

**DECISION OF THE ASSISTANT CERTIFICATION OFFICER ON AN
APPLICATION MADE UNDER SECTION 31(1) OF THE TRADE UNION
AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

Ms D CORRIGAN

v

GMB (No. 4)

Date of Decision:

15 October 2007

DECISION

Upon application by the Claimant under section 31(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

Pursuant to section 256ZA(2) of the 1992 Act I order Ms Corrigan’s complaint be struck out on the grounds of excessive delay in proceeding with it.

REASONS

1. Ms Corrigan (“the Claimant”) is a member of the GMB (“the Union”). By an application dated 18 December 2006 the Claimant made a complaint against her Union relating to the Union’s failure to meet her request for access to the accounting records of the Union. Following correspondence with the Claimant and her representative, Mr Rafferty, the complaint was identified in the following terms:-

‘In breach of section 30(1) of the 1992 Act the Union has failed to comply with Ms Corrigan’s request of 31 October 2006 for access to the accounting records of the Union. The accounting records to which Ms Corrigan has sought access are the books account/ledgers for 2005/6 which record transactions, for the purpose of GMB’s accounting procedures showing: (1) payments over £5,000 (excluding VAT) paid between 1 January 2005 up to 30 June 2006; and (2) termination payment(s) made to Mr O’Hara in or about 2004/5 and to termination payments made to Mr Curran in or about 2005.

2. I investigated the alleged breach in correspondence. The Union was represented by Ms V Phillips of Thompsons Solicitors. The Claimant was represented by Mr D Rafferty a volunteer worker for the Belfast Centre for the Unemployed and a former Assistant Certification Officer appointed by the Northern Ireland

Certification Officer. He is accordingly familiar with the relevant law and procedures.

Findings of Fact

3. Having considered the documentary evidence and the submissions of the parties, I find the facts to be as follows:-
4. The Claimant is a member of the GMB and in 2006 made four applications, including this application, to the Certification Officer making a number of complaints of breaches of Statute and breaches of Union rule.
5. Two of the Claimant's complaints related to the appointment of Mr Kenny as General Secretary of the Union in 2006. In one of those complaints I found in the Claimant's favour but refused to make an enforcement order. The Claimant's appeal against that refusal was heard by the Employment Appeal Tribunal on 4 October 2007. The other similar complaint against the Union was struck out by me on the grounds that it had no reasonable prospect of success. There has been no appeal against that decision. The Claimant's third application related to the ending of her appointment with the Union as a full time staff representative in October 2005. I found for the Claimant on a preliminary point of jurisdiction and the matter is to proceed to a full hearing before me on 8 November 2007.
6. On 31 October 2006 the Claimant wrote to the Union's President seeking access to certain of the Union's accounting records under section 30 of the 1992 Act. On 1 December 2006, having, she stated, received no reply she reminded the Union of her request and said she would raise the matter with the Certification Officer if she had not heard from the Union by 20 December.
7. On 19 December 2006 the Claimant lodged the present complaint with the Certification Officer. There followed an exchange of letters with the Certification Office which resulted in the Claimant confirming, on 7 March 2007, that her complaint had been correctly identified. In the same letter the Claimant stated she expected the information she was seeking to be made available to her by the Union at its Belfast offices.
8. During this exchange of letters the Certification Office, as required by section 31(4) of the 1992 Act, specified the date by which the information sought was to be provided. The Claimant met these dates except on one occasion when the Office extended the deadline from 19 February to 9 March 2007.
9. On 9 March 2007 my office sent the complaint to the Union for its comment and observations and requesting a response by 30 March.
10. On 30 March 2007 the Union's solicitors, Thompsons, replied to the Certification Office. They pointed out that the Union had written twice, on 8 November 2006 and 13 February 2007 to the Claimant in response to her letters of 31 October and 1 December 2006. They enclosed copies of both these letters with the Union's response to the complaint. The Union's letter to the Claimant of 8 November informed the Claimant that any issues relating to employment

matters should be raised with her Regional Secretary. The Union's letter of 13 February apologised for the delay in dealing with her request for access to the Union's accounting records and offered her the opportunity to inspect the Union's accounting records. This letter also set out the Union's intention to charge for allowing access to the records requested and for taking copies of them. It set out the principles in accordance with which the Union's charges would be determined – including both charges for staff time involved in assembling the material and arranging and attending the inspection and 15p per sheet of photocopying. The letter also set out the undertaking to be signed by any professional accountant accompanying the Claimant when inspecting the records. The letter further explained that the records could be inspected at the Union's National Administration Unit in Paisley and offered 13 dates in February and March 2007 for the inspection to take place.

