case no 55275/95/LN/A

Dr Eames, a NATFHE member, responded to Shahrokni's latest IT 1 with an application, through the branch committee, to the NEC Support sub-committee for legal assistance (4th December 1992). (45 – 14 – 1) A week later, (11th December 1992) Dr Eames received the support of "a group of lecturers in the Maths Unit (all white and all members of the…NATFHE Branch), when they wrote to…the…Principal, expressing support for [him]." They wrote:

> …we would like to place on record that Keith Eames has, in our collective experience, * behaved at all times in a totally professional, principled and highly competent manner…The suggestion that any of Keith's decisions are motivated by racism is outrageous and unacceptable.
> It is our belief that the payment of £4000 to Mr Sharokni (sic) lent a curious credibility to his viewpoint and has convinced him that the college lacks the will to defend itself and the truth. We strongly believe…that the current case against Keith Eames be fought through as many stages as necessary to refute the allegations completely, regardless of financial cost.
> Although Mr Sharokni's (sic) ** accusations have caused all the Maths staff shock, distress and anger, it is Keith who is bearing the burden of this case….
> We regard the implications of this case as going beyond the unpleasantness of unfounded allegations by a disaffected individual. In particular, we are concerned that:
> 1. Management does not have the will to mount a defence of principle and this is affecting both morale and race relations within the college.
> 2. If cavalier charges of racism are allowed credence then possible future genuine claims of injustice are in danger of being regarded as similarly opportunistic. ***
>
> We would be glad if you would pass on the enclosed copy of this letter to Keith's defence counsel. (12 – 10 – 8)

A copy of this letter eventually went to the branch chair, three months later (4 March 1993), with a note attached saying it was private and confidential. **** (13 – 10 – 8) In the branch chair's dealings with the Maths Unit, "most of them had told her that [Shahrokni's]

* This was a dubious collective experience because "some members…were quite willing to sign the letter although they were unaware of the facts of Shahrokni's case." (58 – 22 – 1) One signatory, in his evidence before the 1997 Industrial Tribunal case against NATFHE, said that he "had no knowledge of the facts behind [Shahrokni's] accusations but…found it difficult to accept [them]…He had not discussed [Shahrokni's] case with him. He had read the letter before signing it…[but] did not know who drafted [it]." (13/14 – 10 – 8) This was another example of a member making judgements without seeking out the complainant to find out his version and without knowing the facts. In the Weaver case, this characteristic was all too common among union members at Bournville College and the officer caste in the West Midlands

** Shahrokni had worked at the college for almost nine years and his colleagues in the Maths Unit still did not know how to spell his name correctly

*** Those supporting someone accused of racism often express their point of view in terms of being in the interests of race relations. This is a way of contesting claims of racial discrimination by those with only a superficial understanding of racism and/or a rhetorical commitment to anti-racism

**** This letter was not revealed to Shahrokni until January 1997 when it was disclosed during the discovery proceedings for the Employment Tribunal hearing against NATFHE. (13 – 10 – 8) Was this another example of discriminatory preference – a form of confidential racism!

allegations were unfounded [and] some…gave her the impression that if they were called to give evidence they would support management rather than [Shahrokni].” (49 – 17 – 3) This opposition was responsible for the branch chair’s lack of success in obtaining their cooperation. (58 – 22 – 2)

Aware of the support from colleagues, Dr Eames followed up his application for legal assistance with a letter to Ms Ohsan, NATFHE’s regional official, on the 26th January 1993, (14 – 10 - 9) enclosing Shahrokni’s IT 1 (case no 55275/92) and the letter written by the Maths lecturers to the Principal. (45 – 14 – 1) Ms Ohsan was already involved after being contacted by branch officers and had met Shahrokni at the end of 1992. He explained the details of his discrimination and victimisation complaints; and his approach to the CRE. She advised him of the difficulty of proving discrimination but an option he could pursue was a claim for unfair dismissal and redundancy. * She outlined the procedure for seeking legal assistance from NATFHE with the caveat that presenting an IT1 and approaching the CRE before contacting NATFHE could cause difficulties in getting NATFHE assistance because of Rule 24.3 of NATFHE’s Constitution and Rules. This rule stated that:

> Members requiring assistance (whether of a legal or other nature) of the Association on all points (unless otherwise specifically directed by the Association) [should] not commit themselves to any course of action or expenditure without the express authority of the Association. (50/1 – 18 - 1) **

The outcome of the discussion was that Ms Ohsan would advise him in his Industrial Tribunal case and the branch chair would continue to act as his case worker at the college. (14/15 – 10 - 12) However, the branch chair had difficulty in getting information from staff in the Maths Unit concerning the availability of part-time maths teaching. In order to overcome this problem, Shahrokni offered to drop the case against Dr Eames if he supplied evidence for his case against the college and he wrote to Ms Ohsan (11th February 1993) with this in mind, but the regional official thought it unrealistic to expect Dr Eames to do this. (15 – 10 - 12) By this time, Shahrokni was tape recording his telephone conversations with NATFHE officials (officers) and was producing minutes of his meetings. (11 – 10 – 7)

NATFHE officialdom was also in contact with Dr Eames. Mr Scott, NATFHE’s legal

* Using the provisions of employment law was a possible way for NATFHE to avoid a race case without disclosing the legally binding policy the union had to pursue when dealing with complaints between NATFHE members - the Weaver v NATFHE judgement

** At NATFHE’s Annual Conference in May 1988, conference delegates voted to remove certain conditions of Rule 24 from the Rules of the Association. It appeared to be still in operation under a different form of words.[17]

adviser, informed him, (10th March 1993) that "the Support sub-Committee decided…not to provide [him] with legal assistance…on the clear understanding that [his] employer would undertake [his] representation in view of its vicarious liability for acts and omissions." (45/46 – 14 – 2)

College management responded to Shahrokni's actions by sending him, and other staff not currently teaching at the college, a letter (28th February 1993) asking them to remove their material from their desks. This became known as the 'desk issue'. Shahrokni considered it "an act of race discrimination and victimisation by the College authorities" because he had submitted a complaint against the college (14 – 10 – 10) – a protected act under the 1976 Race Relations Act section 2. This led to Shahrokni presenting a third IT 1 * (19th April) on grounds of the college's continuing failure to provide him with work. (16 - 10 – 14 & 18) His application to NATFHE's Support sub-committee for legal assistance (28th April 1993) was endorsed by both the branch chair and branch secretary. (16 – 10 – 15)(46 – 15 – 1) Shahrokni followed this up with a letter to Ms Ohsan, (4th May) enclosing his IT 1 and the settlement terms of his previous case against Kingsway College. These documents were passed on to Scott. (46 – 15 – 2)

The Support sub-committee (14th May) granted Shahrokni assistance but limited it to legal opinion on the merits of the IT 1 application. Scott sent the case papers to a solicitor, who presented a legal opinion to Scott, (8th June) following it up in a letter on the 28th June. The opinion was that "on the basis of the evidence…seen so far…the prospects of this application succeeding at Tribunal are poor and considerably less than 50%." ** This opinion was conveyed to the Support sub-committee, which decided not to grant Shahrokni legal assistance. However, the union was "anxious to offer such other facilities and help as are possible in these circumstances." This information was passed on to Shahrokni (22nd July) with reasons for the refusal and suggesting he contacted Ms Ohsan to discuss what assistance she or the branch could offer. The file on Shahrokni's application was closed on 10th August 1993. Two days later, Ms Ohsan also informed Shahrokni of the Support sub-committee's decision. "Her direct involvement… ceased at that point." (46/7 – 15 – 3 to 7) (51 – 18 – 4)

During the period February/March 1993, another issue arose: Black/Asian

* Case No 22652/93/LN/A

** By this time, the courts were moving in the direction of recognising the difficulties associated with establishing race discrimination. This re-drew the boundary on how merit was established.[18] Furthermore, why did the solicitor question merit in Shahrokni's case as Shahrokni had already won the first Tribunal case against Kingsway College and three individuals on similar grounds to the present case

representation on the branch committee. (14 – 10 - 11) Shahrokni met with a Black NATFHE NEC member and Ms Ohsan, who was also Black, which resulted in the branch committee agreeing to a propose a motion stating "This meeting supports the establishment of branch representation for Black and Asian members and asks those members to select a representative to be endorsed at the next branch meeting." (41 – 12 – 1) Shahrokni was the sole nominee for election, proposed and seconded by Sookhdeo and Nkansah (of the college's Black lecturer's organisation). (41& 44 – 12 – 2 & 10)

When the motion and Shahrokni's nomination was presented to the branch, on the 4th March, * it was "vociferously opposed" by a member of the Maths Unit on the grounds that Shahrokni "was no longer a member of staff at the College ** and, as a paying member of the branch, she challenged the legality of [his] nomination." *** It seemed obvious that this objection was merely a guise hiding the real reason. Shahrokni confronted this gambit by reminding the branch that his grievance against the college; his Industrial Tribunal case; and lack of work "did not affect his membership of the NATFHE branch…He had the same rights as any other NATFHE member." **** The branch chair was unsure of the technical question raised by the Maths lecturer and felt that this opposition to the motion might succeed, therefore, further discussion on the motion was adjourned for a future meeting. (41/2 – 12 – 3)

Shahrokni was in no doubt that branch officers "tried to persuade other black staff to stand for the position [of Black/Asian representative]…in order to edge [him] out…[and, to him] It is clear that in response to management's and some members racial discrimination and harassment, Branch [Officers] have decided to support the racist elements at Kingsway." This observation was communicated to the regional official on the 4th April. (15 - 10 - 13) Shahrokni was supported by the college's black lecturer's group, which was not prepared to nominate anyone other than Shahrokni for the position. Consequently, Kingsway College

* This was on the same day as the Maths Unit's December letter to the Principal was sent to the branch chair

** Apparently, Shahrokni officially stopped working at the college as no further work was offered to him on the 5th May 1993, two months after this meeting (16 – 10 - 16 (42 – 12 – 6)

*** The chair of the Equal Opportunities Committee produced a *Summary of Action Plan* in which item 6 read "Get General Secretary to take up the issue in the Branch – allocate someone to talk to Branch Officers, and inform them clearly that unemployed members have all the rights of Ordinary Members (Kate)" This action was taken on 18th February 1995, which was almost two years after the Kingsway branch meeting. (44 – 12 – 9)

**** In the Bis Weaver case, the Bournville branch passed a hostile motion against her after bringing a complaint against a member/officer of the branch. Shahrokni, in a similar situation to her, had 'unofficially' ceased to have the same rights as other members of the branch. This was the harsh reality facing ethnic minority members in NATFHE who sought right and justice in the workplace

branch did not elect a Black/Asian representative to its branch committee. (44 – 12 – 10) Such was Kingsway branch's commitment to Black representation. *

Shahrokni ceased working at Kingsway college (5th May) and college management followed a similar line as the branch in dealing with him. On the 20th May, the Principal told Shahrokni "that he would not be offered any further employment as the necessary relationship of mutual trust and confidence between them had broken down." ** (16 – 10 - 18) Subsequently, Shahrokni submitted another IT 1 (46621/93/LN/A) on the 13th August 1993.

Shahrokni had applied to the Industrial Tribunal for discovery and further and better particulars but the Tribunal refused to grant him an order. Therefore, he reapplied to NATFHE for legal assistance, (11th October) for an EAT appeal against the Tribunal's decision. Shahrokni was subsequently informed (18th October) that the Support sub-committee had turned it down. The decision was "mindful of the legal advice provided…by [the solicitor], who concluded that [Shahrokni's] prospects of succeeding at [his] appeal are poor…" (47/48 – 15 – 8)

Camden CRE made an entrance by seeking assistance from the chair of Kingsway College's anti-fascist group in March 1994. The chair wrote immediately to branch officers (14th March 1994) and it was a further three months before he wrote to the President of NATFHE and three NEC members, all of whom were Black or Asian - Doreen Campbell, Juliet Edwards, Mehdi Hussaini and Avtar Jouhl (16 – 10 – 19)

Jouhl replied on the 28th June suggesting that the branch discussed racism as "an item on the agenda to determine branch attitude formally." (16/17 - 10 - 19) *** Cameron sent the letter on to the Inner London regional office (1st July); and Mehdi Hussaini (7th July) wrote of having requested NATFHE's Equal Opportunities officer to obtain the facts in accordance with union procedures. (17 - 10 – 19) The officer contacted the regional official, (8th July) whose reply was to say that she considered the matter was "now out of [her] hands" and she "will not involve [herself] further." (17 – 10 – 19)

The increasing involvement of NEC members without consulting the regional official

* Another example of White members deciding whether Black members should have a representative on the committee and, if so, who it should be. The apples in NATFHE, on occasions, fell a long way from the tree – both south and north of Watford

** There certainly was a taint of victimisation embracing this statement under section 2 of the 1976 Race Relations Act

*** Jouhl first became involved when contacted by Fernandes, acting on Shahrokni's behalf, in September 1993, after NATFHE's Support sub-committee had initially rejected Shahrokni's application for legal assistance

had led to her increasing dissatisfaction. She wrote of this in a letter to Mr Akker, the general secretary (20th November 1994), stating that

> …Mr Sharokni has made a number of approaches to NATFHE on and off directly and indirectly. P Smith and two other NEC members consulted me but Mr Jouhl has not. I find this unacceptable. (51 – 18 – 5) *

The regional official was not the only one dissatisfied. Shahrokni was far from gratified with the assistance he was receiving from local officers. On the 1st September 1994, he contacted Chris Powell, regional secretary, who then wrote to the recently appointed new branch secretary, Mr Alan Burgess. Powell cited Shahrokni's view that "Local Officers were neither willing to speak to anyone to collect evidence, nor to come to an Industrial Tribunal Hearing scheduled for the beginning of November 1994 to give evidence." Powell sought a meeting with "Local Officers at Kingsway College [and] Peter Friend, Regional Chair, as a matter of the utmost urgency…"(18 – 10 – 22)

A meeting was arranged at the TUC College, Hornsey, in late October 1994 (just before the IT hearing). Burgess turned up but Shahrokni did not. ** During the meeting, "Mr Burgess told Mr Jouhl that the Branch had done everything it could to help" Shahrokni, which left Jouhl with "the view – without having had any discussion with [Shahrokni], that [Shahrokni's] case had no merit…" *** In the wake of the meeting, "Mr Burgess refused to see [Shahrokni]…" (59 – 22 – 4)

The problem of "Obtaining witness statements from staff at Kingsway College…to provide evidence" for Shahrokni's Tribunal case was discussed by the Equal Opportunities officer, the regional official and a Field Coordinator on the 19th October. **** They concluded that they "were unable to provide such assistance." The next day, Burgess was

* It is not unreasonable for officials to express dissatisfaction when members approach officers for assistance once officials have become involved. However, it was not unknown for an official, when a complainant member was dissatisfied with the service he/she is receiving, to put the blame on the complainant and those seeking to assist him/her; or try to restrict any involvement by those assisting the complainant; or to go beyond the bounds of their authority. This misuse of authority appeared to be the milieu within which some NATFHE officials operated, certainly in the middle to late 1980s. Day, the West Midlands regional official, not only subverted Bis Weaver's search for justice; attacked her personal and professional integrity but also authorised branch committee members not to assist her; while Triesman issued a directive for officers not to respond to her appeals for assistance and information. Lay officers in the West Midlands REC singled out Krishna Shukla, the secretary of the regional anti-racist committee, for hostile treatment because he was assisting Bis Weaver

** Shahrokni said he was not told that a proposed meeting had become a firm arrangement. (18 – 10 - 23)

*** The practice of seeking to influence members against complainants had been a feature of officers in the Bournville branch, Birmingham liaison committee and the West Midlands REC

**** Apparently, the regional official still had some involvement in Shahrokni's case

contacted by the Equal Opportunities officer "to inform him of this decision and to discuss whether any Branch members would be able to provide…the assistance…required. Alan [Burgess] indicated that he believed it unlikely that members would be prepared to take on this responsibility and asked [her] to contact [Shahrokni] as a matter of urgency to let [him] know that, regrettably, further assistance would not be forthcoming…" (60 – 22 – 7) She was also in touch with the regional secretary and understood that he, too, "felt there was [nothing he] could do on the question of seeking witness statements at Kingsway College." This information was left on Shahrokni's ansaphone on the 20th October. * (59/60 – 22 – 5)

Shahrokni's Industrial Tribunal case against Kingsway College and the three other respondents was heard on the 7th to the 11th and the 14th November 1995. The Tribunal, referred to as the Roose Tribunal, (19 – 10 – 24) "found that the College and…Mrs Barker, Dr Eames and Mrs P Haikin had discriminated against [Shahrokni] on racial grounds and victimised him contrary to the provisions of the 1976 Act." (19 – 10 – 24)

After Shahrokni's success, Burgess gave "the impression that Dr Eames was in a position to provide material…[to] assist [Shahrokni] at the remedies hearing." A meeting was arranged at Wembley (18th November 1994) with Mr Fernandes accompanying Shahrokni. "Mr Burgess was unable to provide any such material…[and] Instead…told [them] that female members of staff had made allegations (going back a few years) against [Shahrokni] although no complaints through official channels had ever been made by the alleged complainants." ** (59 – 22 – 4) "Mr Burgess also alleged that students had complained about [Shahrokni's] teaching and that a black teacher had complained about him [but he] was not prepared to disclose the names of the persons making those allegations, as they wished to remain anonymous." ***

Shahrokni hit back at the union by writing to the chair of NATFHE's Equal Opportunities committee (24th November) drawing attention to his successful Tribunal hearing. He focussed on "the lack of assistance from NATFHE at all levels,…[who were] "supporting Kingsway management." He put the blame on "NATFHE's structure of racism,

