

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

Mr M Dooley

V

**Union of Construction, Allied Trades and Technicians
(No.4)**

Date of Decisions

22 January 2013

DECISIONS

Upon application by Mr Dooley ("the claimant") under section 31 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. I find that the Union of Construction, Allied Trades and Technicians breached section 30(2)(a) of the 1992 Act by having failed to make arrangements with Mr Dooley for him to be allowed to inspect the accounting records he had requested by a letter dated 12 January 2012 within 28 days of his request for inspection.
2. I dismiss Mr Dooley's complaint that the Union of Construction, Allied Trades and Technicians breached section 30(6) of the 1992 Act on or about 29 February 2012 by allegedly demanding an amount of £315 from him to inspect the accounting records of the union.

Order

3. I order that the Union of Construction, Allied Trades and Technicians shall:-
 - 3.1 give Mr Dooley access to inspect the accounting records of the Union which he requested to inspect in his letter of 12 January 2012. Mr Dooley is to be given access to inspect those accounting records by no later than 19 February 2013.
 - 3.2 permit Mr Dooley, at the time of the inspection, to take, or secure that he is supplied with, any copies of, or of extracts from the records inspected by him which he requires. Mr Dooley shall, if requested, pay any reasonable copying charges incurred by the Union in supplying him with the copies he has requested.

REASONS

1. Mr Dooley was a member of the Union of Construction, Allied Trades and Technicians ("UCATT" or "the Union") until his expulsion on or about 27 February

2012. By an application received at the Certification Office on 10 April 2012, he made complaints of breaches of statute regarding access to the accounting records of the Union. Following correspondence with the claimant, two complaints were confirmed by him in the following terms.

Complaint 1

UCATT breached section 30(2)(a) of the 1992 Act, by having failed within 28 days to comply with Mr Dooley's request of 12 January 2012 to Mr Steve Murphy, General Secretary for access to the accounting records of the union relating to the contribution income paid by members for 2006 through to 2011 including those which show how each contribution is allocated for in the union's account.

Complaint 2

UCATT breached section 30(6) of the 1992 Act, on or about 29 February 2012, by demanding an amount of £315 from Mr Dooley to inspect the accounts of the union, which amount exceeded the reasonable administrative expenses incurred by the union in respect of the accounts Mr Dooley requested to inspect. The union failed to inform Mr. Dooley of the principles in which the charges should be determined. By referring to a generic administration charge of £315 the union failed to relate this charge to the request made. The union also failed to inform Mr. Dooley of the principle upon which the charges were made for copying documents or extracts.

2. I investigated the alleged breaches in correspondence and a hearing took place on 18 December 2012.
3. At the hearing on 18 December, Mr Dooley represented himself and gave evidence. The Union was represented by Ms Ijeoma Omambala of counsel, instructed by Mr Cottingham of O H Parsons and Partners. Evidence for the Union was given by Mr Steve Murphy, its General Secretary. Both witnesses produced written witness statements. There were in evidence the rules of the Union and an 83 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. At the hearing, I gave leave for three further letters to be added to the bundle. Both the Union and Mr Dooley provided skeleton arguments.

Some Context

4. Mr Dooley has been a member of UCATT from time to time for over 35 years. He has studied at Ruskin College, Oxford and has a law degree from Brunel University. Most recently, Mr Dooley joined the Union in 1998. On 3 May 1999 he became an employee of the Union, as a regional officer based in London. Mr Dooley stood for election as General Secretary in 2004 and 2009. On both occasions he was defeated by Mr Ritchie. He commenced a complaint to me arising out of the 2009 election (**Dooley v. UCATT (No.1)**). I found for Mr Dooley and ordered that the election be re-run. By a letter dated 26 January 2011 Mr Dooley was dismissed from his employment by the Union for gross misconduct. On 4 November 2011 an Employment Tribunal found that dismissal to have been unfair but also found that Mr Dooley had contributed to his dismissal by 50%. That decision is now subject to an appeal and cross-appeal to the Employment Appeal Tribunal, both of which were outstanding at the date of this decision. On 26 October 2011 Mr Dooley was excluded from being a candidate in the re-run General Secretary election that was about to be held and he brought a complaint to me arising out of his exclusion (**Dooley v UCATT (No.2)**). In December 2011 Mr Steve Murphy was elected