11. It would appear that the original of the Union's letter of 13 February 2007 to the Claimant was not received by her. This was because, like another letter to her from the Union dealing with other issues, the letter of 13 February had been sent to her former address in County Antrim rather than the address in Belfast where she has lived since October 2006. I would add that neither of the Claimant's letters to the Union of 31 October and 1 December 2006 included an address for the Claimant.
12. Thompsons letter of response of 30 March 2007 to the Certification Office also indicated that the offer to give the Claimant access to the accounting records she was seeking, set out in the Union's letter of 13 February, remained open and that the Union would be happy to give additional dates.
13. Also on 30 March 2007 Mr Rafferty, the Claimant's representative, wrote to the Certification Office stating that the Claimant's family were coming to terms with a recent tragedy (he had mentioned this to the office by telephone on 20 March), and sought an extension of the deadline set in relation to the Claimant's other complaints (which request was granted). Mr Rafferty also asked for all future correspondence to be sent directly to him as the Claimant would have reduced contact for the following few weeks.
14. On 4 April 2007 the Union's response of 30 March with the attached letters of 8 November 2006 and 13 February 2007 were sent to Mr Rafferty asking for the Claimant's written comments on the Union's response. A reply by 20 April was requested. Having received no response by 8 May, a further letter was sent to Mr Rafferty asking for a reply by 11 May.
15. That date also passed with no reply, so the Office telephoned Mr Rafferty. As a result, on 14 May 2007, the office received from Mr Rafferty, under cover of a post-it note, a copy of a letter dated 6 April. The original of this letter, though properly addressed to my office, had not been received. In the letter Mr Rafferty confirmed that the Claimant has not previously seen the Union's letter of 13 February 2007. He further stated "*Ms Corrigan won't pay any staff time costs, she already is a contributing GMB member: records must be made available for her inspection at GMB's Belfast Office, it cannot be Parliament's intention to put a member (who may be accompanied by and have to pay fees to an auditor) to unreasonable direct cost to have access to such records*".

Parliament intends; 15p per sheet is unreasonable for a not for profit organisation, besides Ms Corrigan is already a contributing member and commercial enterprises routinely advertise photocopying at 5p per sheet- she will readily pay 5p per copy.”

16. In the light of this response the Office wrote to Mr Rafferty on 22 May 2007 seeking clarification of the Claimant’s position. The letter pointed out that the legislation covered inspection of the accounting records at the place where the records are normally kept and required the applicant to pay charges according to principles the union set out before any arrangements for inspection were made. The letter also pointed out that the legislation required that the amount determined in relation to those principles should not exceed the reasonable administrative expenses incurred by the union in complying with the request.
17. In the light of these points, the letter from the Certification Office of 22 May 2007 asked Mr Rafferty four questions, namely; (1) Are you arguing that the Union’s accounting records are not normally kept at the GMB National Administration Unit in Paisley? (2) If so where do you say the records are normally kept? (3) If not, what is the basis of your contention that “*it cannot be Parliament’s intention to put a member..... to unreasonable direct costs to have the access to such records Parliament intends*” (4) Are you further arguing that the Union’s offer of inspection as set out in its letter of 13 February 2007 fails to comply with subsections 3 or 6 of section 30 of the 1992 Act? If so how? A reply to this letter was required by Friday 8 June.
18. No reply had been received by 5 July 2007 and so the Office wrote again. On this occasion a letter was sent to both Mr Rafferty and the Claimant. The letter gave the Claimant until 19 July for answers to the questions set out in the letter of 22 May and also referred to the Certification Officer’s powers under section 256ZA of the 1992 Act to strike out the application should a reply not be received by 19 July 2007.
19. No reply had been received by 25 July 2007 so the Office wrote again to both Mr Rafferty and the Claimant. The letter stated that unless a substantive reply to the questions set out in the letter of 22 May was received by 1 August the matter would be referred to the Certification Officer to consider exercising his powers under section 256ZA(2) to order the application to be struck out on the grounds of excessive delay in proceeding with the complaint.
20. On 31 July 2007 Mr Rafferty telephoned the Office in relation to one of the Claimant’s other complaints saying that he would send a copy of a letter he had written to my office on 11 July in relation to this complaint. The original of this letter had not been received. The copy letter dated 11 July was received on 6 August. Although this letter did not relate to the present complaint it did refer to the Claimant being on holiday and to Mr Rafferty being in hospital. It said he would be back in touch in early August. In the same telephone call, on 31 July, Mr Rafferty said that the Claimant was due to return from holiday the following day and that he would speak to her about the section 30 complaint and then write to the Office.