* A letter from the equal opportunities officer to Shahrokni on this matter was not sent until the 28th March 1995 (60 – 22 - 7) When Shahrokni submitted a Rule 8 against the Kingsway branch secretary, he called her as a witness but, when the complaint was heard on the 25th November 1996, she failed to turn up[19]

** This was a claim that arose in other complaints of race discrimination as a means of directing attention from the race element. A similar claim was made against Dr Deman in the Deman v AUT case[20]

*** The allegations made by Mr Burgess were revealed in two Tribunal hearings. The first was made in Shahrokni v NATFHE and J Akker, and the second in Shahrokni v NATFHE and three members of NATFHE's Rule 8 Disciplinary Panel, see Section (c) (ii)

self-interest, lack of accountability and incompetence" and he sought "an urgent investigation and…put forward his suggestions." He also called for his "immediate re- employment to a full-time post…; full compensation for losses; and the sacking of the management responsible." (20 – 10 – 26)

The Kingsway branch committee reacted immediately to the Tribunal decision and on the following day (25th November) presented an emergency resolution for branch approval. This proposal went against the advice of the regional official, who suggested the branch awaited the written report of the Industrial Tribunal, which was released six days later on the 1st December. (22 & 24 – 10 – 27a & e & 28) The emergency resolution proposed that:

> This branch recognises that the decision by the recent Industrial Tribunal which found in favour of Farhad Shahrokni amounted also to an indictment of the senior management of this college for racial discrimination. This decision, which is likely to receive national publicity when the report of the tribunal appears, has already damaged the image of the college in the eyes of the outside world.
> This branch therefore agrees:
>
> 1 To reaffirm its commitment to anti-racist and anti-sexist politics, its support for measures designed to counter the institutionalised racism endemic in this society,* and its membership of the Anti-Nazi League.
> 2 Whilst acknowledging the complexities of this case, ** we consider the senior members of management involved in the handling of this case have bought (sic) the college into disrepute. We have no confidence in their ability to manage such situations and agree to circulate a petition amongst all members of staff to that effect. We specifically exempt from this the leader of the Maths Unit who inherited a situation over which he had no control.
> 3 A thorough enquiry should be conducted into the operations of the Equal Opportunities Committee in the college. The inquiry should be conducted by a commission including delegates to be chosen by the branch, several members of staff who belong to any of the ethnic minorities in the college, and a member of management who has not been involved in this case. We call on management to grant remission from class contact time to those selected or elected or co-opted onto such an enquiry.
> 4 When the Report of the Industrial Tribunal is published it should be made available to members of the branch. The question of calling for the reinstatement of Farhad Shahrokni should then be discussed. ***

* This showed a tendency among NATFHE officers to identify the cause of racial discrimination solely in terms of institutional racism and avoid the actions of individual members of staff. This was prevalent among members of the West Midlands REC and bureaucrats in the Birmingham Labour Council

** Another tendency shown by officers and officials was to define issues involving race as complex when Shahrokni's particular complaint concerned the college not providing employment to a long term member of staff and their failure to recognise that it was NATFHE members, officers and officials who complicated the matter. A similar point of complexity was to be made about the Weaver case, years after the case was concluded, in what appeared to be an attempt to justify inaction, indifference and detachment from the situation

*** Interestingly, Dr Eames, who had a Tribunal decision against him was exonerated by the branch without them seeing the Industrial Tribunal report, whereas Shahrokni, who won the case, would have to await the release of the report before any consideration was given to calling for his reinstatement

> 5 We condemn as defamatory, scurrilous and politically opportunist, the anonymous leaflet (unsigned but circulated in the college by certain members of the Kingsway Anti-Fascist Group which accused two of the elected officers of this union of complicity with racism in the college.
> 6 We agree to send copies of this resolution as amended by the branch meeting to any interested party, including the educational press, regional officials of the union, and Avtar Jouhl (member of the NEC of NATFHE, and of the ANL.(20/21/22 – 10 – 27a)

The proposer disclosed that a significant number of branch members wanted Dr Eames exempted from any blame and would not have supported a resolution calling for Shahrokni's reinstatement. * However, no one asked for Shahrokni's views on the resolution whereas Dr Eames was consulted. (22 – 10 – 27d) The branch had condemned management while supporting Dr Eames despite the tribunal having found against him as well as the others.

Shahrokni produced a draft motion for consideration at the branch meeting on the 13th December but committee members were disinclined to support it. (23/24 – 10 – 27h) Camden CRE re-entered the scene to complain to the branch chair "that the resolution was evidence of discriminatory treatment towards [Shahrokni] vis-à-vis Dr Eames." ** (22 – 10 – 27b)
In the New Year, the branch was caught up in two issues. The first resulted in a branch resolution calling for Shahrokni's reinstatement being passed by a small majority in January 1995. Three members resigned from the union over the decision, including two who signed the Maths Unit's letter, one of whom was described by a subsequent employment tribunal as "very antagonistic towards [Shahrokni] because [of his] race complaints against Dr Eames, and…was vociferous in expressing those views at every conceivable opportunity." (14 – 10 – 8)(24 – 10 – 28)(62 – 22 – 9b) Notwithstanding the reaction of significant sections of the branch membership, the chair of NATFHE's Equal Opportunities committee wrote to Shahrokni, on the 23rd January 1995, saying "she had put together a discussion document concerning principles and procedures [arising out of his case] which would go before the Support Sub-Committee." (24 – 10 -30)

The other issue was Black representation, which raised its head again when Shahrokni wrote to the branch secretary, Mr Burgess, (16th January) asking for his name to be put

* It was apparent that even the possibility of discussing Shahrokni's reinstatement in the future was not acceptable to branch members. In the branch secretary's report for the 1994/95 academic year, it was incorrectly stated "that the Branch called for the reinstatement of [Shahrokni] at the meeting…" (22 – 10 – 27c)
** In the Tribunal report (Shahrokni versus NATFHE and Dr Akker) the date of Camden's CRE's letter was referred to as the 14th November 1994. However, as the resolution was not passed until the 25th November 1994, the CRE letter referring to in the Industrial Tribunal report must have been sent after that date

forward "for nomination as a delegate to the TUC Black workers conference" at Scarborough. (24 – 10 – 29)(44 – 13 – 1) This was discussed at a branch committee meeting the next day and "it was decided that the committee could not support [his] nomination since it was not clear who [he] would be representing since [he did] not presently work at Kingsway" (44/5 – 13 – 2)

Four months later, on the 29th May 1995, "the NEC decided…to reduce the numbers of NATFHE delegates to the TUC Black Workers Conference to 10 delegates." (45 – 13 – 4) Shahrokni's name was put forward by Powell as a regional nominee. However, the chair at the NEC meeting, Doreen Cameron, "ruled out [his] nomination, prior to the voting, on the ground that it had not been endorsed by his branch. He was, however, invited to attend as a visitor (at his own expense)." (45 – 13 – 5)

On the Tribunal front, the respondents decided to make an appeal against the Roose decision. This decision must have been conveyed to NATFHE officialdom because on the 3rd March 1995, Ms Ohsan wrote to Shahrokni giving him the news of the respondents' intention. She informed him of his entitlement to seek NATFHE assistance, enclosing the necessary forms. (25 – 10 – 33)

Shahrokni then submitted a Rule 8 complaint against the Kingsway branch secretary (24th March). Four days after that, he was informed by the Equal Opportunities officer that the branch secretary had said "branch members were unlikely to co-operate" with his complaint. (25 – 10 – 35) On the 7th April, a new adviser, the regional official for South East England, was appointed to present a fresh IT 1 against Kingsway College and to process his application for legal assistance. (26 to 28 – 10 – 37 to 41)

Shahrokni's new adviser sought details, from two members of the Maths Unit, (3th June 1995) "of all available work…which could have been made available to [Shahrokni] during the spring term" and asked if they were prepared to support his Industrial Tribunal complaint against the college. (28/29 – 10 – 43) This approach brought swift protest letters from the branch secretary and the college Principal, an appellant in the forthcoming EAT Appeal; the latter asked the adviser "why [she] was inciting staff to produce evidence against Kingsway College management." The Tribunal noted that the Principal "felt free to interfere in the union's business, i.e. its legal assistance procedures in [Shahrokni's] case against her and others, [which] She would not have done…had she not been reasonably confident of the Branch members' lack of sympathy towards [Shahrokni]. Equally, Mr Burgess's response typified the Branch's unhelpful attitude, for the same reasons", i.e, the complaint against Dr Eames. (36 – 10 – 53) (61 – 22 – 8)

The Kingsway Principal actively defended herself and the other respondents in a lengthy front page article in the Kingsway Bulletin commenting on the Roose tribunal decision and of the college not being allowed to proceed with its appeal, although individual respondents, including herself, had been allowed to do so. (30 – 10 – 45) She also wrote to NATFHE's general secretary (4th July) complaining about the regional official's letters to members of staff on behalf of Shahrokni, (35 – 10 – 48) overlooking, perhaps, that the letters seeking information were sent to them as members of NATFHE. This looked very much like an attempt by the Principal to garnish support among NATFHE members, officers and officials when Shahrokni was seeking: (i) assistance from the branch; and (ii) legal assistance and representation from NATFHE.

The next day, Burgess wrote to Shahrokni's new adviser, claiming that the branch had an open policy on all issues surrounding Shahrokni in accordance with the sound guidance given by Ms Ohsan, Shahrokni's previous adviser. (35 - 10 - 49) The new adviser, having received "correspondence…from both the Branch and the Principal questioning [her] involvement in the Shahrokni case, contacted NATFHE's general secretary. * (36 – 10 – 53) She had also sent documentation on Shahrokni's IT 1 to Scott, enclosing a separate application for legal assistance to deal with the respondents' appeal against the Roose decision, albeit that neither of the applications carried a branch endorsement as a result of Shahrokni's decision to pursue a Rule 8 complaint against branch officers. (28/29 – 10 – 44)

On the 30th June, the Support sub-committee met to discuss Shahrokni's applications. The sub-committee comprised of five members; plus the legal adviser and one invited guest.** The agenda consisted of recommendations made by Scott covering legal representation for Shahrokni in: (a) the proceedings in the Employment Appeal Tribunal brought by the respondents contesting the Roose decision; (b) the calculation of compensation at the remedies hearing; and (c) the discrimination proceedings presented in the June 1995 IT 1. (30/31 – 10 – 47a & b) Scott's recommendations were that:

> 1. The EAT appeal raises the question of the extent to which individual members should be held liable for discrimination and the general concept of the vicarious liability of an employer in such circumstances. This is an important point of law…
> 2. An Applicant may now be compensated for loss of earnings flowing directly from an act of discrimination [and it] is not always an easy matter for an individual to assess and therefore

* She sent him a reminder on the 21st September. (36/7 – 10 – 53)

** Moira Carr (chair); Jenny Craven-Griffiths (vice-chair); Fawzi Ibrahim, A Gatehouse; R Kett; Mr Scott; and A Jouhl as guest

> 3. The Legal Department has not conducted any investigation of this [new IT 1] therefore…in the light of the history of this case, it would be consistent to offer representation initially to instruct…Solicitors to consider the merits and report back to the Committee… (31/2 – 10 – 47b)

The sub-committee decided to provide representation in the calculation of compensation; and to obtain legal advice on the merits of the June IT 1 application against Kingsway College; but not to provide representation for Shahrokni at the EAT hearing. (32 – 10 – 47c) The reasons for the sub-committee's decision not to support Shahrokni at the EAT were: "(1) …that [he] had nothing further to gain over and above the remedies against the college by continuing against the named individuals; and (2) if the Committee were to support [him] it would generally encourage employers to scapegoat employees. The first reason, according to the Tribunal, was a "mistaken assumption" and the latter "amounted to the formulation of a new policy." * This 'new' policy was that "NATFHE members applying for legal representation in Tribunal cases involving allegations of race discrimination/victimisation by other employees (including NATFHE members) would not be supported by the Support Sub-Committee." ** (68 – 23 – 4)

Scott recollected that at the meeting there was a debate on "whether it was a good idea to have individuals named as discriminators…[or] for employers to scapegoat other employees." *** Jouhl, apparently, made no contribution to the debate and "could not recall any of the discussions." **** (33/34 – 10 - 47(d to f)

Scott then wrote to Shahrokni, (6th July) to confirm the sub-committee's decisions on the compensation hearing and on the June 1995 Industrial Tribunal application. (34 – 10 – 47g) He then passed all the papers on the June IT 1 to the solicitor and authorised the solicitor to: (i) issue a new IT 1 on Shahrokni's behalf; (ii) investigate the merits of the complaint and

* This was not a new policy as it was conforming to a policy put forward by NATFHE and accepted by the Industrial Tribunal, the EAT and Lord Justice May in the Weaver v NATFHE case. The reasons given by NATFHE for not supporting Shahrokni on grounds that he had nothing further to gain or it would encourage employers to scapegoat employees were spurious

** Although the Weaver v NATFHE case was not recorded in the notes of the meeting, there were at least three people at the meeting, who would be fully aware of the judgements in the case. Scott attended the EAT and the Court of Appeal application hearing as NATFHE's legal representative; Jouhl used the Weaver case in lessons he taught at Hall Green College in Birmingham; and Ibrahim was a recipient of the information provided by Bis Weaver to all NEC members

*** This debate was hardly conducive to removing racists from the workplace if NATFHE members were encouraged not to name individual discriminators or to take complaints against them

**** The Tribunal was unable to accept this Jouhl's memory loss and drew "the inference that Mr Jouhl did not want to tell the Tribunal, for reasons known only to himself, as to what had been discussed…" (33 – 10 – 47(d)

(iii) seek discovery (24th August). (36 – 10 – 52) However, three months elapsed before Scott wrote to tell Shahrokni of the sub-committee's decision not to support his application for legal assistance for the EAT appeal and to inform him that the "The Union does not publish reasons for its decisions." (34 – 10 – 47h) This claim did not stand up to scrutiny because "both Dr Eames and [Shahrokni] had been given reasons for the Sub-Committee's decisions in 1993." (45/46 – 14 – 2) (47 – 15 - 6 to 8) (68 – 23 – 7) Nor was any mention made to Shahrokni of the union's policy of not providing legal assistance to complainants bringing cases against NATFHE members and others.

Some confusion had already arisen as to who was advising Shahrokni. On the 18th July, Scott wrote to Shahrokni about his June 1995 IT 1, which named his new adviser as his representative. However, the adviser had handed the case papers to Scott and considered her involvement to be at an end. (36 – 10 – 51) Notwithstanding this, the solicitor, on the 18th September, sought assistance from Shahrokni's union adviser to gather information. (36 – 10 – 53)

In November, Shahrokni returned to NATFHE's inadequate assistance in his case against Kingsway College, describing their actions as ranging "from incompetence to collusion with Kingsway Officers in racism against" him. He considered that "the matter first requires a full and impartial investigation to determine the full facts. If this request is delayed or declined, [he] will fully exercise [his] legal rights against NATFHE." These concerns and intentions were brought to the attention of Akker, (16th November) who consulted the union's professional advisers and "after considering the matter carefully," he wrote to Shahrokni (30th November) saying he was unable "to comment on the…vague and unsubstantiated but serious allegations. Unless [Shahrokni] can provide…further particulars, [he was] not able to take the matter further." (37/38 – 10 – 54/55)

Shahrokni seemed to be getting nowhere and, while NATFHE appeared irresolute, he issued his fifth IT 1 against Kingsway College and named individuals on the 13th December. (38 – 10 - 56)

Three months later, on the 5th March, the EAT convened to hear the appeals of the three named individuals in the Roose decision. The two senior members of management withdrew their appeals and the EAT remitted Dr Eames appeal to a fresh Industrial Tribunal hearing. (38/9 – 10 – 59) The case now solely involved a NATFHE member v another NATFHE member, therefore, removing any possible complication from NATFHE to use the Weaver v NATFHE judgement as a defence for not assisting Shahrokni.

The Kingsway branch, in line with its previous response, passed a hostile motion against Shahrokni and supportive of Dr Eames. The motion read as follows:

> The branch congratulates Keith Eames on winning his appeal against the IT judgement of 1995, and reaffirms its belief that he was never guilty of racial discrimination.
> We call upon Farhad Shahrokni to dissociate his grievances against the College from action against individual NATFHE members and to deal with any differences in a constructive and non-legalistic way, so that we can work together in harmony *unanimous*.* (39 – 10 - 61)

The branch appeared intent on sabotaging its own defence against Shahrokni because prior to the EAT hearing, Shahrokni had submitted his first IT 1 against NATFHE and Mr J Akker, on the 22nd February 1996. ** (38 – 10 - 58) Or, perhaps, the branch did not consider itself to be liable for its actions or was it just plain incompetence?

When the Roose Tribunal remedies hearing was convened, on the 29th April, a settlement was negotiated without any involvement by NATFHE's legal department, and, as part of that settlement, Shahrokni withdrew his complaint against Dr Eames (40/41 – 10 – 66)

By the end of April 1996, the case against Kingsway College was over. Next on the agenda was the action against NATFHE.

(ii) Shahrokni v NATFHE

The Industrial Tribunal heard Shahrokni's case against NATFHE and Mr J Akker over twenty-three days between the 14th January 1997 and the 29th July 1997. There were 1,200 documents submitted and NATFHE produced fifteen witnesses. The point was made at a later hearing that Shahrokni had been ambushed by NATFHE. A large part of the time was taken up by witnesses reading out their witness statements which had not been disclosed to Shahrokni before the Tribunal proceedings commenced. Consequently, "as an unrepresented litigant, he had some considerable difficulty in targeting his cross-examination in the succinct way that he would have wished, [that is] to cross-refer one witness statement to another and to the documents which had been produced…That was obviously a method of proceeding

* Shahrokni had been prepared to drop the case against Dr Eames (11th February 1993) if he supplied evidence for him in his case against the college, which would have dissociated his grievance against Dr Eames from the one against the college. Now they were calling on Shahrokni to think about working in harmony with the branch. They wanted it all their own way without any consideration for Shahrokni

** He presented a second IT 1 against NATFHE and Akker on the 19th July 1996 (41 – 10 – 67)

which was calculated to lead to lengthy days of hearing as, indeed, was the case."[21] NATFHE's deplorable practices had been well and truly detected.