General Secretary. By a letter dated 27 February 2012 Mr Dooley was expelled as member of the Union, arising out of which he brought a further complaint to me (**Dooley v UCATT (No.3)**). I gave my decisions in **Dooley (No.2)** and (**No.3**) on 9 July 2012. I found for Mr Dooley in Dooley (No.2) but considered it inappropriate to make an enforcement order. I found against Mr Dooley in Dooley (No.4). Aspects of those decisions are presently being considered by the Employment Appeal Tribunal.

Findings of Fact

5. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
6. As noted above, Mr Dooley has been in conflict with the leadership of the Union since at least the time of the General Secretary election of 2009. From June 2010 Mr Dooley made enquiries with the Union and its auditors about its finances. By a letter dated 29 November 2011 Mr Dooley stated that he had "*serious concerns ... in relation to your Union's financial management*" and asked for an explanation of "*why the members contributing to the Union in 2010 do not equate to the financial contributions from members in 2010*". Mr Dooley did not receive a substantive response to these enquiries, despite a reminder of 9 December 2011.
7. By a letter dated 12 January 2012 Mr Dooley made a formal request for access to inspect the accounting records of the Union. The letter states, inter alia,

"Members Request for information relating to the Union's finances (property)

Dear Brother Murphy,

I am requesting access to the Union's accounting record pursuant to Rule and if need be, section 30(1) TULRA 1992.

1. The records I am requesting access to are the accounting records for 2011, 2010, 2009, 2008, 2007 and 2006.
2. The particular records are the records of the contribution income paid by members each year. My concern is that our annual contributions from our total paying memberships consistently appear to show that subscriptions are only being received by less than half the members recorded as paying members in the Certification Officer's annual returns AR21s. I could be incorrect in my assumption and this is why I am making my request and would like to see the details of how the contribution income is recorded.
3. The record of how the contributions from each member is allocated and accounted for in our accounts.
4. Any appropriate records pertaining to this request which is in your possession which will show how the contribution from each member is accounted for and the manner in which is recorded into our annual accounts.

I also draw your attention to the two repeated requests for information made in relation to the Union's property which have been ignored by the Pro Tem General Secretary and ask you to deal with the enquiry contained in those letters. The letters are dated 29 November 2011 and 9 December 2011."

8. I find that this letter was sent by post and received by the Union on Friday 14 January 2012. It was then that the request was "made" for the purposes of section 30(2)(a) of the 1992 Act. Accordingly, the end of the period of 28 days beginning with the day the request was made, was 9 February 2012.
9. Mr Murphy took up his elected position of General Secretary on 9 January 2012. On 16 January he replied to Mr Dooley stating that he had only been in post for a week

and would write to him again, having endeavoured to gather as much information as he could.

10. On 17 January 2012 Mr Dooley wrote to Mr Murphy. He commented, "*Although your letter might be considered an attempt to prevaricate, I will treat it only as an acknowledgement of my request.*" Mr Dooley indicated that he would not accept any delay and referred to his concern that the Union may well be mismanaging the Union's funds either deliberately or negligently.
11. By a letter dated 26 January 2012, Mr Murphy informed Mr Dooley that his request was being processed and that it was going to take a little time to collate all the material given the great deal of information asked for. Mr Murphy concluded "*Once I have the information to hand I will accede to your request and respond to you in due course.*"
12. The 28 day period since the request was made expired on 9 February 2012.
13. Mr Dooley was expelled as a member of the Union by a letter dated 27 February 2012.
14. On 29 February 2012 Mr Murphy wrote to Mr Dooley in the following terms:

"Dear Colleague,

Request for financial information

I refer to your recent correspondence in relation to the inspection of Union's accounting records. Having spoken to the Financial Department on this matter, I have been advised that the financial information you have requested will be available on 13 March 2012. I have therefore made arrangements for you to inspect the accounting records on Tuesday 13 March 2012 at 9.30am. It would assist me if you would confirm that you will be at General Office on this date.