21. On 8 August 2007 the Office wrote to Mr Rafferty setting 17 August as the new date by which a substantive response was required if the papers were not to be referred to the Assistant Certification Officer to consider exercising his power under section 256ZA(2) of the 1992 Act to order the application to be struck out on the grounds of excessive delay in proceeding with the complaint.
22. No reply had been received by the due date of 17 August so, on 22 August 2007 the Office wrote to the Claimant and Mr Rafferty stating that the papers had been passed to the Assistant Certification Officer for his consideration as to whether the complaint should be struck out.
23. On 30 August 2007 the Office wrote to both the Claimant and Mr Rafferty giving notice as required under section 256ZA(4) of the 1992 Act that an order striking out this complaint would be made unless the Claimant had shown cause by 21 September 2007 why such an order should not be made. It added that any request for an oral hearing had to reach the Office by 10 September, and that supporting evidence should be provided if holidays, bereavement or illness were relied on to justify the delays in responding.
24. Mr Rafferty replied on 6 September 2007 proposing that these matters be dealt with on 8 November 2007 on the day of the hearing of another of the Claimant's complaints. He also objected to reference being made to health and personal matters.
25. By a letter dated 12 September 2007 I refused to accede to Mr Rafferty's proposal which would have added a further delay of two months. I was aware of the Certification Officer's scheme to refund expenses, allowances for loss of earnings and other payments to persons attending hearings held by the Certification Officer and offered two dates before 21 September when I would be available in London to hear oral representations. The letter also repeated the invitation to make representations in writing. This letter was sent by recorded delivery to both Mr Rafferty and the Claimant and by e-mail to Mr Rafferty the same day.
26. The recorded delivery letter to Mr Rafferty was signed for on 14 September 2007. The Claimant was apparently out when the letter arrived at her address and a 'while you were out' card was left by the Post Office to enable her to pick up her letter at a later date. On 17 September my Office telephoned Mr Rafferty to ask if he had received his letter and if he would be taking up the offer of making oral representations before 21 September. The Office made a note of the telephone conversation and on 17 September e-mailed Mr Rafferty to confirm what had been said. The e-mail confirmed that Mr Rafferty had told the Office that he had been away from home and had not seen or been told about the letter of 12 September, although it was possible that the letter had been received at his address in his absence. It also confirmed Mr Rafferty as having said that the letter had been read to him and that neither Mr Rafferty nor the Claimant would attend a hearing on 19 or 20 September. It further confirmed Mr Rafferty as having said that he understood the position and that he reserved the right to make further representations on the matter.

27. On 18 September Mr Rafferty replied to the e-mail of 17 September stating that it was not a fair representation of what had been said in the telephone conversation of 17 September. The Office responded by noting that Mr Rafferty had not challenged the accuracy of any specific points made in its account of the conversation. Mr Rafferty was given the opportunity to record what he thought should be added to the note so that it reflected what he considered to be the true character of the conversation. Mr Rafferty replied by a further e-mail on 18 September. His response contained no new facts but some argument which will be dealt with below.
28. Up to the date of this decision neither the Claimant nor Mr Rafferty have responded to the questions put in the letter from my Office of 22 May, notwithstanding the further requests for them to do so in the letters of 5 July, 25 July, 8 August, 22 August, 30 August and 12 September and notwithstanding him being informed on five occasions that a failure to do so could lead to the complaint being struck out.

The Relevant Statutory Provisions

29. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:

S.28 Duty to keep accounting records

- (1) *A trade union shall -*
- (a) *cause to be kept proper accounting records with respect to its transactions and its assets and liabilities, and*
 - (b) *establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and remittances.*
- (2) ...