The Tribunal reviewed matters leading up to and following Shahrokni's case against Kingsway College and the three other respondents and then assessed the actions of the College's NATFHE branch and the Support sub-committee with regard to that case.

After Shahrokni had presented a second IT 1 against Kingsway College and named respondents on the 29th October 1992, Maths staff members sent a letter to the Principal of the college, on the 11th December 1992, the contents of which were clearly hostile to Shahrokni because of his race discrimination/victimisation complaint against Dr Eames. The signatories were all NATFHE branch members and they sent a copy to the branch chair, Ms McAnspie, (4 March 1993) (13 - 10 - 8) (49 – 17 – 3) in what could reasonably be described as a clear attempt to influence her but their attempt failed to do so. Nonetheless, the branch's failure in March 1993 to consider Shahrokni's nomination as the Black/Asian representative on its committee (14/15 - 10 – 11 & 13) was evidence of the influence that was exerted on the branch membership. Shahrokni was the only candidate, appropriately proposed and seconded, and under union rules was eligible for nomination. It was clear that a Maths lecturer used Shahrokni's race discrimination and victimisation case as an excuse to prevent or delay his election. * "But for her intervention, Shahrokni, in all probability, would have been elected as the Black representative…as there was no other candidate…The branch leadership either through weakness or because they were in broad agreement with [this lecturer] adjourned the matter." This was described as a "cop-out" on the part of the branch committee as its members "were in a position to know or ought to have known that [her] ostensible reason for the opposition to [Shahrokni's] nomination was based on a false premise; [as] all they had to do was look up the Constitution and Rules of the Union which were clear on that issue." ** (43 - 12 - 8) (58/9 – 22 – 3)

The hostility of the Maths Unit staff was also considered to have influenced the

* The hostility of the kernels on the Bournville branch committee influenced the decision to prevent the co-option of Bis Weaver on to the committee in April 1986 as the anti-racism representative

** This reference to consulting the rule book was also pertinent to Bis Weaver's complaint, especially in the early stages of the complaint. West Midlands REC officers should have known (by consulting the rule book if in any doubt) that bringing in Day to carry out an investigation into Bis Weaver's complaint against Gates was *ultra vires*. The later actions - such as the *Frew enquiry* and the Bournville 'racist' motion', were tantamount to treating Bis Weaver less favourably than Gates. Or, perhaps, they might have argued that it was custom and practice – the ever present 'remedy' for NATFHE's dubious 'ingenuity'.

branch secretary, * Burgess, who "did not start off with any strong feelings against [Shahrokni] but by October 1994 had become unsympathetic to him." ** Burgess' antipathy to Shahrokni went as far as telling Jouhl, of the NEC, that the branch did everything it could to help Shahrokni, when it clearly had not. (59 – 22 – 4) However, Burgess's view was contradicted by the branch resolutions, which the Industrial Tribunal considered to be detrimental to Shahrokni's interests. Furthermore, the Kingsway branch committee, the day after the Roose decision, (24th November) drafted a resolution clearly favouring Dr Eames' interests and was worded to satisfy the demands of his supporters. The resolution, approved by the branch, accepted the tribunal's decision against the college but rejected its findings of race discrimination and victimisation against Dr Eames. *** The Tribunal drew the conclusion that if Shahrokni had not included Dr Eames in his IT 1, "the Branch would not have passed the resolution in those terms nor would they have refrained from calling for [his] reinstatement." (61/62 – 22 – 9a)

The second resolution of January 1995, accepting the call for Shahrokni's reinstatement by a small majority, was enlightening because "two of the most vociferous supporters of Dr Eames resigned from the membership of the Branch as a result because they perceived the call for [Shahrokni's] reinstatement as lack of support by the Branch for Dr Eames." (62 – 22 - 9b)

The third resolution (14th March 1996) came in the wake of the EAT judgement of the 5th March 1996. "The wording of [the first part of] the resolution was misleading [as] the EAT judgement had not completely vindicated Dr Eames; it had remitted [Shahrokni's] complaints against Dr Eames to be reheard…The case against Dr Eames was therefore still pending in March 1996…[and] By its premature congratulations to Dr Eames at that stage, the Branch treated [Shahrokni], an Iranian Branch member, less favourably than Dr Eames, a

* At Bournville college, the most influential union members in the college were the *kernels*, including the Bournville 'trio' of the Business Studies department – a department whose members participated in the isolation of Bis Weaver in the college. In 1986, when organising a meeting on anti-racism, the departmental members chose not to invite the college's equal opportunities adviser, who was also an officer in the Birmingham NATFHE's anti-racist committee to the meeting, let alone lead the discussion. Their influence was evident in the Bournville branch's hostile motion of the 29th April 1986

** A similar situation was evident during the Weaver case when members and officers, Ms Deeson and Nedjat, initially not unsympathetic to Bis Weaver's situation were influenced by dominant elements in the union

*** The response to the Weaver v NATFHE Industrial Tribunal hearing was similar among West Midlands REC members who refused to recognise that NATFHE had a policy with a racially discriminatory effect; that the regional official's actions were considered to be deplorable; and that Bis Weaver's complaint against Gates had merit

white Branch member. The second part amounted to a clear act of victimisation of [Shahrokni] for pursuing a protected act under Section 2 of the 1976 [RR] Act." The call for Shahrokni to "drop [his]…complaints against Dr Eames…was a deliberate act of victimisation [as] The Branch was aware of the pending remedies hearing scheduled to take place on the 29 April 1996." (62/3 – 22 – 9c)

NATFHE's counsel had sought to have the resolutions considered as "an expression of the democratic will of the branch members." * The Tribunal acknowledged that

> Every individual member of the Branch is entitled to have her/his views on the merits of the… complaints against Dr Eames. However, Branch resolutions which appear to favour Dr Eames and to dismiss out of hand [Shahrokni's] complaints without acknowledgement of the Tribunal's decision are bound to raise the question… as to whether the Branch had by passing such a resolution committed an act of discrimination against [Shahrokni] on racial grounds and/or victimised him contrary to the provisions of the 1976 Act.
> On the evidence it is quite clear that the Branch members would have treated [Shahrokni's]…complaints against the College more sympathetically had he…not included Dr Eames…This is confirmed by the wording of the two resolutions of 1994 and 1996. Apart from individuals such as Ms McAnespie…the Branch did not even attempt to render any meaningful assistance to [Shahrokni]. (63 – 22 – 9c & d)

The Tribunal's majority decision in Shahrokni v NATFHE was as follows:

> The Kingsway College NATFHE branch operated and maintained a policy or practice to deny [Shahrokni], a member of its Branch any meaningful assistance in his race/discrimination/victimisation complaints against Dr Eames, a white branch member, during the period November/December 1992 up to the settlement of his claims at the Tribunal on 29 April 1996. [Shahokni] was put to a disadvantage…that amounted to a detriment…[and] was a 'continuing act' of race discrimination/victimisation against [Shahrokni] by the Kingsway College NATFHE Branch for which NATFHE, the first Respondent, is vicariously liable…" **

The Tribunal found

> that a significant majority at the Branch meeting on 25 November 1994 wanted an immediate resolution supporting Dr Eames, [whereas Shahrokni's] position was very much of secondary consideration and the Branch was not prepared to support a call for his reinstatement…as the rank and file membership (particularly the vocal members of the Maths Unit) would have interpreted any call for [Shahrokni's] reinstatement as an endorsement of the Tribunal's finding against Dr Eames. That was not a finding the Branch would have supported under any circumstances. (23 – 10 – 27f)

Furthermore,

> The 14 March 1996 Branch resolution, by attempting to dissuade and discourage [Shahrokni] from pursuing protected acts under section 2 of the 1976 Act,… amounted to an act of victimisation against [Shahrokni]. Such a resolution favoured Dr Eames and was

* He was another person associated with NATFHE who appeared unfamiliar with Mill's concept of the tyranny of the majority
** Sections 1(1)(a), 2 & 11(3); 32 and 68(7)b

to [Shahrokni's] detriment. * (64 – 22 9f)

The Tribunal went on to assess the Support sub-committee's actions. It found that the committee's policy of not providing legal representation to members complaining of racial discrimination and victimisation against other employees, including NATFHE members had discriminated against Shahrokni. (66/67 – 23 – A1) The sub-committee was said to have "established [this] policy or practice or criteria at its meeting on 30 June 1995…and insofar as there is no evidence…that that policy has been rescinded, that policy is a 'continuing act' within…section 68(7) (b) of the 1976 Act." The Tribunal concluded that

> the change to the rule or policy…amounted to both racial discrimination and victimisation against [Shahrokni], as he, an Iranian, was treated less favourably by the NATFHE Support sub-committee than Dr K Eames, (a white) (who benefitted from the operation of that policy)… ** Dr Eames was known to be in receipt of legal support from the College whereas [Shahrokni] was denied any assistance…That was 'detrimental treatment' of [Shahrokni] vis-à-vis Dr Eames. As a result of the new policy…the Support Sub-Committee decided not to grant [Shahrokni] legal representation at the EAT appeal on 5 March 1996…That policy…also amounted to a deliberate policy of victimisation…*** (66/67 - 23 – A1)

This contrasted with the sub-committee's "previous criteria…for providing legal assistance in the form of representation at Tribunal proceedings [which] had been to consider each assistance application on its own merits – if…it had a more than 50% chance of success, it would be supported; however, in 1993, it was accepted by the Support Sub-Committee that because of the special difficulties in proving race discrimination, race discrimination cases might be supported even if the chances of success were less than 50%." **** (67/8 – 23 – 3) (33/34 - 10- 47e)

* The Shahrokni case, as in the Weaver case, showed that an articulate and vociferously antagonistic group of members can significantly influence the branch committee and the branch against those members who do not toe the line, that is, the group's line, and is a significant weapon to be used against Black and ethnic minority members, who are invariably a minority of the membership in NATFHE branches

** This assessment fell foul of the judgement of an Industrial Tribunal in June 1987, which was upheld at an Employment Appeal Tribunal, in December 1987 and by a Lord Justice in an application to the Court of Appeal in July 1988. The policy was not established by NATFHE's Support sub-committee in June 1995

*** Was this the key to finding NATFHE guilty of racial discrimination and victimisation? Dr Eames had been legally represented by the employer, therefore, the union could represent Shahrokni. However, if this had been the reason, it could be expected that reference would be made to the Weaver v NATFHE case in order to explain why the Shahrokni case was distinguished from that case

**** This was not a valid assessment as in Weaver v NATFHE it was judged that merit was not a consideration to be taken into account when providing legal advice, assistance or representation, which was determined by whether or not the accused admitted liability

It took several months, from July to December for the Industrial Tribunal to release its decision. The judgement against NATFHE was by majority decision, which held that NATFHE was vicariously liable for the actions of both the NATFHE NEC Support sub-committee (69 – 23 – 8) and the branch, which were at all times acting as agents of NATFHE. (64 – 22 – 9e)

The minority member, who Shahrokni was to describe as antagonistic to him,[22] viewed on the Support sub-committee's restrictions on NATFHE members as "a one-off aberration and an isolated act which was unlikely to be repeated. That did not constitute a new policy or criterion…[or set] any new precedent or policy for the future." (69 – 23 – B) Nor was there a "Branch policy or practice during the relevant period…to deny [Shahrokni] any assistance in relation to his…complaints against Dr Eames…" * As for the branch resolutions, he considered them to be "examples of lay persons expressing their views** [and Shahrokni] could have influenced the resolutions had he played a more active part by attending branch meetings." *** (65 – 22 – B(a))

He interpreted the November resolution as the branch committee wanting "an immediate resolution from the Branch Meeting [and seeking] to learn lessons from the Industrial Tribunal Decision but which exempted Dr Eames from criticism…" The possibility of a motion calling for his reinstatement being defeated was put down to Shahrokni's "unpopularity with the vocal members of the Maths unit." **** (23 – 10 - 27g) The March 1996 resolution was "an expression of the views of Branch members [and] Its wording was not 'misleading of the EAT judgement' in that it correctly referred to Dr Eames…'winning his appeal against the EAT judgement…' It did not say he had been completely vindicated."***** He also reckoned that the call for Shahrokni "'to dissociate his grievances against the college from action against individual NATFHE members'…could not be read as victimisation…; were not anti-[Shahrokni]; and none…affected the service he received from

* This was further confirmation that the Industrial Tribunal members appeared unfamiliar with the implications of the Weaver v NATFHE judgement

** This may be the case but subsequent actions based on those views can be discriminatory if, as a result of those actions, Shahrokni was treated less favourably than others

*** Shahrokni did attend branch meetings and his influence was negligible compared to the influence of the Maths Unit. As with Bis Weaver, who attended branch and other union meetings, her attendance made little difference to the attitudes and actions of other branch members and, at times, these meetings were extremely unpleasant experiences in a highly hostile environment

**** He seemed to be accepting that the denial of a member's rights can be justified by the level of popularity of the person concerned

***** If Dr Eames had won there would have been no referral to another tribunal hearing – the decision gave him the opportunity to have the complaint re-heard

Branch Officers, which was excellent and extremely time-consuming…" He added that "Many of the shortcomings were due to [Shahrokni] and his mistrustful nature." (65 – 22 – B(b) He was "unable to draw any inference of race discrimination or victimisation by the Kingsway College NATFHE Branch" or "a continuing act' of racial discrimination or victimisation by the Sub-Committee" (65 – 22 – B(b))(69 – 23 – B) * The minority member's views seemed simplistic and uninformed.

For the joint respondent, Mr Akker, the Tribunal, by a unanimous decision, found that "Mr Akker…did not discriminate…on racial grounds nor did he victimise [Shahrokni] because "as General Secretary of the NATFHE Union…[he] can only be held responsible for his own actions or omissions. He cannot be held vicariously liable under section 32 of the 1976 Act for the policies and practices of…individual members" or NATFHE's constituent bodies. (55/6 – 21 – 8 & 10)

Not only was Akker cleared but the Industrial Tribunal cleared NATFHE officers and officials involved in Shahrokni's case against Kingsway college. Shahrokni, in a later hearing, contended that racial discrimination, which was the form of discrimination that he was subjected to, "did not just arise in a vacuum [as] there had to be individuals who were responsible for it…[and they] have been exculpated by the Tribunal…" **[23] NATFHE's counsel later conceded that "two of the individuals…named are not fully exculpated…and appear to have a role in the discrimination and victimisation…"[24] Counsel was referring to the two senior members of management and did not include Dr Eames, a NATFHE member, who, it seemed, NATFHE was still trying to distance from the acts of discrimination.

Central to the Shahrokni complaint against NATFHE was the issue of representation for union members, who brought complaints against members of the same union. Neither the Industrial Tribunal members nor NATFHE's counsel nor NATFHE's witnesses *** raised

* This was an argument put forward by NATFHE's counsel. He contended that "there was no evidence to support the finding that the decision taken by the subcommittee amounted to the creation of a policy or procedure or represented a continuing act of race discrimination…The only evidence as to the Union's policy came from witnesses.., and that even if the decision of the subcommittee was strange and possibly in conflict with the stated policy, there was no material on which the Industrial Tribunal majority could have concluded that it created a policy or procedure or amounted to such. Counsel seemed unaware of the policy laid down in three hearings of the Weaver v NATFHE case. Did NATFHE legal officers not draw counsel's attention to the legal precedent set by this case?[25]

** A pertinent point that could be applied to the Bournville brigade and the attempt of Birmingham City Council, in the Hall 'report', to hide direct discrimination under the designation of institutional racism

*** There were at least three who knew of the Weaver v NATFHE ruling (Jouhl, Ms Ohsan and Scott). The policy also covered other trades unions

the binding precedent made in the Weaver v NATFHE case.

The Tribunal referred to the Support sub-committee's policy being created at its meeting in June 1995 and was a continuing act until the 29th April 1996. This was clearly inaccurate because NATFHE was restricted from providing advice, assistance or representation in complaints between members of the same union. * What was surprising was the Industrial Tribunal's apparent ignorance of the judgements in the Weaver v NATFHE case. This 'ignorance' also applied to NATFHE's defence team, which never raised the Weaver case to justify the Support sub-committee's policy. This was a surprising failure considering at least three people attending the sub-committee's deliberations and who gave evidence in Shahrokni v NATFHE were familiar with the Weaver v NATFHE judgement. Why did NATFHE fail to raise this as a defence, especially as Dr Eames, a NATFHE member, became the sole defendant in a prospective re-run Industrial Tribunal until Shahrokni dropped the case against him as part of an overall settlement?

Did the circumstances surrounding Shahrokni's situation provide the means for the Industrial Tribunal to find in his favour? As the Tribunal noted, Dr Eames, the only NATFHE member in the complaint, was represented by the employer's legal team, which freed NATFHE from representing Dr Eames, as was stated in a letter from NATFHE to him on the 10th March 1993. This would also remove any conflict of interests if NATFHE represented Shahrokni. However, this was not the reason for the decision because the Tribunal identified the union's policy *per se* as discrimination for not representing its members in conflict with other members. Not only that, there was always a possibility, in the event of Shahrokni winning the case, which he did, of Dr Eames' tenure being put at risk. On the basis of the Weaver v NATFHE decision, NATFHE would be legally constrained from not taking any action on behalf of Shahrokni if it put Dr Eames tenure at risk.