Whilst writing, I would advise you that in accordance with the legislation and the Union's rulebook, there will be a charge of £315. Furthermore, should you require copies of any documents, this would incur an additional charge."

15. In his evidence, Mr Murphy stated that he had understood Mr Dooley's request was for all the accounting records of the Union from 2006 to 2011. Mr Murphy caused these to be printed out for Mr Dooley to inspect. They amounted to some 16,000 pages and had been placed in a room at the Union's General Offices ready for inspection. As to the cost of producing this information, Mr Murphy gave evidence that eight boxes of paper were used at a cost of £322.24 and two ink cartridges at a cost of £68.66. In addition, the time of two staff members who each worked on this task for 1½ days was calculated at £244.64 and £232.53 respectively. No costing was produced in relation to any staff time that might be required at the actual inspection.
16. On the day appointed for the inspection, 13 March 2012, Mr Dooley did not attend at the Union's General Office to inspect the accounting records. He did not contact the Union prior to that date nor subsequently to explain his non attendance or organise a further inspection. The Union maintains that it has always been and remains willing to allow Mr Dooley an opportunity to inspect the accounting records it has produced,

which remain in the same room awaiting inspection. Mr Murphy further stated that if Mr Dooley considered the sum of £315 to be excessive, he had always been prepared to discuss this matter with him.

17. At the hearing, Mr Dooley expressed surprise at the volume of documentation prepared by the Union in response to his request. He stated that all he really wished to examine were the equivalent of the individual "Membership Record Files", which record the details of each member and their contribution position. He explained that as a regional officer he had accessed these files from time to time to check up on whether a member was in benefit. Mr Dooley stated that his intention was not to look at each one of these. In December 2011 the Union's annual return to my office put its membership at 83,760. He explained that he would inspect a sample of them. Mr Dooley gave evidence that he considered that the breadth of the inspection requested in paragraph 1 of his letter of the 12 January 2012 was qualified by his request in paragraph 2 and the remainder of that letter.
18. As to the charges made for inspecting the accounting records of the Union, Mr Murphy gave evidence that in 1999 a Mr Kelly had brought a High Court claim to enforce his statutory right to inspect which had resulted in him making a payment of £180. Mr Dooley gave evidence that in 2011 Mr Kelly had inspected other accounting records of the Union on two occasions for no charge. Evidence was also given that a Mr Flanagan had been charged and had paid £315 in about March 2012 for inspecting accounting records. Mr Murphy stated that the accounting records to which Mr Flanagan was given access were the same records that had been prepared for Mr Dooley.
19. Mr Dooley commenced this complaint to me on 10 April 2012.

The Relevant Statutory Provisions

20. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

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.

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.

In the case of records relating to a branch or section of the union, it is immaterial whether he was a member of that branch or section.

(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.

- (7) In this section "member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

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.

(2B) Where the Certification Officer is satisfied that the claim is well-founded 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.

The Relevant Rules of the Union

21. The rules of the Union which are relevant for the purposes of this application are:

1.3. Constitution

1.3(g) The general books of the Union and a list of the names of all members shall be kept at the General Office. The books of each Branch shall be kept by the respective Branch. All books of the Union shall be open for inspection at reasonable times by any member having an interest in the funds of the Union; the Executive Council will have the discretion to make a charge for such inspections.

3. Branch Meetings

3.9. At each meeting, the Treasurer shall report the previous meetings bankings and this amount shall be minuted.....

Members may, on one months' notice require copies of current and previous quarterly financial summaries to be made available by the Branch President for inspection.