S.29 Duty to keep records available for inspection

- (1) *A trade union shall keep available for inspection from their creation until the end of the period of six years beginning with the 1st January following the end of the period to which they relate such of the records of the union, or of any branch or section of the union, as are, or purport to be, records required to be kept by the union under section 28.*

S.30 Right of access to accounting records

- (1) *A member of a trade union has a right to request access to any accounting records of the union which are available for inspection and relate to periods including a time when he was a member of the union.*
- (2) *Where such access is requested the union shall*
- (a) *make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of twenty-eight days beginning with the day the request was made,*
 - (b) *allow him and any accountant accompanying him for the purpose to inspect the records at the time and place arranged, and*
 - (c) *secure that at the time of the inspection he is allowed to take, or is supplied with, any copies of, or of extracts from, records inspected by him which he requires.*
- (3) *The inspection shall be at a reasonable hour and at the place where the*

records are normally kept, unless the parties to the arrangements agree otherwise.

- (4) *An "accountant" means a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.*
- (5) *The union need not allow the member to be accompanied by an accountant if the accountant fails to enter into such agreement as the union may reasonably require for protecting the confidentiality of the records.*
- (6) *Where a member who makes a request for access to a union's accounting records is informed by the union, before any arrangements are made in pursuance of the request –*
 - (a) *of the union's intention to charge for allowing him to inspect the records to which the request relates, for allowing him to take copies of, or extracts from, those records or for supplying any such copies, and*
 - (b) *of the principles in accordance with which its charges will be determined, then, where the union complies with the request, he is liable to pay the union on demand such amount, not exceeding the reasonable administrative expenses incurred by the union in complying with the request, as is determined in accordance with those principles.*

S.31 Remedy for failure to comply with request for access

- (1) *A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the Court [or to the Certification Officer].*
- (2A) *On an application to him the Certification Officer shall -*
 - (a) *make such enquiries as he thinks fit, and*
 - (b) *give the applicant and the trade union an opportunity to be heard.*
- (2B) *Where the Certification Officer is satisfied that the claim is wellfounded he shall make such order as he considers appropriate for ensuring that the applicant –*
 - (a) *is allowed to inspect the records requested,*
 - (b) *is allowed to be accompanied by an accountant when making the inspection of those records, and*
 - (c) *is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.*
- (2C) *In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.*
- (4) *Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.*

256ZA Striking out

- (1) *At any stage of proceedings on an application or complaint made to the Certification Officer, he may –*

- (a) *order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived.*
- (2) *The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.*
- (3) *An order under this section may be made on the Certification Officer's own initiative*
- (4) *Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made*
- (5) *Subsection(4) shall not be taken to require the Certification Officer to send a notice under that sub section if the party against whom it is proposed that the order under the section should be made has been given an opportunity to show cause orally why the order should not be made*

Brief Summary of the Claimant's submission

- 30. Mr Rafferty did not make any formal submissions but I have derived the following from his various contacts with the Office.
- 31. In his telephone conversation with the Office on 17 September Mr Rafferty argued that it was unreasonable for me to have set the deadline of 20 September for him to make representations. He states that the Office had failed to deal with questions he has posed and should not rely on a one sided account of a telephone conversation. He maintained that he had been on holiday and had no facilities to note or record matters.
- 32. On the issue of the treatment of illness or medical evidence in considering delays in responding to deadlines Mr Rafferty says that evidence relating to his health and the Claimant's family problems given in relation to, and mentioned in, a decision on another of the Claimant's complaints, was personal information separately provided in good faith and cannot be part of the application before the Assistant Certification Officer now.

Conclusion

- 33. There are several points of law that I have borne in mind in reaching my conclusion on this matter. These include (i) the Certification Officer may regulate the procedure to be followed on any application or complaint made to him (section 256(1) of the 1992 Act); (ii) the Certification Officer may make such enquiries as he thinks fit (section 31(2A)(a)); (iii) the Certification Officer is required to specify the date by which information requested of anyone is to be furnished (section 31(4)); (iv) while section 256ZA(4) of the 1992 Act requires the Certification Officer to send a notice to the party against whom he proposes to make an order striking out a complaint he is not required to give an opportunity to make oral representations where such a notice has been issued; (v) the Certification Officer is required to ensure that so far as is reasonably practicable an application on access to accounting records is determined within six months of it being made (section 31(2C)); (vi) where the Certification Officer finds the claim well-founded he is required to make an order he considers appropriate to ensure the applicant's rights (section 31(2B)).