Furthermore, if the Industrial Tribunal intended to distinguish Shahrokni v NATFHE from the Weaver v NATFHE judgement, it could reasonably be expected to mention the latter case in order to show how the two cases differed. Yet, it made no reference to the precedent set in Weaver v NATFHE. Were the Tribunal members ignorant of the Weaver v NATFHE case, which would be surprising given the publicity surrounding that case and the publication of the EAT's report in the *Industrial Tribunal Report*? [26]

* This was in accordance with Justice Popplewell's judgement in December 1987, confirmed by Lord Justice May in July 1988. The report of the Shahrokni v NATFHE Industrial Tribunal referred to the policy covering other employees as well but the policy submitted by NATFHE and accepted in the Weaver v NATFHE case covered only members of the same union

NATFHE's silence in not putting forward the defence that it was legally bound not to assist Shahrokni was extraordinary. It was difficult to see how the committee victimised the complainant when following a legally binding judgement dealing with complaints between members. There may have been a racially discriminatory impact in the decision – Shahrokni, an Iranian, versus Dr Eames, who was White, but that was covered by the Weaver v NATFHE decision.

Why did NATFHE not use that as a defence? Did NATFHE not want to draw attention to the Weaver v NATFHE judgement lest it resurrected publicity on its role in establishing a racially discriminatory policy covering the trade union movement as a whole? Could this also be the reason for the unusual step of not disclosing the reasons for the Support sub-committee's decision to the party concerned? The reason for this committee's decision only became known when the notes of the June 1995 meeting were disclosed in the 1,200 documents submitted to the Tribunal. Furthermore, if NATFHE thought Shahrokni was not going to win the case against Kingsway College, as its solicitor had advised was the likely outcome, then, perhaps, Shahrokni and his case, might melt away without further disclosure of NATFHE's discreditable and deplorable record in its dealings with race issues.

The victimisation and racial discrimination resulting from the branch passing several motions against Shahrokni was not covered by the Weaver judgement as such a complaint was not brought by Bis Weaver against NATFHE in 1986/7. Therefore, it was open to the Tribunal to draw the conclusion that the hostile action of the branch was victimisation on the grounds that Shahrokni's action in submitting an IT 1 was a protected act. When assessing the Shahrokni judgement on this particular limb, it could reasonably be concluded that Bis Weaver had also been victimised and suffered racial discrimination by several acts aimed specifically at her by various sections of NATFHE's organisation. This covered both her complaints against NATFHE lay officers in the course of their employment at Bournville college; * and her complaint against NATFHE in an Industrial Tribunal action. **

NATFHE also tried to justify its failure to represent Shahrokni on grounds of no merit in his complaint. Merit was not a consideration to be taken into account, according to the verdicts of the Industrial Tribunal June 1986) and EAT (December 1986) in the Weaver v

* This covered the hostility of the branch when motions were passed. The Beider motion (January 1987) and the 'racist' motion submitted to the West Midlands REC (March 1987), might be considered to be interfering with her right to bring a complaint under the 1973 Employment (Consolidation) Act (Teachers Grievance Procedure)

** The *Frew enquiry* (January 1987) and the 'racist' motion (March 1987) following Bis Weaver's IT 1 against NATFHE under the Race Relations Act 1976

NATFHE case. The alleged lack of merit in the Shahrokni case had no bearing on his case because even if NATFHE or its solicitor adjudged that there was merit in his complaint the union could still not represent him. However, this appeared to be another line of defence that NATFHE did not want to broadcast.

In May 1993, the regional official had sent Shahrokni details of Rule 8 procedures and standing orders. (16 - 10 -17) Almost two years later, Shahrokni registered a Rule 8 complaint against the Kingsway branch secretary, Burgess, on the 22nd March 1995, which was heard on the 25th November 1996. (2 – 4) * The complaint covered Burgess': (a) "alleged refusal…to assist [Shahrokni] in the investigation of race discrimination complaints…"; (b) informing Shahrokni that three members of staff and students had complained about his alleged behaviour and teaching but he had refused to disclose their names as they wished to remain anonymous; (c) support for the Kingsway College NATFHE Branch resolution of the 15th November 1994; and (d) not responding to Shahrokni's application for nomination to the TUC Black Workers Conference. (10/11 – 10 – 1 (a to d)

NATFHE's Constitution and Rules made provision under Rule 8 "for a member or body…to submit a complaint that the conduct of any member has been detrimental to the interests of the Association…[and] How…the conduct" affected those interests. (6 – 8 – 1.1/1.2) Under these provisions, the first stage of a complaint would be dealt with by a branch disciplinary panel, consisting of: (a) a chair "appointed by the Region"; (b) two branch members "one nominated by the complainant and one…by the member complained against;" and (c) a non-voting secretary. The parties to the complaint were allowed to call and examine up to three witnesses. (7 – 8 – 2.1 – 2.2) If a complaint was not resolved at this stage, it would be referred to a Regional Disciplinary Panel comprising "a member of the National Executive Council from the Region," acting as chair; (b) "two members from the Regional list;" and (c) a non-voting secretary to produce handwritten and typed notes. This Panel had the power to impose penalties. ** (8 – 8 – 3)(11 – 10 – 4)

When the branch disciplinary panel met on the 16th July 1996, Shahrokni and his witnesses turned up but Burgess failed to do so and "The complaint moved to the next stage…" (11 – 10 – 3) The Regional Disciplinary Panel met on the 25th November 1996 with both parties to the complaint and witnesses and observers in attendance. (11 – 10 – 4) The

* The bracketed numbers refer to the page, section and points in the Industrial Tribunal Report[27]
** When Bis Weaver and I submitted Rule 8 complaints the procedure was to hear complaints at national level with a panel consisting of NEC members. See Rule 8 procedures in 1986[28]

hearing went on for three hours, after which the Panel considered its verdict for about 45 minutes. The decision to reject Shahrokni's complaint was conveyed to the parties on 26th November by the secretary. The conclusion was that "Mr Burgess had not treated Dr Keith Eames more favourably than [Shahrokni], save in relation to one matter, [which] was to support the Branch resolution of 15 November 1994."(11/12 – 10 – 5)

Dissatisfied with both the procedures and the outcome, Shahrokni presented an IT 1 against NATFHE and the three members of the Rule 8 Panel on the 21st January 1997. The complaint was of discrimination and victimisation contrary to the 1976 Race Relations Act and covered both direct and indirect discrimination. (2 – 1) The thrust of the complaint was: (i) Shahrokni's belief that the Disciplinary Panel discriminated "on grounds of race and due to his 'protected act' against NATFHE" (3 – 4 – p); (ii) that the rule had a "condition or requirement…[that] had a 'disproportionate adverse impact' on non-white racial groups…" (5 – 7); and (iii) that the Panel members were "biased and hostile towards him and his witnesses" and they were being "sued as individuals…[and] not necessarily or solely as agents of the union." (2/3 – 4 – k to q)(4/5 – 6)(15/16 – 12 – 3(a to f) The respondents denied the allegations of discrimination and victimisation; of acting as agents of the union; or pursuing "a policy, rule or practice to [Shahrokni's] detriment." They also contended the acts complained of were out of time. (4 – 5 – 1 to 7)(4 – 6)

Shahrokni's argument that Rule 8 "had a 'disproportionate adverse impact' on non-white racial groups" (5 – 7) attempted to show that

> "A member from an ethnic minority may have the same grievances as that of a White member, but additionally could have a complaint of race discrimination. Therefore…[a] complaint of race discrimination is an additional burden that a member from an ethnic minority group has to face."

NATFHE's counsel argued that Shahrokni "had failed to show that the adverse impact of the condition or requirement was proportionately greater [for] ethnic minority members…than for white members… [and] he did not accept the 'commonsense' argument advanced by [Shahrokni]." * (6 – 7)

Shahrokni further argued that a complaint of racial discrimination "would not succeed

* The proportionality argument was put forward in the Weaver v NATFHE case and was rejected by the Industrial Tribunal, the EAT and by LJ May. It was part of the precedent set by the Weaver case. NATFHE's counsel did not have to argue against it - all that was required was to cite the Weaver v NATFHE judgement to show Shahrokni's proposition had been dealt with at a higher level of legal proceedings and was binding on industrial tribunals. Why was NATFHE so reluctant to refer to the Weaver v NATFHE case to support its case against Shahrokni? It was unlikely to require a genius to answer that question!

because it may not be construed as being detrimental to the interests of the Association [and] may deter the member from bringing the case, or if brought, for the case [not] to succeed." (5/6 – 7) He also pointed out that lack of training for panel members in recognising racial discrimination could mean that valid complaints were not upheld. * (6 – 7)

The Tribunal concluded that Shahrokni had failed to show that "the condition or requirement…has satisfied the disproportionate impact provision in section 1(1)(b)…[therefore, Shahrokni's] complaints of 'indirect' race discrimination under sections 1(1)(b), 11 (3), 32 and 33…are dismissed." (16/17 – 14 – 3) The claim of 'direct' race discrimination was also dismissed as "There [was] no evidence of any conscious or unconscious act of discrimination by NATFHE or the Panel members." (17 – 14 – 4)

NATFHE was not let off completely. The Tribunal pointed out that "The principal flaw in the whole system was that Rule 8 was an inadequate procedure for dealing with…race and victimisation complaints…" [17 – 14 – 4] However, Rule 8 had now been "accepted by all parties…[to be] an inadequate and unsatisfactory method for dealing with individual complaints from one member against another." (12 – 11 – (a))

The Tribunal noted several unsatisfactory features "for dealing with complaints. Firstly, "a Member can only complain against another member not e.g. against the Branch Committee." ** Secondly, "the complainant…has to show that the complaint is well-founded and that the member complained against acted to the detriment of the interests of the union." (tribunal's emphasis) Thirdly, "…each party nominates a Panel Member of his/her choice, [which] Apart from the undesirability of having the parties' representatives participating in the adjudication of the complaint, it might not be easy for an unpopular or friendless branch member to find a nominee." *** (12 – 11 – a)

As for the Regional Disciplinary Panel, the Tribunal concluded that "Although it is called a Disciplinary Panel, it emerged from the evidence given by the Panel members (9/10 – 9 – 1 to 3) [that] There was some confusion…as to whether the Panel's role was to resolve a grievance, conciliate or hold a disciplinary hearing…[and] whether the parties could be

* This was clearly demonstrated in the Weaver case by the West Midlands Region's officer caste; the Bournville *kernels* and branch members; the West Midlands regional official; and national officials, as Triesman admitted in February 1986

** This was one change in the procedures since the Weaver case as both Bis Weaver and I had submitted Rule 8 complaints against the Bournville branch committee

*** Influential members of the branch would undoubtedly have the hearing slanted in their favour. If this system had been in place at the time of Bis Weaver's difficulties in Bournville college branch, she would have had no chance of anything approaching a reasonable and impartial outcome. This disadvantage would also have applied in a regional disciplinary panel

allowed to cross-examine each other, a right usually available in disciplinary hearings." Nor was it "an ideal forum to hear complicated disputes, particularly race complaints." (12/13 – 11 – 1a)

The time gap between submitting the complaint on the 25th March 1995 and its hearing by the Regional Panel on the 25th November 1996 was considered to be "a lengthy delay [that] cannot be justified on any view." (13 - 11 – 2) There was also criticism of "the contemporaneous hand-written notes taken by [the secretary that] differed from the typed version. In one or two disputed areas there were crucial discrepancies between the two versions, [which were] not due to editing alone." What happened was "that the notes were circulated to the Panel members who made additions to it from their individual recollections, [which] is an undesirable practice…[as it] can lend itself to abuse." * The Tribunal told NATFHE, what should be obvious to any organisation, that "The notes must be an accurate record of what transpired at the meeting…[and] Original notes must always be preserved in their original form, [so] the parties should be provided with copies…immediately on any request being made." (13 – 11 – 3)

The Tribunal referred to Rule 8 procedures as being far from ideal in hearing race complaints, which was an understatement since race complaints were outside the sphere of authority of Rule 8 proceedings unless the restrictions on hearing race cases had been removed. However, there seemed to be no evidence of this having been done. **

In 1986, criticism had been levelled at Rule 8 procedures *** but the changes made to those procedures since then had not improved the provision for making complaints about other members, instead they appear to have been made more onerous for complainants.

NATFHE still seemed to be in a state of denial over its contribution in establishing a racially discriminatory policy that applied to all trade unions. This self-deception was confirmed as late as February 2007, six months after NATFHE's demise as an independent union, when its last general secretary replied to an enquiry from the National Assembly Against Racism. **** NATFHE certainly was the harbinger of its own disasters by showing

* It was specifically pointed out that "the original notes appear to have supported [Shahrokni's] oral evidence on a crucial issue whereas the typed version appeared to contradict his oral evidence."
** Having ploughed through *NATFHE Journal* between 1989 and publicity surrounding the Shahrokni case, I found no evidence of race cases being brought in to the domain of Rule 8
*** Paul Mackney, who became NATFHE's general secretary in December 1997, had criticised Rule 8 in April 1986, when seeking to explain his role in the initial stages of Bis Weaver's complaint against Gates[29]
**** See Section (f)

its lack of commitment to anti-racism except in rhetoric, which was the only activity in the area of anti-racism that had continued to expand in NATFHE when its officials occasionally appeared on anti-racism and other platforms. The habitat of the hot air brigadiers!

At the end of the case Mackney, "on behalf of NATFHE" agreed "to apologise to [Mr Shahrokni] in relation to the actions of the union which led to the findings of discrimination and victimisation... admitted by the union in [tribunal] cases…"

In a prelude to the apology, in preparation for NATFHE introducing new guidelines, Mackney made it clear that NATFHE branches should not

> fall into the mistake of judging for themselves whether the allegations made by a complainant are true and then acting…by either, for example, giving support to the person against whom the complaint is made, or otherwise discouraging the complainant from continuing their objections. Such action by a branch can lead to the union itself being adjudged to have victimised the complainant.

He announced that steps were being taken to improve the handling of discrimination cases and in particular Rule 8; and that

> Branches must respect the rights of the complainants to raise complaints of unlawful discrimination. Passing a hostile or critical motion, seeking to influence a member not to exercise their statutory rights under the Race Relations Act, or refusing to co-operate with enquiries on a members behalf cannot play any part in the union's proper role of assisting the complainant."[30]

Every one of these conditions reflected what Bis Weaver had endured up to July 1986 and afterwards. In 1982, there was the Fernandes case, followed between 1985 and 1988 by the Weaver case and then the Shahrokni case between 1994 and 2000. This showed the long-term abject disinterest that NATFHE had in racism and how racism was 'dealt' with by 'anti-racists' in the union. Eighteen years from Fernandes, fourteen years after Ms Weaver and it required public criticism from the Shahrokni employment tribunals to stir the remnants of the Broad Left Coalition to admit to the union's deficiencies.

Mackney's apology to Sharokni was:

> NATFHE acknowledges that, as a result of your claims, the union has taken a number of steps to improve its approach in the handling of discrimination cases and in particular its Rule 8 procedure, which have been to the benefit of all its members. NATFHE has, with the assistance of the Commission for Racial Equality, initiated a programme of changes and monitoring by which the union intends to scrutinise carefully its handling of all casework with the intention that all forms of discrimination are detected and eliminated.'[31]

(d) Anything You Can Do: Who Can Do it Better

Concurrent with *Shahrokni v NATFHE*, although it was to run for a much longer period, was *Deman v AUT*. The Deman affair ran for most of Triesman's spell as AUT general secretary and for some time afterwards. Dr Deman ultimately lost his case of racial discrimination against the union but the case showed that the attitude to racism of AUT officers and officials, associated with the case, was still in the Dark Ages. The AUT 'victory' was akin to the *Pyrrhic* victory secured by NATFHE against Bis Weaver and showed the ineffectiveness of Triesman's approach in dealing with racist discrimination. The AUT, under Triesman's stewardship, was as disdainful of complainants of racial discrimination and as incompetent as was NATFHE. *

From February 1994 until September 1995, Dr Deman was employed as a probationary lecturer at Queen's University, Belfast (QUB) ** (s3) and had joined the AUT in October 1994. (s3) Dr Deman incurred the hostility of officers of the local AUT branch and the Senior Common Room (SCR), especially from Dr Mercer, President of the local AUT and secretary of the SCR. (s4 & s5) He brought a complaint of race discrimination and victimisation against the employer, QUB, and sought assistance from the local branch. (s4) Dr Deman was also dissatisfied with the research support provided by a member of staff, Ms Carroll. (s5) He then discovered that Ms Carroll had registered a complaint against him of sexual discrimination. (s5) Ms Carroll, employed at QUB for six years without joining the union, applied for membership of the AUT. She was given instant membership, contrary to usual procedures, (s20) [32] in order for the union to offer her assistance for a sex discrimination case.

Following up Dr Deman's request for assistance for his race discrimination case against the QUB, Dr Goldstrom of the QUB AUT branch, told him that "he would be ill-advised to raise the allegation of race discrimination as such allegations might result in counter allegations being raised that he was himself guilty of sexual harassment." Deman was also informed that racism would not be tolerated but evidence was required before making serious charges against the University. Goldstrom hoped to settle the matter informally but, if necessary, Deman could apply for legal aid from the AUT. (s6)

* When the Employment Tribunal announced its decision, one national newspaper published that "The head of the AUT has been lambasted by an employment tribunal as ignorant, naïve and complacent about race relations…"[33]
** The details are from the Court of Appeal Hearing in March 2003[34]

Dr Triesman entered onto the scene after receiving a letter from Deman. Correspondence took place between the two and Triesman decided that Mr Everett, the AUT regional official, could assist Deman with his employment dispute with QUB and a complaint made by Deman against the local AUT would be dealt with by Triesman himself. Deman then became dissatisfied with the regional official's handling of the matter and expressed this dissatisfaction to Triesman, who advised Deman to use a local solicitor. However, the solicitor declined to act on Deman's behalf. Triesman then informed Deman that no legal assistance from an alternative source would be available and that he (Triesman) had taken grave offence over Deman's attack on the AUT. (s7 & 8) Triesman's disclosure of his position on Dr Deman's complaint hardly made him an impartial adjudicator in determining the assistance available to Deman in his complaint against the branch and he should have disqualified himself – shades of Day in the Weaver complaint against Gates.