Consideration and Conclusions

Complaint One

22. Mr Dooley's first complaint is as follows:-

"UCATT breached section 30(2)(a) of the 1992 Act, by having failed within 28 days to comply with Mr Dooley's request of 12 January 2012 to Mr Steve Murphy, General Secretary for access to the accounting records of the union relating to the contribution income paid by members for 2006 through to 2011 including those which show how each contribution is allocated for in the union's account".

23. Section 30 (2)(a) of the 1992 Act provides as follows:

- (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.

Summary of Submissions

24. Mr Dooley submitted that by 9 February 2012, the end of the 28 day period from the date his request was made, the Union had not made any arrangements with him for him to be allowed to inspect the records he had requested. He rejected the Union's argument that Mr Murphy's letter of 16 and 26 January 2012 amounted to the making of an arrangement with him. Mr Dooley maintained that the Union's letter of 16 January was no more than an acknowledgment of his request and that the letter of 26 January, stating that the Union acceded to his request, was merely stating that the Union would do what it was obliged to do by statute.
25. For the Union, Ms Omumbala submitted that the Union's letters of 16 and 26 January 2012 were part of the process of making the arrangement for Mr Dooley to inspect the accounting records in question on 13 March and that, on a proper reading, they made clear that Mr Dooley would be granted access to the requested accounting records when they were collated. In Ms Omumbala's submission, the Union's statutory obligation was simply to make arrangements with Mr Dooley for him to be allowed to inspect the records by 9 February and that it did not require the inspection itself to be carried out by that date.

Conclusion

26. Section 30(2)(a) of the 1992 Act is capable of two constructions. The parties both made submissions on the basis that the sub-section is satisfied if a union makes arrangements within the 28 day period, even if the inspection itself takes place outside the 28 day period.
27. An alternative construction is that section 30(2)(a) of the 1992 Act requires the member to be allowed to inspect the records requested before the end of the period of 28 days. Whichever of these constructions is correct depends mainly on identifying the words to which the 28 day time period apply. Do the 28 days apply to

the words "make arrangements" or the words "for him to be allowed to inspect the records requested"? I observe that, if the intention had been to time limit the making of the arrangements, the draftsman could have made this clear by placing the words "for him to be allowed to inspect the records requested" at the end of the sentence. Further, it is unlikely that Parliament intended to allow a union to wait up to 28 days before making an arrangement for the requested accounting records to be inspected and then permitting the union to set a date for inspection some weeks or even months ahead, without there being a final deadline. This is made more unlikely by the requirement in section 29(1) of the 1992 Act that Unions shall keep available for inspection for six years those accounting records which it is required to keep by virtue of section 28. In most circumstances, a period of 28 days to allow the inspection of extant records will be more than adequate.

28. In my judgement, the second of the above constructions is correct. Section 30(2)(a) of the 1992 Act requires a union to make arrangements with the member that will allow him or her to inspect the records requested within the 28 day period from the day the request was made. On the facts of this case, the 28 day period from the day Mr Dooley's request was made expired on 9 February. UCATT made an arrangement with Mr Dooley that he was to be allowed to inspect the requested records on 13 March. Accordingly, the Union breached section 32(2)(a) of the 1992 Act by having failed to make arrangements with Mr Dooley for him to be allowed to inspect the accounting records requested within 28 days of his request being made.
29. On the alternative construction of section 30(2)(a) of the 1992 Act, I would have found that neither of the letters from the Union of 16 or 26 January, taken individually or together, amount to an arrangement with Mr Dooley for him to be allowed to inspect the requested records. I find that one letter was an acknowledgment of receipt of Mr Dooley's request and the other was in effect an acknowledgement of the Union's legal obligation. Accordingly, on this construction also, I find that the Union breached section 30(2)(a) of the 1992 Act.

Complaint Two

30. Mr Dooley's second complaint is as follows:-

"UCATT breached section 30(6) of the 1992 Act, on or about 29 February 2012, by demanding an amount of £315 from Mr Dooley to inspect the accounts of the union, which amount exceeded the reasonable administrative expenses incurred by the union in respect of the accounts Mr Dooley requested to inspect. The union failed to inform Mr. Dooley of the principles in which the charges should be determined. By referring to a generic administration charge of £315 the union failed to relate this charge to the request made. The union also failed to inform Mr. Dooley of the principle upon which the charges were made for copying documents or extracts".