34. The Claimant's complaint was lodged with the Certification Officer on 19 December 2006. It was being progressed at a satisfactory rate until Mr Rafferty was sent the Union's response to the complaint on 4 April 2007 and with it the Union's offer of access to the Union's accounting records. At that point Mr Rafferty states that a letter from him to the Certification Office dated 6 April went astray. When a copy of that letter was eventually received in the Certification Office on 14 May the Certification Officer decided that certain fundamental points about the Claimant's complaint should be explored before a hearing could be arranged.
35. At that stage it was clear that even if the letter of 13 February 2007 from the Union to the Claimant had been received by her, the Union would not have met its obligation under section 30(2)(a) of the 1992 Act to provide access to the requested records within 28 days of the request being made. However given the reservations expressed by Mr Rafferty in his letter dated 6 April about the Union's offer, made in its response to the complaint, it was not clear what points would need to be decided at any hearing, what orders were being sought or the basis upon which those orders were being sought. Nor was it clear that any order could go beyond what was being offered by the Union. It was to clarify such issues prior to any hearing that the letter of 22 May 2007 posing four precise questions was sent to Mr Rafferty. In my judgment the questions that were asked were necessary and appropriate to enable me to deal with this matter justly. It was necessary that the Union should know the case that it had to meet. Further, the answers to those questions may have lead to the matter being dealt with more proportionately, more expeditiously and with a saving of expense to both the parties and the public purse. In all the subsequent exchanges over a period of five months no reply to those questions has been offered by the Claimant or Mr Rafferty. In my judgement that is an unacceptable delay in providing information that I was entitled to seek.
36. As early as 5 July 2007 the Claimant and Mr Rafferty were told that in the absence of a reply by 19 July action, under section 256ZA of the 1992 Act, to strike out the application would be considered. That warning went unheeded. It was repeated on 25 July with a date of 1 August for a response to be received. After a telephone call from Mr Rafferty on 31 July explaining his own earlier indisposition and the Claimant's absence on holiday to the beginning of August, the date for a response was extended until 17 August. No reply was received by 17 August. On 30 August formal notice was sent to both the Claimant and Mr Rafferty that an order striking out the application would be made unless the Claimant had shown cause by 21 September why such an order should not be made. The original questions of 22 May remain unanswered and no attempt has been made to show cause why an order striking out the complaint should not be made.
37. Before finally deciding to order the complaint to be struck out, I have considered two other issues. First, having given the Claimant an opportunity to make oral representations was I correct to turn down her request for an oral hearing on 8 November and to set a very tight deadline for alternative dates to hear such representations? In this connection I had regard to the fact

that the dates I gave for an oral hearing coincided with the date previously given for written representations. Further, there is no statutory right to make oral representations once a notice to show cause has been issued. I also had regard to the fact that by 8 November the complaint would have been with the Certification Officer for ten months. I have still not received any response to the original enquiries or my “show cause” letter. Further there was nothing in the correspondence to lead me to believe that any would be forthcoming. As early as 5 July 2007 the Claimant had been warned that action under 256ZA was a possibility and three months later she has not answered my enquiries nor produced an argument against the case for an order under that power. In all the circumstances I consider that the Claimant was given ample opportunity to put all her arguments.

38. Secondly the Claimant has not advanced a case explaining the delay in answering the questions posed in the letter of 22 May. Moreover she has argued that I should not make use of, nor refer to, anything that had been said to the Office about health or personal issues in relation to other complaints she had made. I can see some force in this argument but equally I can see circumstances where a decision might be appealed on the grounds that I had not taken account of all the evidence available to me. I also accept that some matters are too delicate or personal to spell out in a decision but that is a matter for the Certification Officer to decide on the facts of each case. As it is in this case, I note that the Claimant’s family tragedy occurred before 20 March 2007 which is two whole months prior to the posing of the questions about her complaint on 22 May. Also I have no evidence that the periods of Mr Rafferty’s indisposition and of the Claimant’s holiday are such as to justify the failure to answer those questions four months after they were posed.
39. It is for these reasons that I order the Claimant’s complaint be struck out on the grounds that there had been excessive delay in proceeding with it.

E.G. Whybrew CBE
Assistant Certification Officer