In August 1995, Deman asked Triesman for representation in pursuing internal remedies within QUB, which Triesman explained * was difficult as Deman had dismissed the assistance of all the local AUT officers and made allegations against Mr Everett and Hanna & Co. (s 9) In September 1995, the QUB terminated Dr Deman's employment and, failing to get support from the branch, Deman wrote to Triesman seeking legal aid for a judicial review against the QUB. In October, Triesman put the application to the Legal Aid Committee (LAC), whose membership included Triesman and Dr De Groot. Triesman recommended that the LAC did not support Deman's application on grounds that he was provided with assistance by the AUT's solicitors but had refused. The LAC saw no exceptional grounds to authorise expenditure from its budget for advice from any other firm. ** (s 10) After receiving the decision, Deman protested to Triesman and asked for his application to be referred to the Legal Aid Standing Committee (LASC). (s11)

The LASC, on the 1st March 1996, endorsed Deman's objection. The committee's view was that "Where a member was in serious dispute with his local association, it was unfortunate that the member was then offered legal assistance only from a firm that regularly acted on behalf of the local association...There were understandable grounds why Mr Deman might have felt that there was indeed a conflict of interest." (s12) The matter was remitted to the LAC to reconsider.

* In Triesman's evidence at the Employment Tribunal hearing
** No exceptional grounds seemed to be a fall-back position when refusing to do anything to help complainants, as in NATFHE's submission during Triesman's involvement in the Weaver case

On All Fools Day, the LAC, chaired by Dr De Groot, decided no exceptional circumstances existed to overturn its previous decision, so Deman appealed to the full AUT executive committee. That committee heard the appeal, on the 5th July 1996, with De Groot in the chair. Deman, accompanied by a friend, Mr McCue, made a submission and was questioned by the committee. While the committee made its decision, Deman and his friend left the hearing, however, Triesman, who presented the opposition case, remained and addressed the committee in Deman's absence. The committee dismissed Deman's appeal. (s 13)

Deman then made an application for an Employment Tribunal hearing against the English-based national office of the AUT on grounds of racial discrimination and victimisation. * His complaints concerned: (i) the failure of the respondents to investigate his complaints of less favourable treatment by the QUB AUT; and (ii) the failure to provide him with legal aid or legal assistance in relation to his cases of race discrimination, victimisation and unfair dismissal by QUB. (s14)

When the case came before the Employment Tribunal, the Tribunal criticised Deman to some extent as not 'an entirely satisfactory witness' and it was unable to see any reason for his failure to co-operate with Mr Everett, (s15) as only Mr Everett, of all the AUT's witnesses, demonstrated an understanding of Deman's problem. (s 16) However, the Tribunal thought Deman had grounds for distrusting the local AUT. (s 15)

The Tribunal was critical of the AUT's other witnesses. Dr Mercer was seen as "a powerful figure both within the QUB and the local AUT, who disliked Deman and was actively hostile to him, shown in a note he sent to Dr Brown, QUB's Equal Opportunities Officer.[35] In this letter Mercer wrote "Here is the latest dose of rubbish from Dr Deman. I shall not even bother to reply to it." The Tribunal concluded that such views were bound to have influenced the QUB's treatment of Deman. (s 19) Dr Goldstrom's "advice that any allegation of race discrimination was likely,...to result in a complaint of sex discrimination (harassment) against Deman, displayed a degree of foreknowledge or prescience of coming events which would have only been gleaned from a discussion with Dr Jay, of the AUT, who was Ms Carroll's representative." (s16) Deman was discouraged by Dr Goldstrom and Mr Lynch "from pursuing his race discrimination complaint against the QUB and against Ms

* The case was not taken against the local branch of the AUT because the 1976 Race Relations Act did not apply in Northern Ireland. It was eventually heard in London in two sittings on 7-11th September 1998 and 1-5th February 1999 [36]

Carroll…in a manner" entirely different to "the vigorous assistance...Dr Jay gave to Ms Carroll for her allegation of sexual harassment..." In contrast, Ms Carroll never at any stage really believed she had been sexually harassed or discriminated against by Deman and her complaint was eventually dismissed or withdrawn. Yet Dr Jay, her representative, had vigorously pursued those allegations. The speed with which Ms Carroll was given AUT membership raised questions as to whether the real reason for giving her application preferential treatment was in order to assist her in her complaint against Deman. * (s20)

The Tribunal found it "difficult to understand why the AUT...insisted that Deman accept assistance from Hanna & Co and no-one else when...evidence from Dr Goldstrom that in other conflicts of interest (member against member) situations the AUT had relaxed [that] rule." (s21) Furthermore, "The LAC and LASC's decisions not to provide Deman with assistance solely on the basis of his rejection of...Hanna & Co was hard to understand as the AUT did not investigate the issue of conflict of interest."

The decision of the LAC was the real hornet's nest showing inappropriate behaviour on the part of Triesman and De Groot. The Tribunal concluded that "De Groot should not have presided at the [Executive Committee] Appeal Hearing on 5 July 1996 [as] she was presiding over an appeal against a decision to which she had been a party." Everything concerning the issue of legal aid "gave the appearance that Dr De Groot wished to control the outcome of the matter and justice was not seen to be done." (s22) De Groot was found "to be a patronising, unreliable and evasive witness. When asked by a Member of [the] Tribunal...how many members of the York University AUT were black," the tribunal received what it described as "her glib, evasive and unhelpful reply [namely,] I don't put labels on people". ** (s 17)

The Tribunal also criticised Triesman for staying behind after Deman was asked to leave and he should not

> have been permitted to make any submissions in [Deman's] absence either as an LAC member, in the light of the immediate past history, or because...he was clearly going to recommend that Legal Aid should not be granted to [him]. The presence of Dr De Groot and Dr Triesman, the two most powerful officer holders would have inhibited the other members. (s22)

* Providing immediate membership to Ms Carroll, who was prepared to make allegations against a complainant in order to assist union officers, was in the same vein as the immediate membership given to Beider, who was prepared to make allegations against Bis Weaver to assist Cave, Hartland and Gates. Beider was given immediate membership, within a day, which presented no difficulty because he knew the Bournville branch secretary, who represented him at the enquiry, through the Sparkhill Labour Party

** Dr de Groot was a member of staff at York University. Her research interests covered gender, culture and colonialism, specifically 19th and 20th-century women's history; socialist and feminist ideas and movements; and Iranian, Middle Eastern and Indian history in the l9th and 20th centuries

Triesman was described

> as an impressive witness but he 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 [Deman's] complaint, displayed a surprising degree of ignorance and complacency.

He did not seem to appreciate that it did it not follow that because

> no one else raised a racial grievance under the rules -- unlike [Deman] -- that all ethnic minority members are happy with the state of affairs within the union.

The Tribunal suggested that Triesman should

> pay heed to the views of members like Dr Saha, who was a most impressive witness, who wanted to work with and not against the AUT, but who are very unhappy with the services provided by the AUT to ethnic minority members. When asked why he had not raised any internal grievance, his telling reply was, 'Then I would have ended up like the Applicant', i.e. in the Tribunal against the AUT, which is not the situation he would like to be in." * (s 16)

The Tribunal's conclusion when rejecting Deman's complaint was:

> The picture that emerges is one of incompetence and cutting corners rather than any conspiracy as far as the national officials and officers were concerned. Nevertheless, the fact remains that the national AUT should have investigated Deman's complaint against the local Branch, [and] Deman could have been more co-operative with Mr Everett and Dr Triesman. The Tribunal gave careful consideration to the issue as to whether the AUT and the other Respondents had discriminated against the Applicant on racial grounds or victimised him contrary to the provisions of the 1976 Act. There is *prima facie* evidence of less favourable treatment of the Applicant vis-à-vis Ms Carroll by the local AUT (not by Mr Everett or Dr Triesman). However, the complaint is not against the local AUT or its officers.

The Tribunal also found that Dr Goldstrom's advice to Deman not to proceed with the race discrimination allegations was given on tactical grounds, but given Dr Goldstrom's background, he would not consciously have been a party to any act of race discrimination against Deman. **

* Another victim of Bournville branch hostility towards Black members of staff had said something similar. He said he left the college as he did not want to finish up like Bis and Gordon Weaver [37]

** Dr Goldstrom had escaped from the Nazis but tragically the rest of his family died in the Holocaust. However, the Tribunal should have given greater consideration to the evidence and not rest its decision solely on this part of his background. Being Jewish did not exclude a person from being a racist or subscribing to racist ideas. Hans Eysenck, while disclaiming any racist intent and pointing to his own experience of being Jewish in Nazi Germany, *** wrote that Black people were genetically inferior in intelligence to White people.[38] Other scholars described his research as "This biological reductionism is precisely...that used by the Nazis and present day Fascist groups [39]

*** Dr Eysenck made this point when addressing a meeting at a Birmingham University NUS meeting in the 1971/2 session, which I attended.

The Tribunal expressed

> reservations about the AUT's failure to investigate [the complaints] and about the manner in which [Deman's] Legal Aid application was handled by the AUT and its officials, [but was] unable to find any evidence from which an inference of race discrimination or victimisation could be drawn against the Respondents.

The unanimous decision was to dismiss the complaints. (s24 covering s19 to 24 of the ET decision) Despite irregularities and impropriety on the part of the AUT UK-based officers and officials, they were cleared of racial discrimination.

There was one officer who came out in public to defend the AUT. Paul Hudson, Belfast AUT branch secretary, accused the THES of reporting selective and out-of-context quotations and he attacked Dr Deman's integrity.[40] He had obviously failed to take on board the evidence provided at the Employment Tribunal. *

Deman did not accept the ET decision and in February 2002, after Triesman had left the AUT to become general secretary of the Labour Party, an EAT was convened to examine the Employment Tribunal decision and Deman's objections. The appeal was dismissed. The Appellant's claim was that sufficient evidence was available for the Employment Tribunal to infer that racial discrimination and victimisation took place. (s10) This claim had been based on a response by Dr Triesman, under cross-examination, that he "was very concerned that Dr Deman...was seeking AUT's aid in challenging his probationary failure by judicial review...without having demonstrated any substantive issue to be argued." The Appellant thought this was "open to be interpreted as an indication of racial discrimination and that it was therefore required of the Tribunal that it should deal with it in its findings." The EAT said "Let it be assumed...that Dr. Triesman did say exactly as is alleged...during cross-examination [and]...Let it also be assumed that the answer could <u>possibly</u> be indicative of racial bias." In that context, "such an interpretation would seem...to be improbable to have been the intended one." (s21)

The EAT decided that the

> probable meaning to be ascribed to Dr. Triesman…is that he believed, firstly, that the AUT legal aid scheme should not be used in such a way as might undermine that robust probationary system which he thought to be of key importance in academic professional life and, secondly, that for Dr Deman to launch Judicial Review proceedings against QUB without a substantive issue having been identified could serve to undermine probation in a way that he believed the AUT would not wish to do.

* In 1987, Triesman made a similar accusation against *7 Days* on the Weaver case and often made slurs against Bis Weaver's integrity!!

The EAT held that

> such beliefs were not unreasonable or that they are indicative of racial prejudice, especially as at several points in his Memo Dr Triesman emphasises that the AUT would always oppose termination of probation if it believed, on the advice of its lawyers, that discrimination was the reason.

Recognising that the EAT had

> not heard or seen Dr. Triesman utter the words alleged and we cannot say what...the words were intended to convey but we do say that if, as is said, the words emerged in the course of cross-examination on the Memo, that the meaning we have suggested is far more probably the intended meaning than anything pregnant with race...Putting the words into their probable context we see no error of law in the Tribunal's failure to mention them.

The EAT, during this hearing, did not have access to the notes of the ET hearing taken by the Tribunal chair, which gave the EAT wide scope to assume anything. Therefore, unaware of Triesman's actual comments, it decided to accept the ET decision, concluding that the disadvantages Deman faced were a result of Triesman's incompetence and cutting corners and rejected racial discrimination as a factor. The EAT upheld the Employment Tribunal decision and Deman's appeal was lost.[41]

Union officials in 'intellectual' trade unions 'sail very close to the wind.' However, this was not the end of the matter and another hearing of this case was granted in November 2002. On the 1st November 2002, Mummery LJ gave Deman leave to appeal to the Court of Appeal. (s2)

When the Court of Appeal met, in March 2003, it listed three grounds on which Deman could appeal: (i) the ETl did not give sufficient (or any) reasons for its conclusion as to why the Appellant's claims failed; (ii) the ETl erred in law in holding there was no evidence from which an inference of racial discrimination or victimisation could be drawn; and (iii) the ET erroneously failed to consider unconscious racial discrimination and/or victimisation, looking only for conscious discrimination. (s 25) The Court referred to a number of relevant cases not taken into account by the ET or the EAT and then proceeded to analyse these three grounds.[42] On all counts it found in favour of Deman.

The Court thought the Tribunal's comment on Dr Goldstrom's background as a reason for excluding consideration of racism was "a curious and ambiguous observation, [because] acts of discrimination could be unconscious, [as could] acts of victimisation,...accordingly,...the ET had failed to consider unconscious motivation" on Dr

Goldstrom's part. * (s 34) The ET was under a duty to give reasons for accepting or not accepting inferences drawn from the evidence. (s35) as **"**It is the job of the tribunal...not simply to set out the relevant evidential issues..., but to follow them through to a reasoned conclusion..."(s43)

The Court also made a distinction between "cases of unfair dismissal on the one hand and racial discrimination and victimisation on the other." The former required an

> assessment of the fairness or unfairness of the dismissal generally...on...objective norms and accepted standards of fairness in the field of employment....whereas, racial discrimination and victimisation cases will usually involve the necessity for a more careful and elaborate statement of reasons...if the Tribunal is to fulfil the parties' entitlement...(s44) **

The ET's claim that it was

> unable to find any evidence from which an inference of race discrimination or victimisation could be drawn against the Respondents [was] manifestly incorrect [as] The findings provide abundant material...from which inferences of discrimination could properly be drawn. (s46)

The Court noted that

> There is... a very substantial difference between, on the one hand, there being no evidence from which inferences of race discrimination or victimisation can properly be drawn; and, on the other, a situation in which there was evidence from which such inferences *could* properly be drawn, but where the Tribunal had come to the conclusion that it was not appropriate to draw them (s48)

If the Tribunal was saying that "there was evidence from which inferences could properly be drawn, it was under a clear obligation to explain fully why it had decided not to draw them." (s49) The only reason given was contained in the phrase, "The picture that emerges is one of incompetence and cutting corners rather than any conspiracy as far as the

* The House of Lords decided that, "on a true construction of section 2(1) of the Race Relations Act 1976**,** a person alleged to have been victimised had to establish that the alleged discriminator, in treating him less favourably than another, had a motive which was consciously connected with the race relations legislation. The House went on to decide that there was no good reason for adopting a different approach for subconscious motivation in cases of victimisation from that adopted in cases of conscious discrimination[43]

** Although legal proceedings are in a different league to union and employer's grievance procedures, this comment, when taken as a right to a fair hearing, put into perspective NATFHE's failure to offer Bis Weaver an investigation capable of 'fulfilling the parties entitlement' in order to assess her claims. This could also apply to the LEA's prevarication in not revealing to Bis Weaver the real findings of its investigation of racial harassment but chose instead to claim there was no report of the enquiry and, going as far as to say, in the words of Byron, the chair of the Education Committee, that he had "never seen a report [and] denied that there was a copy of a report into her case."[44] I took Byron to task over his untenable comments to the press.[45]

national officials were concerned." The Court thought

> It is far from clear to what particular matters this portmanteau phraseology was addressed. Leaving on one side whether or not the appellant's case was that such a conspiracy existed, the identification of 'incompetence and cutting corners' is, in our judgment a manifestly inadequate analysis of the material... (s50)

Reference was made to a few examples with regard to "findings directly related to issues of racial awareness." It quoted the ET's comments that

> Dr Triesman, despite being 'an impressive witness' displayed a 'surprising degree of naiveté and ignorance' and 'a surprising degree of ignorance and complacence' that all was well in racial terms." (s51)

Dr de Groot's "glib, evasive and unhelpful" comments were also mentioned. (s52)

The Court stated that

> All was plainly not well in racial terms within the AUT. There was discrimination on the shop floor. There was unhappiness amongst the ethnic minority members about the services the AUT provided to them. Amongst senior members of the union there was complacency and ignorance on Dr. Triesman's part, and unhelpful evasion from Dr. De Groot. One obvious inference to be drawn from these findings was that Dr Triesman and Dr. De Groot were guilty of conscious or unconscious racial discrimination. If the Tribunal was not going to draw such an inference, it needed to set out its reasons for not doing so. (s53)

In the Court's judgment,

> the need for full reasons is all the more compelling when the behaviour of the AUT and its senior officials was so extraordinary. We are conscious that Dr De Groot is not a lawyer, but somebody in the appellant's position can, we think, reasonably expect an intelligent academic to have an elementary grasp of the rules of natural justice, and if such a grasp is not demonstrated to ask why. If, as may well be, the reference to 'cutting corners' was directed to the conduct of Dr De Groot and her ubiquity in relation to the legal aid decisions of the AUT, [then] The evidence demonstrated a highly focused determination to get her own way which is far removed from incompetence. It may well be that her motivation and behaviour had nothing to do with conscious or unconscious racial discrimination towards, or victimisation of the appellant, but the findings of fact about her plainly required that issue to be fully and properly addressed. (s54)

The Court was invited by the AUT's legal representative to dismiss the appeal against Dr. Triesman and Mr. Everett, "as they had been vindicated by the ET," and to give clear directions "to concentrate upon the restricted nature of the acts of discrimination/victimisation alleged against the AUT within the United Kingdom." (s57) While sympathetic to this request, the Court did

> not think it appropriate for this court to lay down who should or who should not be parties to the re-hearing. We certainly could not....dismiss the appeal against Dr. Triesman in the light of our decision. (s58)[46]

This incisive analysis of the contents of the evidence presented to the Employment Tribunal earned Dr Deman a referral to a new Employment Tribunal hearing. (s45) But the new Tribunal did not come up with a reward for Deman's persistence as it dismissed his case and, as to conscious or unconscious racism, it found nothing to support either conclusion; it was naiveté and incompetence on the part of Triesman and the others that were responsible for Dr Deman's difficulties over a considerable period of time.