31. Section 30(6) of the 1992 Act provides as follows:

(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

Summary of Submissions

32. Mr Dooley submitted that the Union had breached section 30(6) of the 1992 Act in a number of respects. First, he maintained that it had not informed him of its intention to make a charge for inspection before it had made any arrangements in pursuance of his request. He noted that the arrangement for the inspection was made in the Union's letter of 29 February 2012 and that the charge of £315 was notified in the same letter. Secondly, Mr Dooley noted that the Union's letter of 29 February did not state 'the principles in accordance with which its charges will be determined'. Thirdly, he argued that the sum of £315 exceeded the reasonable administrative expenses incurred by the Union in complying with the request. Mr Dooley submitted that there was no need for the Union to have printed out or copied any documents prior to inspection as they all existed in hard copy format or electronically and that he wished to inspect the original records, not copies. He also argued that the sum of £315 was a generic charge which the Union had imposed arbitrarily, as shown by the absence of any decision by the EC to levy such a charge, and the exact same amount having been required from Mr Flanagan. Mr Dooley further maintained that a General Operative in the construction industry receives £306.93 gross for a full week on rates agreed by the Union and it would therefore be unreasonable for the Union to charge an inspection fee of £315, especially having regard to the need of a member to take a day off work and incur travelling expenses. It was Mr Dooley's case that the Union had required him to pay the £315 before it would permit him to inspect the accounting records to which he had requested access.
33. My office had written to Mr Dooley on 4 May 2012 and sought his observations on the proposition that section 30(6) operates so as to create a liability on the member to pay a sum of money to the Union after the inspection had taken place and, as no inspection had taken place on the facts of this case, section 30(6) had not been engaged. Mr Dooley was also asked to comment on whether the obligations created by section 30(6) came within the jurisdiction of the Certification Officer. In his response of 18 May, Mr Dooley maintained that the Union had demanded payment of £315 before it would allow him to access the accounts and that if he had made the payment, he would be viewed as having agreed to the payment and would have a small chance of recovering the money from the Union in a County Court. As a point of policy, Mr Dooley considered that there was no point to a statutory right to inspect accounting records if the Union is allowed to make any charge that it likes, exorbitant or otherwise, prior to allowing the member to view the accounts. At the hearing, Mr Dooley argued that, if the Union had complied with the requirements of section 30(6) and the member had refused to pay in advance of the date set for the inspection, the Union would be entitled to refuse the inspection or, alternatively, by inspecting the accounting records on those terms, the member would have agreed to make the payment and would not be able to argue otherwise after the inspection. Mr Dooley further submitted that the words "in any respect" in section 31(1) had the effect of enabling him to claim in respect of a breach of any of the provisions of section 30, including section 30(6). He also maintained that the statute intended any

breach of section 30 to be dealt with by the Certification Officer and that a construction that required the intervention of another court is unlikely to be correct.