(e) NATFHE's Search for Credibility

In the wake of the Shahrokni case and the new requirements on indirect discrimination in the Race Relations (Amendment) Act of December 2000, placing a duty on all public bodies (including colleges and universities) to reduce institutional racism, NATFHE produced a new document *Handling Race Discrimination Claims; Guidance for NATFHE Branches.*[47] This was the document Mackney referred to when apologising for NATFHE's treatment of Shahrokni.

The key points were that branch officers should: (i) ensure that their institution has effective policies and procedures for dealing with race discrimination claims; (ii) create an environment where both managers and members know the NATFHE branch will take up cases of race discrimination; (iii) have trained NATFHE representatives ready to take up cases; (iv) notify the regional office and appoint a branch member as representative if a member complains of race discrimination; (v) take rapid steps to apply for Legal Advice and Assistance and, if the member wants to apply to an Employment Tribunal, ensure the claim is lodged within the time limits; (vi) try to resolve the matter internally, by informal approaches, use of the questionnaire procedure, and, if necessary, use of the appropriate internal procedures; and (vii) if external procedures have to be used, follow the advice of the regional official at all times. (page 1) *

NATFHE's policy was undoubtedly aimed at dealing with complaints against management on matters relating to racial discrimination in the terms and conditions of employment, pay and promotion; rather than on member v member cases of discrimination and harassment.

* Points (iv) to (vii) could only apply if the complaint is against the employer or a non-NATFHE member because if against a NATFHE member, NATFHE's policy on tenure would swing into action – a condition to which NATFHE's document made no reference. Instead it gave the opposite impression

In the introduction, NATFHE's intention was to re-examine how to "respond to the needs and aspirations of our black members, and in particular the way we deal with claims of racial discrimination." NATFHE explained it was relying on the definition of 'institutional racism' arrived at in the Stephen Lawrence Inquiry, which was defined as:

> The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantages ethnic minority people. *[48]

NATFHE, aware of its obligations under the RRA 2000 to prevent institutional racism, concluded that "not only are universities and colleges likely to contain elements of institutional racism, but so is the union itself." NATFHE was mindful of the fact that, even before the Lawrence Inquiry, it had "become obvious that many...black members are dissatisfied with the treatment that they receive from NATFHE. In particular, many black members claim that…discrimination issues are not taken up vigorously by the union, either at branch or national level. There have been Employment Tribunals taken out against NATFHE, and a number of Rule 8 cases in which black members have complained of racist treatment by other NATFHE members." **

Although unmentioned, this could be seen from the Fernandes issue; the dissatisfaction shown by numerous Black members in 1985; *** the Weaver case, 1985 - 1987; and the Shahrokni case 1994 – 2000. What emerged from NATFHE's admission was that all was not well in the union for Black members and that NATFHE had decided to examine the divergence between its rhetorical pronouncements **** and its actual anti-racist practices. Whereas, NATFHE had little choice other than to revisit its policies as a result of the Shahrokni case and the amendment to the Race Relations Act. Notwithstanding its actual record, NATFHE continued to beat the drum by claiming to have "a proud anti- racist record. But [recognising that] what still remains is to gain the trust of our black members that the union of which they are an integral part will fight for them, and take up their discrimination

* In the Lawrence case, the inaction of the police was more than institutionalised racism. It could reasonably be argued that the prejudice, ignorance, thoughtlessness, and racist stereotyping by the police was more than unwitting and could be attributed to conscious attitudes.
** It would be interesting to know which cases these were and what type of complaint was submitted as it was not possible, constitutionally, to use Rule 8 in racism cases
*** NATFHE Race Conference, Middlesex Polytechnic, December 1985
**** The internet was replete with items showing NATFHE's anti-racism flag-waving activities mainly directed at organised racist and fascist groups

claims." *

NATFHE's policy document claimed that it had

> a programme for achieving that aim at branch level…much of it deal(ing) with the practicalities of taking an individual race discrimination claim [but] it should always be borne in mind that the collective approach is the best defence. If one individual is feeling discriminated against by a line manager, it is possible that other individuals have had the same experience, and a collective grievance can be lodged. If one black member of staff feels their promotion prospects are being blocked, it is possible that other black staff...feel the same. The best approach may be to challenge the institution about its promotion procedures, rather than take an individual case. This also has the advantage that the individual who first complained is not cast in the role of victim. In colleges where there is only one or two black lecturers employed, however, these individuals are almost bound to feel isolated, and a sense that NATFHE will support them if they face discrimination is vital. (page 2) **

NATFHE branches were given the task of ensuring colleges and universities had a separate policy for racial equality, which included

> recruitment; appointments; grading; contract terms (fixed-term and casual); conditions of service; promotion and career development; redundancy; discipline and dismissal; and harassment.

There was the possibility of a "fast track procedure specifically for dealing with claims of race discrimination"; and adequate training for new staff "on how to handle racist remarks and incidents in the work place." (s1 p3) (s2 p3) NATFHE also wanted access to statistics kept by management "in the areas of recruitment and promotion" and to lay "great stress on the importance of monitoring, auditing and setting equality targets" to ensure "management are auditing...the whole range of issues..." The "aim was to create an atmosphere in which any black member will feel confident of bringing their concerns to the union." (s3 p3) Part of this objective is to have NATFHE representatives with "an understanding of race issues, and a knowledge of the law" and if possible to have the "case dealt with by another Black member." (s4 p4)

A detailed procedure was provided for branch officers to follow up complaints of racial discrimination (i) by identifying acts of discrimination; (ii) advising the complainant to

* This was something of a contradiction since if it had a 'proud record' then Black members would not distrust the union, unless NATFHE's well noted arrogant and dismissive attitude towards Black consciousness had previously assessed these Black members as not capable of drawing accurate conclusions on NATFHE's failure to perform. Black members were well aware of whether or not NATFHE had fought for them and taken 'up their discrimination claims.' It was difficult to know who NATFHE officials and officers were trying to convince – Black members or themselves or the wider trade union and labour movement

** A service that was not granted to Fernandes (1982/3), Weaver (1986 -87) or Shahrokni (1994-2000)

develop a chronology of events with supporting documentation; (s3 p5) and (iii) contacting college/university managers for them to rectify the situation. (s7 p5) If the matter is not resolved "the appropriate agreed internal procedure should be invoked." This might involve "the grievance, harassment or race equality procedure, or there may be a case for lodging a collective grievance," but officers must make sure that "the agreed procedures" are followed.* (9 p5) If the complainant wishes to pursue the matter externally the officer should "advise the complainant about NATFHE's Legal Advice and Assistance Scheme." (s4 p4) No complainant should be discouraged from continuing their allegations; nor should their access to the regional office or the legal scheme be blocked; nor should the member be influenced not to exercise their statutory rights. ** (p 8)

For complaints of racist harassment, the response

> should be swift and positive. Avoid giving the impression that you think the member is being too sensitive, has a chip on their shoulder, that you can't believe the person complained of behaved in that way, or that the treatment complained of was only a joke. (s1 p6)

A comprehensive list of do and do not's was provided for officers when interviewing the complainant (s5 p6/7)

Officers were informed that as representatives for NATFHE they would be held liable for an act carried out on NATFHE's behalf and must

> ensure the member is aware of the different options for action, and of any union rules or policies which affect the case,..[and] inform them about support and assistance within the union. This will help raise their morale and ease their stress and anguish. ***

They should also find out "how...they have been affected, have they been to see a doctor or been off sick..." (s5 p6) The member should be told how the legal scheme works and that an application did not guarantee NATFHE support for a legal case. (9 p8)

NATFHE recognised that "many branches will find little difficulty in supporting a

* This was an advance on the Day-Triesman era when NATFHE procedures for dealing with racism appeared to be made up as they went along. This applied to both internal NATFHE procedures and local authority teachers' grievance procedures

** Yet again, this could only apply for complaints against the employer – management, or members of other unions. External procedures might also put a member's tenure at risk and in those circumstances support from NATFHE would not be available to the complainant

*** If this procedure was followed, and the 'policy on tenure' and 'conflict of interest' with their implications were divulged, this would hardly be likely to 'raise morale or 'ease...stress and anguish as the complainant would: (i) know the union would not provide assistance as racist harassment is a dismissible offence; (ii) realise that the accused would get union assistance; and (iii) need to obtain alternative assistance or give up

black member who alleges discrimination on the part of college/university management" but it was more difficult with a complaint against another NATFHE member. It pointed out that the college or university was "vicariously liable for acts of discrimination carried out by its staff, which it has not taken steps to prevent." NATFHE then claimed that:

> if a staff member complains that an individual colleague has discriminated against them, the management should be providing representation to the person bringing the complaint.* However, the complainant may still want a NATFHE representative to provide them with advice, guidance and support. It is only if management fail to deal with their responsibilities that the complainant should need official representation from NATFHE.

NATFHE's guidance was that "In a situation where one member is alleging racial discrimination against another, who denies it, both members are entitled to have a NATFHE representative to offer advice and guidance." In those circumstances, "the same person should not deal with both parties. Both should receive advice from NATFHE representatives of the same standing and experience." (p8) Nor should the branch "decide in advance of any formal outcome who is right and who is wrong, and support one member to the detriment of the other,...[nor] pass a hostile or critical motion about the behaviour of one of the parties. A Tribunal decision indicates that the passing of such a motion could be 'unlawful victimisation.'" (page 8/9) **

This was the nearest NATFHE got to the Shahrokni judgement but without mentioning it. NATFHE representation for complainants at grievance procedures might have been possible prior to the Weaver v NATFHE judgement of 1987, as Linda Milbourne made clear, but Triesman's 'evidence' eliminated that as an option and, for the circumstances cited in the guidelines, it was now *ultra vires* to assist the complainant if the accused denied the accusation against him/her.

Officers were informed that under the legal aid scheme "applications are considered without regard to the fact that the person or persons against whom complaints are made by the member applying for legal assistance are or are not themselves members of the union". (p9) (NATFHE's Legal Advice and Assistance Scheme Regulations 2.6) By stating that all

* The claim that it would be management's responsibility to provide representation for the complainant in the grievance hearing was difficult to sustain. Management might be culpable for the discriminatory behaviour of an employee and it would have a conflict of interests in representing the complainant. The complainant would only be left with a 'friend' or another source for representation without any advice or assistance being available from the union

** This happened to Bis Weaver in April 1986 and then paraded by the perpetrators to the West Midlands REC and to national officials for support. The Shahrokni decision, although being made thirteen years afterwards, showed that NATFHE action in April 1986 was 'unlawful discrimination' and victimisation under the 1976 Race Relations Act

members were eligible to apply even against fellow NATFHE members enabled NATFHE to maintain the myth of being in a position to assist victims of racist harassment. In allowing the complainant to file for legal aid, NATFHE, in the event of having a resilient complainant, would have to introduce the conflict of interest restriction to debar an application and/or dissuade a complainant from pursuing a complaint, and then leave a complainant to fend for him/herself. NATFHE did not explain that its policy on tenure rendered everything else it said about defending victims of alleged racism null and void because from the word go any complaint of racist harassment carried with it a strong risk that the tenure of the accused was at risk and NATFHE would have to act in accordance with that. It would be interesting to know how NATFHE thought it could get around the policy on tenure. * NATFHE was producing a shoal of red herrings.

NATFHE's "object of providing information" to branches was to help them understand and "detect unlawful race discrimination occurring in the workplace or in the branch." It claimed to be "primarily concerned with direct discrimination" but as outlined above its main concern was with management's discriminatory practices and indirect discrimination. However, it shied away from offering guidelines on indirect discrimination as this was considered "a complex area" and if there was any concern about this type of discrimination, the branch "should seek guidance from the Regional Office." (s1 p 9)

An explanation was given of the Race Relations Act and the role of Employment Tribunals in deciding whether unlawful discrimination had taken place. (ss 5 – 8, pp 9/10) Another unidentified reference to Shahrokni was introduced when it stated that

> The importance for the union under these provisions lies in the clear risk that branches fall into the mistake of judging for themselves whether the allegations made by the complainant are true and then acting accordingly by either, for example, giving support to the person against whom the complaint is made, or otherwise discouraging the complainant from continuing with their allegations. ** Such action by the branch can lead to the union itself being adjudged to have victimised the complainant. (s9 p10)

The branches were told that in all cases when a member complains of discrimination by the branch or the employer, "the branch should ensure that the member is given all appropriate support including enlisting the assistance of the Regional Office." *** (s 10 p 10)

* A comment by Mackney in 2007 gives an indication of how NATFHE thought it had resolved the problem, See next section

** This was another feature of the situation Bis Weaver found herself in when tangling with NATFHE and in her case it extended from the branch to liaison, regional and national level. This was also evident in the Shahrokni case

*** This could only be effective if branch officers, regional officers and the regional official were not hand in glove with each other as they were in the Bis Weaver case

In its conclusion, NATFHE noted that "the whole trade union movement is having to come to terms with the fact that race equality is exactly that. NATFHE is not alone in finding dissatisfaction among its black members," and that the decline in union membership is more rapid among black workers than among whites. NATFHE acknowledged that

> It is still the case that many black members see unions as white organisations which are either indifferent or hostile to the concerns of black people...[and]...we risk permanently alienating and eventually losing our black members.

The final sentence stated that "The prize for successfully challenging race discrimination in the institution is a diverse, proud and united NATFHE branch, in which everyone is stronger." (page 11)

NATFHE's Legal Advice and Assistance Scheme Regulations were included as an appendix. This was produced in great detail but did not really apply to complaints of racist or sexist harassment against fellow members. Yet, NATFHE gave the impression that all complaints of race discrimination/harassment, including those against other NATFHE members, would be considered for legal advice and assistance and representation even in grievance procedures. It provided a list of conditions against which applications are assessed. NATFHE, in these guidelines, omitted its contribution in establishing a limited racially discriminatory policy for the trade union movement as a whole, which left victims of racist (and sexist) harassment/discrimination 'isolated and vulnerable' in the workplace. The omission of this significant factor retained part of the NATFHE myth on anti-racism as will be seen in correspondence between NATFHE and the NAAR in February 2007. The NATFHE motto appeared to be 'do nothing outside of rhetoric and all will work out well'. Malvolio was re-born!

NATFHE's offers of aiding the victims of racial harassment in the workplace against those who would be predominantly NATFHE members should have carried the Motto: "Do not be afraid of asking for assistance our way of refusing is very polite." * Or, as in Bis Weaver's case, 'not very polite'.

NATFHE's measures for tackling racism in the workplace were overtaken by a survey conducted by the Commission for Black Staff in Further Education, which slated the sector for not being able to protect staff and students. It reported that "many of the 200 college employees" providing "evidence to the inquiry...report being passed over for promotion in

* In the mass unemployment period of the 1930s, some shopkeepers in working class districts put up signs "Do not be afraid of asking for credit as our way of refusing is very polite"

favour of less-experienced and less-qualified white colleagues." Although only five per cent of college lecturers and managers were Black, they were "more often challenged and asked to prove their identity on college premises than [were] their white colleagues." An African-Caribbean female lecturer, the only one in that college, said

> It is the most isolating working experience I've ever had. There are so many examples I could give concerning racism and marginalisation, but I'm going to stop now so as not to get too upset at the years I have wasted trying to make a difference...[49]

This survey concerned itself primarily with institutionalised racism in colleges of further education – the sector of educational provision dominated by NATFHE, which shows that NATFHE, despite all its claims of 'a proud history in anti-racism' and its glossy packs, knew very little about what had been going on in the workplace, as was said of Triesman in the Deman case.

It was at this time (2001) that Triesman moved on from the trade union arena. Prior to his new appointment and while he was still general secretary of the AUT, the Labour Party became the butt of highly disparaging remarks from Triesman. At the TUC conference in September 2000, he likened Blair's New Labour to Orwell's Big Brother Thought Police suppressing free thinking in academia. He accused the government "of attacking essential safeguards of academic freedom and of 'censoring' pioneering thinking..." The New Labour government was grouped with Iran and Iraq for its failure "to endorse elements of the 1997 Unesco convention on higher education." Australia was included alongside Iran and Iraq, and he suggested that the Labour Government "should step back from this ill-assorted alliance..."[50] Five months later, Triesman took another shot at the Labour government when he spoke at a Kent AUT organised conference, *ASYLUM NOT EXPULSION: why we welcome asylum seekers*, on 13th February 2001. He "accused politicians and the media of 'playing the race card'", explaining that "their use of language is intended to stir up xenophobia and racism. The callow, bellowing, inflammatory rhetoric' was reminiscent of Enoch Powell's notorious 'river of blood' speech…The Government deliberately misrepresents asylum seekers as 'economic migrants' because the Government 'has made a calculation, driven by Treasury calculations, to deal with the flow of asylum seekers in the UK, only to find that the flow is greater than expected. Crude calculations give rise to crude expediencies.'"[51]

Accusing others of 'playing the race card' was a device that Triesman knew only too well because NATFHE officials had falsely accused Bis Weaver of doing that in its Industrial Tribunal submission of 1986, which was a perfect example of NATFHE' 'crude calculations

[that] give rise to crude expediencies.' * Four months after this attack Triesman became general secretary of New Labour.

When Triesman became general secretary, a *New Statesman* reporter, ** quoted ex-NATFHE colleagues as saying Triesman seemed "to move to the right at breakneck speed...[and that] When he went to run the AUT...he seemed to be siding with all its enemies." *** A further comment was that Triesman "takes his colour from what's around him, and always has done. Today, what is around him is new Labour, and he has learnt to speak its language fluently…As long as Triesman can contain his sense of the ridiculous, and continue to take new Labour seriously as a progressive party, he will serve it well and faithfully, as he served NATFHE and the AUT." He was also seen as being able to "adapt to a prevailing political climate, which to his friends makes him skilful, but to his enemies (and he has some unexpectedly bitter foes) makes him untrustworthy." ****[52]

* In October 2009, Triesman, as chair of the Football Association, at a *Leaders of Football* summit, contravened FIFA rules. He criticised other bidders seeking to host the World Cup when referring to Spain and Portugal, joint bidders, as having to face "a series of racism controversies in recent years."[53] It was said that Triesman "broke protocol by playing the racism card" against Spain,[54] which showed that it was not unknown for him to play the 'race card' when it suited his purposes

** Francis Becket, who interviewed Triesman, described him as a strange, clever, chameleon-like man,…" who gave the impression of "feeling defensive... - he has been made to sound rich, greedy and untrustworthy, [and] suspects that old trade union enemies have taken the opportunity to peddle nasty stories about him." Beckett recognised in Triesman a "genuine administrative ability, [and]...Beneath the smooth, sometimes almost ingratiating exterior,...there is a tough, efficient manager, ruthless with staff he doesn't trust, good at picking people he can work with."[55]

*** Paul Foot, in an article entitled *Worse Than Thatcher*, described Triesman in his days at Essex University in the late-1960s as "a wild man of the Very Far Left", and subsequently observed him "on the usual dreary road from left to right."[56]

**** This adaptability was later described by Triesman as *situationism* which he explained to students at his old university at Essex as "the ethical view that morality is determined by surrounding circumstances rather than personal qualities."[57] The dictionary describes it as a psychological term; it is "the theory that behaviour is chiefly the response to immediate situations." This seemed to be an alternative word to describe 'opportunism'. The adoption of this position was shown earlier during the *Weaver v NATFHE* industrial tribunal hearing when Triesman, or an associate, thought up the 'policy on tenure' after NATFHE's defence of no merit in Bis Weaver's complaint of racial harassment was shown to be in error and an alternative explanation had to be conjured up to stave off a finding of direct racial discrimination against NATFHE.

Triesman was certainly adaptable with a tendency towards *situationism.* In September 1995 when addressing the TUC, Triesman referred to a recent case involving higher education and the courts.[58] He spoke of employers, who, when beaten in the courts "respond by inserting new waiver clauses into contracts to avoid the rights achieved." He wanted it to "be illegal for employers both to avoid rights upheld by the courts or to invite employees to sign away their legal rights." Triesman called for TUC support and rather cynically added "No doubt vocal support will be given."[59] Triesman was fully aware of encouraging members of trade unions to sign away their rights and any support tended to be vocal rather than practical – this was NATFHE's formulae for dealing with racial harassment. Had Triesman forgotten his attempt to get Bis Weaver to sign away her rights to the union's procedures, such as they were, in January 1986 and, when she refused, declined to offer her any further assistance and cut off any assistance to her from any union committee

Triesman has been described as "An educator, a trade unionist and a passionate advocate of the notion of tolerance and inclusion", who opposed allowing the Holocaust denier, "Mr Irving a platform" at the Oxford Union. Triesman threatened to "call for an academic boycott of the union both in this country…and [by] other trades unions throughout the world." Triesman thought that allowing Irvine to speak may inflame racial tension.[60]

Triesman remained as general secretary of the Labour Party * until he was elevated to the House of Lords, as Baron Triesman of Tottenham in the New Year's Honours List in January 2004, where he acted as Parliamentary under-Secretary in the Foreign and Commonwealth Office**.** **

(f) Sleepwalking Without Thinking into History ***

NATFHE produced a seven page document *Response from NATFHE to the recommendations of The Commission for Black Staff in FE to trade unions*, identifying what NATFHE had done since the Commission's interim report was published in 2001 and what were its future intentions. NATFHE provided a highly detailed account dealing with the establishment of committees, training schemes, conferences, monitoring schemes, new complaints procedures, its opposition to all forms of harassment, prejudice and unfair discrimination, negotiation of practices with employers, publication of documents, and the encouragement of Black members' networks. NATFHE's intention was to enforce its 2001 rule "to censure, and ultimately expel members who are guilty of discriminating behaviour."

In the section to 'Provide clear and decisive leadership, by modelling best practice as

* One reason put forward for Triesman vacating the post of general secretary was a breakdown in his relationship with party chair Ian McCartney.[61] An interesting connection because Triesman's letter to McCartney in 1988 provided the opportunity for Bis Weaver and I to broadcast the reality of the Weaver v NATFHE judgement and expose NATFHE's misrepresentations to a wider audience

** "Lord Triesman was accused of misleading peers [in] the House of Lords [by telling them] that no...meeting between the UN and UK civil servants [since the 1st November] had taken place over extraordinary rendition" - the secret CIA torture flights using British airports. The Foreign Office admitted "that the answer was incorrect and that one of its civil servants had been at a Home Office meeting with Dr Scheinin, [the UN Human Rights Commission's special rapporteur],...where rendition was discussed." Lord Oakeshott wrote to the Foreign Secretary, Jack Straw, accusing the Government of presiding over a "culture of concealment and cover-up." He wrote: "The FCO did not properly check or did not want to check the facts before giving me that reply."[62]

*** Commenting on a heated row between the Labour Party and the unions, Triesman said, "Maybe we were sleepwalking towards much more fundamental breaches without thinking what the road ahead really looked like"[63]

employers', NATFHE's document applauded its own leadership by saying:

> The general secretary served on the TUC Stephen Lawrence Task Force, which produced the major new TUC documents on combating racism. He participated in the CRE Education Working Party which drew up the Codes of Practice to implement the RRA. He was a signatory to the Leadership Challenge. Immediately after publication of the Macpherson Report, he wrote to the FEFC, UNISON, and the AoC about taking a joint approach, thus initiating the Commission for Black Staff in FE. He has spoken on issues of race equality on many public platforms, and raised the issues with government ministers...[and] is now a member of the TUC Race Relations Committee.

NATFHE sent copies of the document to every FE branch, advertised it widely in publications, and put it on [its] web site."[64]

Paul Mackney, who had sat on the commission, told the press that "Further education colleges have already achieved much to be proud of in setting an agenda based on inclusivity and respect for diversity. But there is more that needs to be done to transcend the wasted opportunity costs of racism and discrimination."[65]

NATFHE, or more appropriately, Paul Mackney, was about to make history when, in September 2002, he became the first NATFHE General Secretary ever to be elected to the TUC General Council.[66] Prior to this event, and subsequent to it, the sound of NATFHE's anti-racism proclamations began to pierce the sound barrier.

The focus on racist and fascist organisations was evident at NATFHE's annual conference, in May 2003, when the assembly agreed to back, after a fierce debate, any lecturer who refused to teach an 'active fascist.' Mackney argued "passionately that staff are justified in taking a stand and universities ought to protect them from the threatening presence of BNP members in their classes, particularly in the case of ethnic minority staff." He said "Just as we expect members to enjoy a safe and healthy working environment we expect them to be able to work free from racism and discrimination." He spoke of the "major obligation on employers, reinforced by the Race Relations Amendment Act,...to make it clear that racist behaviour will be dealt with severely"; to take steps to prevent "political activity from organisations which proclaim...that Britain should be white only;" and "not to permit fascist activity on campus." The issue was not simply "one of free speech - it goes beyond free speech to threats and violence" and "Sometimes you have to stand up to things and be extreme in order to prevent extremism." Mackney insisted, however, that "the union is not seeking to ban people because of their views." His solution was for them to "renounce their activity in the BNP while they are at university." Mr Mackney then made "a distinction between

organised members of the BNP... and students who expressed racist views." *

Mackney turned to "The whole 'war against terrorism'.., [which was] ratcheting up Islamophobia and asylum hysteria" and he criticised the Home Secretary for believing he "has the right to tell people whom they can marry, what language they should speak in their own home (though he hasn't got on to prescribing diet yet)." He saw this as playing

> into the hands of the BNP, which says openly that it wants a 'white Britain'....Well we don't. And neither do the vast majority of British people **....Black people were central to the post-war reconstruction of Britain. Black people are not going anywhere they don't want to. And we will not let fascists drive them out. Nor will we tolerate fascist activity in any college or university or in our union.

His conclusion was that

> If any of our members finds themselves in a situation where they feel threatened because they have fascist members organising in the classroom we would support their right not to teach that person.[67]

Three weeks later, Mackney was again in national print criticising the THES for giving space to a one-time member of the National Front directorate of the 1980s, which he described as "either crassly naive or grossly irresponsible." He also drew attention to NATFHE's, and his own, commitment to opposing fascism. He referred to a NATFHE decision to

> support any member who refuses to work with, or teach, organised fascists in the same way that we insist that a building is safe from hazards. The issue...is not about polite debates or even academic freedom, it is about the right of people to work and study free from fear.

He said that

> Many lecturers, but particularly those of African, Afro-Caribbean, Asian, Chinese and Jewish origin, find it intimidating to teach people who are in far-right groups organising for an all-white Britain.

* The Broad Left Coalition in the West Midlands, of which Mackney was a member, had made 'a distinction between organised members of the BNP' on the one hand, and NATFHE members (not college students) on the other. These union members were not members of organised racist groups and may not have expressed explicitly racist views but had acted directly against the interests of Black and ethnic minority members. These offending union members had been able to rely on the protection of Broad Left Coalition officers and/or national and regional officials

** This was different to the position he adopted in June 1987, when critically commenting on a statement Bis Weaver and I made about Leftist activists seeking popularity from the political Left. He misinterpreted our comment, presenting it as if we were referring to the population as a whole and not to Leftist activists in trade unions, whom we thought would be more responsive to anti-racism rhetoric than the wider British population. He stated that publicity on anti-racism did not bring popularity to people like himself, that is, anti-racism was not a popular issue and by that comment he must have been referring to the general public. It suited his argument to adopt that stance then. Six years after making that comment there must have been a major transformation among the British populace, judging by Mackney's assessment in 2003, with opposition to racism being the position now held by 'the vast majority of British people' or was this just another example of Mackney's rhetoric being cut to suit the cloth. A form of *situationism*!

He called on the THES

> to acknowledge that some lecturers feel threatened by the presence of activists from far-right organisations and that a few have had their names and contact information posted on race hate websites.

The readers of the THES were then acquainted with a *resumé* of his own experience with the National Front of being threatened with violence and arson because of his stand on the Birmingham Six. * During this presentation of his own anti-fascist commitment he recognised that he was a relatively powerful white person with good connections with all the people in authority." However, he

> was frightened not least because...[a] socialist bookshop next to where [he] worked was torched with a blazing car, killing a kidnapped female motorist locked in the boot. The person responsible was caught in the classroom where [Mackney] taught trade union education courses." **[68]

NATFHE also supported the recently established 'Unite Against Fascism' organisation and put forward proposals for fighting the BNP in a socialist newspaper. He placed the rise of fascism in the context of "the insidious drip-drip of the dehumanising of asylum seekers and migrants by government ministers and a mass media whose headlines talk daily of 'swamping', 'cheats', 'bogus', 'illegal' and 'floods.'" For Mackney, "a key lesson of the twentieth century is that it is dangerous to play with fascism or give succour to its ideologies." Mackney

> argued that we should not see the BNP as just another right-wing party. Fascism is not about free speech or academic freedom, but about personalised violence against black people, trade union activists and Jews.

He repeated his view that "People have a right to work and study free from fear." ***[69]

* When I read this I was put in mind of a letter sent to me by Triesman when he wrote of the NF attacking his house and putting an axe into his front door [70]

** This part of the presentation covered about a third of the article. The shop specialised in SWP material in Digbeth, Birmingham

*** Mackney should have reflected on the plight of a Black woman lecturer, whose case he was very familiar with and who fitted into one of the categories in need of protection. She, too, had wanted 'the right to work...free from intimidation' but her adversaries were not students or BNP members. They were NATFHE members, one of whom was a colleague of Mackney in the Broad Left Coalition; and, during those days of widespread intimidation, Mackney was not seen to use his 'good connections with all the people in authority', at least not in a way that would bring any benefit to Bis Weaver. He was in a position to assist her when she was subject to intimidatory monitoring and 'snooping' carried out on behalf of the leadership of the Birmingham Labour Party – the party of which Mackney was a member. Even when asked specifically to do something he always found a reason for not doing so or did not bother to reply.[71] As a governor of Bournville college, he was also in a position to do something positive to halt the harassment but he failed to live up to that expectation

NATFHE continued the myth-making when celebrating the centenary of its predecessor organisation's origins. This occasion was greeted with a number of contributions, including a Mackney proclamation-like assertion that

> We [NATFHE] have championed equal rights and prioritised opposition to all forms of institutionalised discrimination, oppression and harassment. We have worked with social movements for justice in an increasingly individualistic and cynical world. Above all they have ensured that, in the pursuit of justice, NATFHE members never give up![72]

Mackney also kept in tune with NATFHE's pledges, albeit unattained, to the discriminated against in a sterling speech at the Race Equality Conference (March 2005). * He spoke of NATFHE's attempt **"**to be in the forefront of equality changes in unions" and conference needed to tell NATFHE "how we will be in the forefront in the next 20 years, possibly in a new union." Conference was informed that NATFHE and the AUT had

> agreed to include the TUC approved aims and objects clauses and tried to develop structures which 'will be representative of women members, black members, LGBT members and disabled members.' These include equality networks, annual equality conferences of Black members, a national Black members Committee, an NEC equality committee and reserved equality seats on NEC including 2 seats for Black members.

Mackney went on to list the items (twenty three in all) that were objectives for the new union soon to be formed by the merger of NATFHE with the AUT. ** The items listed were predominantly prefixed with the words 'I want' with an occasional 'I think' or 'we need'.

The list consisted of: a commitment from the top that the union will be seen as a champion for race equality; actively seeking and listening to the views at ground level; to become better at handing race discrimination cases; to develop "a curriculum which looks at the history and interests of everyone and this means Black studies"; the right of communities to act in self-defence; to ask the Home Secretary to block race hate websites; "recognise that we still live with the legacy of the old racism; that slavery leaves its mark on many generations (both white and black)"; to speak against the government's immigration and asylum policies, described as their hysterical security measures which they want us to police; to "challenge the new racism, which focuses on Muslim people, which we call Islamophobia"; to "acknowledge that international tensions and the rise of fascism has led to a massive increase in anti-semitism [and]...ensure that this generation learns about the holocaust and genocide;" "to remain implacably opposed to all manifestations of fascism…

* Mackney, whose favourite book was apparently C L R James' *Black Jacobins*,[73] was at his best when making strong speeches denouncing racism in front of audiences of people professing to be, or who were anti-racists

** These were two unions whose record on anti-racism left a lot to be desired

not only in this country but also in fortress Europe." There would also be an active Black members' network as part of an Equality Unit so that Black members, and those who become managers, felt part of the union.

Mackney, following a line similar to the one adopted by one-time President of NATFHE, Nan Whitbread [74] said that "as the intelligentsia of the Labour movement we need to provide space for rigorous intellectual analysis on these questions." He wanted

> much more focus on outcomes than on processes, on campaigning and negotiating for results rather than forever contemplating our own navel and debating refinements of policy, [because] we have policy coming out of our ears, [and] we need implementation.

In conclusion, he said that "we may not get all of that but we will be battling for it." He then invoked the name of, and a saying from, "the Black Freedom Fighter, Frederick Douglas [who] said:

> Without struggle there is no progress. Those who profess to favour progress, yet deprecate agitation want crops without digging up the ground. They want the ocean without the awful roar of its waters."

Mackney added that "reference to the roar of the ocean's waters reminds [him]...of a meeting with vice-chancellors where raising some of these issues seemed like pitching a boulder into the village pond." *[75]

Mackney's speech was statesmanlike and all encompassing, and the audience could be forgiven if they thought it was the post of UN secretary-general that was up for grabs.

The merger with the AUT was now on the agenda but shortly before the unions merged, NATFHE created a storm at its annual conference that hit the press world-wide. A motion proposed by the NATFHE *Left* criticised "Israeli apartheid policies, including construction of the exclusion wall, and discriminatory educational practices" and invited members to "consider the appropriateness of a boycott of those that do not publicly dissociate themselves from such policies". Several "speakers outlined the...difficulties experienced by Palestinian students and lecturers living under occupation," and the proposers claimed that "the majority of Israeli academics are either complicit or acquiescent in their government's policies in the occupied territories."

NATFHE delegates, despite the mounting international pressure from those opposed

* Bis Weaver knew exactly how that felt from her dealings with NATFHE officers and officials. These were people professing to 'favour progress' but 'deprecate agitation' and 'want crops without digging the ground' when it became inconvenient or against their interests to act, such as, in September 1985 when a reason given for not assisting her was because it might 'split the left'

to the policy, “voted in favour of a boycott of Israeli lecturers and academic institutions who do not publicly dissociate themselves from Israel's "apartheid policies."