34. For the Union, Ms Omumbala submitted that on the facts of this case section 30(6) was not engaged and that, in any event, it created a right which fell outside the jurisdiction of the Certification Officer. She observed that the right to complain about a breach of section 30 is contained in section 31(1), which restricts a claim to where there has been a failure by a union to comply with a request to inspect accounting records. Ms Omumbala contrasted this with the obligation created by section 30(6) which only arises after the Union has complied with such a request. She also argued that Mr Dooley was wrong to assert that a member incurs a liability to pay the Union whatever it has requested by merely attending to inspect the accounting records. In her submission, if a member inspected the accounting records but failed to pay a sum properly due under section 30(6), the Union would have to decide whether to take proceedings against that member in the County Court. Ms Omumbala also noted that the expression "in any respect" in section 31(1) was part of the larger expression "has failed in any respect to comply with the request made" by the member. She argued that this restricted the right to complain to where the request to inspect the accounting records had not been complied with and not the financial aspects dealt with in section 30(6). Ms Omumbala also observed that the remedies provided for in section 31(2B) excluded any remedy relating to a breach of section 30(6) and argued that this was a further indication that section 30(6) fell outside the matters about which a complaint could be made under section 31.
35. Should section 30(6) fall within my jurisdiction, Ms Omumbala submitted that Mr Dooley was wrong to assert that the Union had made the payment of £315 a precondition for allowing him to inspect the accounting records requested. She further argued that rule 1(3)(g) of the rules of the Union gives the Executive Council a discretion to make a charge for any member to inspect the books of the Union and that, as an experienced Union officer, Mr Dooley was in fact aware of the Union's rules and practice in this regard. Ms Omumbala invited me to accept the evidence of Mr Murphy as to what costs the Union had actually incurred in preparing the accounting records to be inspected by Mr Dooley and submitted that it was entirely reasonable and proper for the Union to seek to recover a proportion of its administrative costs.

Conclusions – Complaint Two

36. I have considered the scope of section 30(6) of the 1992 Act, whether a breach of any of its requirements falls within my jurisdiction and whether a complaint of any such breach can be made under section 31(1).
37. The central obligation created by section 30(6) of the 1992 Act is a liability on the part of the member to pay the union a sum of money for allowing him to inspect the records to which his request relates or for allowing him or her to take copies or for supplying any such copies. That obligation only arises if the union complies with two pre-conditions. First, before making an arrangement with the member for him or her to be allowed to inspect the records requested, the union must have informed the member (a) of its intention to make a charge and (b) of the principles in accordance with which its charges will be determined. Second, the union must have complied with the request, i.e it must have given the member an opportunity to inspect the

records requested pursuant to section 30(2)(a). In these circumstances the member incurs an obligation to pay the Union but that obligation is restricted to an amount not exceeding the reasonable administrative expenses incurred by the Union in complying with the request as determined in accordance with the principles that the union has notified to the member. Examined in this way, section 30(6) imposes no obligation on the Union unless it seeks payment from the member. If it does seek payment from the member, section 30(6) provides the member with a number of possible defences to such a claim, should the union have not met any of the pre-conditions for the member's liability and/or should the amount to be paid exceed the reasonable administrative costs incurred by the union.

38. Section 31(1) of the 1992 Act provides for a complaint to be made to the court or to the Certification Officer for a breach of section 30 but only insofar as the union has failed in any respect to comply with a request made by the member under section 30. However, it is a precondition for the operation of section 30(6) that the union has complied with that request. It would therefore seem that a complaint cannot be made under section 31(1) for a breach of a requirement in section 30(6). Mr Dooley relies upon the words "in any respect" in section 31(1) but they are not conclusive in his favour. That expression applies to a failure by the union to comply with a request for inspection "in any respect". Such a failure might most commonly occur where the union has given access to inspect only some of the records requested or where the inspection was not at a reasonable hour or where the member's right to be accompanied by an accountant has been refused.
39. I find it to be consistent with the above analysis that the remedies provided for in section 31(2B) do not refer to the financial aspects for which section 30(6) makes provision. Section 31(2B) provides a wide discretion for me to make such order as I consider appropriate, but that order may only be for ensuring that the member is allowed to inspect the records requested, to be accompanied by an accountant and to take or be given copies of the records. These are aspects of the right to access to accounting records, not its financial consequences. It may be thought that if a union has been found to be in breach of its statutory obligations, Parliament intended that it should lose its conditional right in section 30(6) to charge a member for its reasonable administrative expenses, as it could have done had it complied with its statutory obligations.
40. An aspect that has troubled me in this case is that the enforcement of the obligation created by section 30(6) and the defences open to a member to resist payment, would normally only surface in the civil courts. Mr Dooley argued that it was Parliament's intention that the whole of the rights in section 30 should be determined by the Certification Officer. I find it unattractive that the same circumstances can give rise to proceedings in two fora, but I do not find this argument to be conclusive in Mr Dooley's favour having regard to the origins of section 30 and section 31. These were first enacted in section 6 of the Employment Act 1988. At that time they contained no reference to the Certification Officer. A member had to go to the courts to seek enforcement. These provisions carried over into the 1992 Consolidation Act without any reference to the Certification Officer. It was only by section 29 of the Employment Relations Act 1999 that the Certification Officer was included in section 31(1) as a person to whom a complaint could also be made and section 31(2B) was inserted as the corresponding remedies provision. Accordingly, when drafted,