Many academics,[76] correspondents, and journalists condemned the motion as McCarthyite. One critic in a Leftist newspaper, said it was the

> imposition of a loyalty test which is so reminiscent of McCarthyism. For those against whom it was aimed, It is being forced into making an open and public political statement not out of principle but out of blackmail.[77]

Another critic from the Democratic Left described it

> as requiring...a *political declaration* as a precondition of their being extended the usual courtesies and advantages of scholarly cooperation. What a disgrace to the profession the NATFHE decision is.[78]

Mackney came under a lot of pressure, including hate mail, and spoke against the motion. He said,

> Most of us are very angry about the occupation of Palestine. But this isn't the motion and it isn't the way. Any motion to boycott requires the highest level of legitimacy. As far as I can see no more than a couple of branches have discussed this motion. You cannot build a boycott on conference rhetoric.[79]

He added that

> in order to adopt an academic boycott, a much more comprehensive debate on the issue must be carried out. We need to develop a coherent and sustainable policy [and] a reasoned debate was made extraordinarily difficult by an aggressive campaign involving tens of thousands of activists.

His outspoken opposition surprised delegates because general secretaries “are not supposed to express their personal opinion, but are expected to support and work in accordance with any resolution passed by the union” and he was “accused of ‘trying to undermine the resolution.”[80]

Mackney seemed to be taking up a Janus-like position on the motion as he was quoted when addressing a different audience that

> Actually it is not possible to be 'even handed' in the face of such injustice. The Palestinian people and Palestinian civil society including the universities need support and solidarity as never before and I will not be bullied into silence. None of this is a denial of Israel's right to exist, nor is it a rejection of a two state solution. But in such a situation we have to stand with the oppressed and I trust we will continue to do so in UCU. A coherent and sustainable policy in UCU [is needed] to develop as quickly as possible a coherent policy of concrete assistance to Palestine universities and civil society...which...involve members in the branches, not empty gestures. [81]

In the wake of the conference decision, Mackney said that

> The ironic thing, is if we had put this to delegates a couple of weeks ago, before the international pro-Israeli lobby started this massive campaign e-mailing delegates and

> trying to deny us our democratic right to discuss whatever we like, it probably wouldn't have passed. * People feel bullied, and what we have seen is a hardening of attitudes. All they achieved was making the delegates determined to debate and pass the motion. **[82]

NATFHE did have a pre-disposition to air its laundry in public.

The merger between the AUT and NATFHE had been seen by NATFHE senior sources as the AUT staging "a power grab" in what looked more like a takeover than a merger.[83] The marriage between the two unions, creating the University and College Union (UCU), was not harmonious and the principal parties signing the license soon came to blows. The conflict was over who was to hold pole position in the new union. Sally Hunt and Paul Mackney were leading contenders but due to ill-health Mackney was forced out and another candidate, Mackney's ex-NATFHE colleague, Kline, was put forward by Mackney, as having "the kind of breadth of experience and approach" needed. Mackney, a firm advocate of a united lecturer's union, seemed to be having second thoughts as he described the NATFHE-AUT merger as "like trying to reverse evolution with a merger of birds and reptiles".

In July, Mackney became responsible for equality issues, which prompted "a furious Ms Hunt [to write] to 32,000 female members saying that 'male colleagues...sometimes do not fully understand what issues are actually most important to women. Too often they make assumptions that they know best.'" Mackney "hit back, claiming that Ms Hunt was 'playing politics' as the decision to make him head of equality was taken by a committee of male and female elected members."[84] He did not say whether any ethnic minority members were on the committee selecting him to deal with equality issues or whether he thought it appropriate for him to speak on behalf of disadvantaged members when there were many members available with direct experience and expertise of the issues to be taken forward.

Three months later, an "internal UCU policy paper written by Ms Hunt, which was

* Apparently, "The vast majority of the tens of thousands of emails originated not with groups fighting for academic freedom, but with lobby groups and think tanks that regularly work to de-legitimise criticisms of Israel"[85]

** In 2002, NATFHE had proposed a similar motion calling on all UK universities and further education colleges to sever their academic links with Israel," which was a "move towards the sort of boycott operated by British academics against South Africa," during the apartheid era. This was an emergency resolution, passed unanimously by the union's national executive, expressing dismay at the "illegal and barbaric" incursion of the Israeli Defence Force into areas under the jurisdiction of the Palestinian Authority," and resolved "that all UK institutions of higher and further education be urged immediately to review...severing any academic links...with Israel."[86] NATFHE "abandoned it a year later because it became a distraction from raising the main issue and *no branch acted upon it*."[87]
The motion was described by a critic as "'gesture' politics...and it will undoubtedly provide material for scholarly articles but...it will have no effect - none at all - upon Israeli policy in the Disputed Territories.[88] The latest policy had "an official shelf life of less than three days," as on that day NATFHE and the AUT merged, and the motion "will only be advisory to the new union"[89]

highly critical of NATFHE's handling of the aftermath of its 2005 dispute over contracts at London Metropolitan University,...led by NATFHE's Mr Kline and Mr Mackney," was leaked to the THES and an article under the heading *Honeymoon is over for UCU* was published. The UCU policy paper prompted Paul Mackney to launch "a scathing public attack on his senior colleague, Sally Hunt; [and] the ex-NATFHE camp" described "the report [as] a crude exercise in political point-scoring." Mackney added that it "is unfortunate" the UCU paper "was written without consulting [him], [or] the union's senior solicitor or any of the national officials involved." Mackney described it as "the biggest bundle of dirty washing likely to be exposed in the public arena. * If we are really going to do our dirty washing in public, let us look at the biggest bundle - the national higher education pay dispute.'" But he "declined to be drawn on exactly what he meant by this comment…"[90]

(g) Out of the Ashes: The Phoenix Arises

Towards the end of Mackney's stint with the UCU, the Weaver v NATFHE case reappeared when the Industrial Tribunal and Employment Appeal Tribunal reports and documents submitted to those Tribunals by the applicant and respondent were placed on the internet. ** The purpose behind the publication of the documents was to preserve the case for all those interested in the development of anti-racism legislation and to expose the difference between anti-racist rhetoric and practice by using an actual case – one that was comprehensively recorded, *** albeit the information on the website was only about events leading up to June 1986. ****

In February 2007, a correspondent, familiar with the Weaver v NATFHE case, sent a letter to anti-racist organisations drawing attention to the case and the extant precedent it set. One recipient organisation, the National Assembly Against Racism (NAAR), contacted Paul Mackney, still at the UCU, asking for details. [91]

* He had obviously forgotten about Fernandes, Bis Weaver and Shahrokni in NATFHE
** Available at *www.theplebeian.net*
*** At that time it was not sure whether the full story would be released for public view
**** The issues following that date were not covered by the Tribunal cases, as were a number of other issues prior to that date, which were not relevant to the case against NATFHE's discriminatory policy. As can be seen now as they are now available as reference sources for this exposition of what actually occurred in Bournville College and NATFHE

Mackney responded to say that:

> This is a very old case and I doubt if it sets any precedent these days whatever Harvey * says. The Weaver/Gates case is horrendously complex ** - there used to be a whole drawer on it in the Birmingham office. There were almost daily items or letters in the press.
> I was against that 'line of defence' (against indirect discrimination) used by the union at the time (as were many officials employed at the time)...but I wasn't employed by the union then and had no lay authority at the time. I'm not sure if anyone involved still works for UCU/NATFHE (the national official was David Triesman) and we are quite clear now that this prioritisation of the rights of the (alleged) harasser is not acceptable. ***
> These cases are not simple but: someone can lose their job because they are accused of harassment; equally someone can be harassed out of a job. This informs our perspective and our current legal scheme would not treat as paramount an obligation to protect tenure.[92]

There is no evidence of Mackney, nor any official, making any expression of opposition to the policy at the time, unless discussion of this 'racially discriminatory policy' was considered 'confidential' and discussed in 'smoke-filled rooms.' Surely, as an anti-racist, he should have made his views known at meetings or in the press as he was noted for not staying quiet on other issues, e.g. exposing confidential racism as he claimed to be doing when criticising publicly a Manpower Services Commission Inquiry, prior to its official publication. ****[93]

He was also right about people losing their jobs because of harassment but that didn't seem to bother him or his NATFHE colleagues and comrades during the Weaver case. As a leading NATFHE officer cognisant with its rules and policy, Mackney could be expected to have known that the policy on tenure put forward at the Industrial Tribunal was contrived for that hearing yet he remained quiet on that, unlike Linda Milbourne.

Paul Mackney sent a copy of his reply to NAAR to the correspondent, who sent the information to the NAAR. The informant assessed Paul Mackney's comments and then

* Harvey's Employment Law – a directory of all relevant cases

** The case that the correspondent had written about to the anti-racist organisations was not the Weaver/Gates grievance citing harassment but the Industrial Tribunal case of racial discrimination - Bis Weaver (and the CRE) versus NATFHE under the Race Relations Act. Furthermore, did Mackney need 'lay authority' to speak out on highly significant issues; and did he need to be employed by the union to speak out? These 'restrictive' conditions had not prevented him from speaking out on other issues

*** An interesting choice of words in choosing the "prioritisation of the rights of the (alleged) harasser" rather than the victimisation of complainants of racist, sexist or other forms of discrimination

**** Paul Mackney placed his papers in Birmingham Reference Library (Library of Birmingham), including papers dealing with racism and racial discrimination. I failed to find a single paper in the archives referring to the Weaver case; none of the letters that passed between Mackney, Bis Weaver or I; nor any of the correspondence sent by Bis Weaver or I to the REC, which were copied to Mackney.[94] Perhaps this 'serious' case brought to Day's attention by Mackney in 1985 after Phil Murphy's intervention and later involving the CRE did not qualify as racial discrimination!

communicated his appraisal to NAAR:

> I have now had a chance to look at the tribunal reports in the light of Mr Mackney's comments. It seems clear that any attempt by NATFHE to deal with the Tribunal decisions within its own structure would not enable it to bypass the legal obligation to protect the tenure of alleged harassers.
> The IT and EAT decisions applied not only to NATFHE but also to all trades unions and as such would require more than action by NATFHE. But even then, any measures taken by the whole of the trade union movement would not be able to overturn a judicial decision. I noticed on page 355 of the website (press cutting page) that the case went before an appellate judge in a preliminary hearing of the
> Court of Appeal and the learned Lord Justice upheld the EAT's decision. The only way, it appears, that the judgement of the EAT could now be overturned would be the result of a judgement from a higher court and until this happens the Weaver v NATFHE case continues to act as a precedent. It is also highly unlikely for Harvey's Employment's Law, the most authoritative source of employment law, to include the Weaver v NATFHE case as a referenced source if it was now not applicable as a precedent.
> As the law stands, if this assessment is correct, should a complainant member be offered advice and assistance by a trade union, the accused member could refer to the Weaver v NATFHE case and expect the union to protect his/her tenure. The complainant would be left to pursue the complaint on his/her own as was mentioned by NATFHE's official and agreed to by the Chair of the industrial tribunal. (page 20 of the IT report section (iv))
> In anti-discrimination law this is an illuminating case.
> It is also seems quite clear to my colleagues and myself, from the documentary evidence, that NATFHE officials did not want to investigate the applicant's complaint of racial harassment. The regional official completely ignored it; the national official was very keen to avoid investigating the accused member's motives for the harassment; and those officials contributing to NATFHE's IT submission denied that the applicant had ever made a complaint of racial harassment prior to the regional official's investigation, which the facts showed their claims to be in error. A complicated case? Perhaps![95]

By this time NATFHE had ceased to exist as an independent union; the Weaver v NATFHE case had outlived it.

As for NATFHE's previous negotiating secretary, now Lord Triesman, he was appointed Chair of the Football Association in 2008 and within months of his appointment, the Press recognised his determination "to have his stamp on just about everything that comes out of the FA and that, while admirable in a way, is a dangerous strategy."[96] He was given the epithet of the "FA axeman...ready to declare war on the Premier League after ruthlessly ousting Chief Executive Brian Barwick," a decision that was recognised as "not hav[ing] been taken by Triesman alone, but he carefully manipulated a situation that the Chief Executive found so intolerable he offered to go quietly." One commentator described the axing of Barwick as: "The blade protruding from beneath his shoulder blades was delivered, not randomly, but with the practised precision of a professional assassin..."[97] It was thought that "The plotting had only just begun and the implications might be far reaching. But Triesman is strong enough to weather the initial storm and come through intact."[98] Others

saw “this ruthlessness in danger of spiralling out of control as it emerged [that] his own board had to take collective action to curb his dictatorial rule...”[99]

During his sojourn at the FA, Triesman was confronted with the same spectre from the past that he might have thought had disappeared for ever. After the Weaver v NATFHE case surfaced on the internet it was picked up by a Guardian reporter, who wrote of Triesman’s role in the Weaver case:

> Lord Triesman's anointment yesterday as independent chairman of the Football Association was a first step towards smoothing the warring boardroom factions of the amateur and national games. A look at Triesman's history as a trade unionist suggests the FA now has a man at the top with genuine experience of negotiating delicate political matters.
>
> Twenty years ago, when deputy general secretary of the university lecturers' union NATFHE, Triesman was caught up in a race row involving two members. He insisted he could offer no union support to the complainant because by definition a trades union had to protect its members' jobs. "If we were to represent you it would have the effect of joining you in seeking the dismissal of [the defendant] from employment," he told her in a letter.
>
> The dispute led to a racial-discrimination claim against NATFHE. The industrial tribunal found Triesman to be "completely free of any racial bias" but he was placed in the position of defending what was interpreted by the complainant's barrister, Ramby de Mello, as the union's racist policy. De Mello stated in his arguments that "the exclusion of support for racial discrimination cases affects detrimentally people in [ethnic-minority groups] far more detrimentally than it affects other members of staff". The tribunal agreed but dismissed the claim in favour of Triesman's jobs-protection argument.
>
> His clarity of thought in an emotive environment will be useful at the FA. [100]

Triesman’s eventual demise at the FA, in 2010, came at the hands of a friend. The friend wore a wire-tap when she met him and she bugged his conversation. He commented to her that the Russian FA and the Spanish FA intended to bribe referees and his friend sold the conversation to the Mail on Sunday.[101] Triesman said that he had been badly betrayed[102] and the comments made to his friend were never intended to be taken seriously [103] but he had “gossiped himself out of his jobs.”[104] This might explain why Triesman, in his letters to Clare Short and Ian MacCartney, was prepared to believe the drivel about Gates being Bis Weaver’s and my friend. [105] In Triesman’s world, a friend was someone capable of causing damage - betrayal as Triesman described it in his situation, which led to the loss of his job. Could it be that Triesman had previously used this misguided assessment of what constitutes friendship as a model for accepting that a so-called friend of Bis Weaver could harass her and conspire to remove her from her job, as would have been her fate had she stood idly by while it happened? Triesman’s world-view of friendship as well as anti-racism was absurd. The sea had definitely been reached.

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[4] THES 16 May 1997
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[7] THE 5 Sep 1997
[8] THE 12 Dec 1997
[9] THE 24 Oct 1997
[10] THE 12 Dec 1997
[11] TES 9 Jan 1998
[12] University of Bristol, PSI**,** 18 Jun 1999
[13] Press Release 18 Jun 1999
[14] Joint Agreement on Guidance: Race Equality Sept 1999
[15] The Lecturer, Feb 2000
[16] Shahrokni F v NATFHE and J Akker, 10 Dec 1997 Case number 11880/96 and 44988/96
[17] NJ Summer 1988
[18] King v Great Britain-China Centre [1992] ICR 516 at 528-9
[19] Shahrokni F v NATFHE and Rule 8 Panel members, North London, 30 Jul to 4 Aug 1997, report 11 Dec 1997, Case No 2200521/97 (p4 – s4 – pt (k)
[20] Deman v AUT [2003] ECWA Civ 239, ss 5 & 20
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[22] Shahrokni F v NATFHE, 22 Apr 1999, EAT/486/99 p 3
[23] NATFHE v Shahrokni F, 7 Oct 1999, EAT/232/98 and EAT/989/98, s 10
[24] Ibid, s 14
[25] NATFHE v Shahrokni F, 10 Mar 1998, EAT 232/98
[26] Industrial Tribunal Report [1988] ICR Part 7, July 1988 EAT 599
[27] Shahrokni F v NATFHE and Rule 8 Panel members, North London, 30 Jul to 4 Aug 1997, report 11 Dec 1997 case no 2200521/97
[28] Rule 8 procedures 1986 File B 26
[29] PMc to DE 8 Apr 1986 BW IT Bundle 55
[30] PMc The Lecturer, Feb 2000
[31] Ibid
[32] THE 28 May 1999
[33] THES 21 May 1999
[34] Deman v AUT [2003] ECWA Civ 239
[35] Deman v AUT [2002] 22 Apr 2002 EAT/746/99
[36] Ibid
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[40] THES 11 Jun 1999
[41] Deman v AUT [2002] 22 Apr 2002 EAT/746/99,
[42] King v Great Britain-China Centre [1992] ICR 516 at 528-9; EAT in Qureshi v Victoria University of Manchester now reported at [2001] ICR 863 at 873-876; Anya v University of Oxford and another [2001] ICR 847 at 852- 855; Chapman v Simon [1994] IRLR 124**,** 129 paragraph 43; Nagarajan v London Regional Transport [1999] IRLR 572
[43] Nagarajan v London Regional Transport [1999] IRLR 572
[44] BEM, Post and E & S, 9 Jan 1989
[45] GW to LB 24 Feb & 22 Mar 1989 and LB to GW 15 Feb, 9 Mar & 4 Apr 1989 File V 58 - 64
[46] Deman v AUT [2003] ECWA Civ 239
[47] NATFHE, 1 Jul 2001
[48] The Stephen Lawrence Inquiry (Cm 4262-1) Feb 1999. Para 6.34
[49] Interim Report of Commission for Black Staff in Further Education, October, 2001, in Guardian, 9 Oct 2001
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