section 30(6) did not give rise to the possibility of the same circumstances giving rise to two sets of proceedings as both would be litigated in the same civil court. The result may be an unforeseen consequence of the amendment in 1999 but it does not render the provision unworkable. Indeed, the provision makes clear that the right to inspect the accounting records of a Union is separate from and not dependant upon the conditional obligation to pay the Union's reasonable administrative expenses.

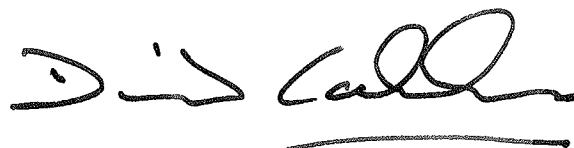
41. Accordingly, I find that section 30(6) was not engaged on the facts of this case as the Union did not comply with Mr Dooley's request within 28 days of it having been made and that, in any event, I have no jurisdiction to determine whether a member becomes liable to pay a union on demand the sum it is allegedly due or to determine whether the sum demanded is a sum not exceeding the reasonable administrative expenses incurred by the Union.
42. For the above reason I dismiss Mr Dooley's complaint that the Union breached section 30(6) of the 1992 Act on or about 29 February 2012 by allegedly demanding an amount of £315 from him to inspect the accounts of the Union.
43. Mr Dooley stated that he believed the Union could demand payment of a sum in respect of the Union's administrative expenses in advance of the inspection and refuse to permit the inspection to proceed if payment was not made. He also stated that he believed that if he inspected the documents, he would have impliedly agreed to pay the sum requested and have no further defence under section 30(6). For the avoidance of doubt, I consider that neither of these propositions is correct. A member's statutory right to access to his or her union's accounting records cannot be made conditional upon making a payment in advance of inspection. Further, a member's obligation to make such a payment only accrues after the members request has been complied with and if the conditions set out in section 30(6) have been met by the union. Any dispute about the obligations created by section 30(6) is to be resolved by the civil courts.

Order

44. Having found that Mr Dooley's complaint of a breach of section 30(2)(a) of the 1992 Act is well founded, I make an order under section 31(2B) that he be given access to the records requested in his letter of 12 January 2012. The Union gave evidence that it has had the records ready for inspection by Mr Dooley since 13 March 2012 and so can give immediate inspection. Mr Dooley stated that it is not his intention to be accompanied by an accountant. The order I therefore make is that the Union shall

- (1) give Mr Dooley access to inspect the accounting records of the Union which he requested to inspect in his letter of 12 January 2012. Mr Dooley is to be given access to inspect those accounting records by no later than 19 February 2013.
- (2) permit Mr Dooley, at the time of the inspection, to take, or secure that he is supplied with, any copies of, or of extracts from the records inspected by him which he requires. Mr Dooley shall, if requested, pay any reasonable copying charges incurred by the Union in supplying him with the copies he has requested.

45. I make no order in respect of any administrative costs incurred by the Union arising from Mr Dooley's request to inspect the accounting records of the Union, other than in respect of the copying charges. Having failed to comply with section 30 of the 1992 Act, when it was open for it to do so, the Union has now lost the right to seek its reasonable administrative expenses in respect of the inspection. Mr Dooley's present right to inspect the accounting records he has requested is by virtue of this order, not by virtue of section 30 of the 1992 Act.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath.

David Cockburn
The Certification Officer

