

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE  
UNDER SECTION 31(1) AND SECTION 108A(1) OF THE TRADE UNION AND  
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**Mr J Flanagan**

**V**

**Union of Construction, Allied Trades and Technicians**

**Date of Decision:**

**13 August 2013**

Upon application by Mr John Flanagan ("the claimant") under section 31(1) and section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

I uphold Mr Flanagan's complaint that the Union of Construction, Allied Trades and Technicians Union breached section 30(2)(a) of the 1992 Act by having failed within 28 days to comply with Mr Flanagan's request of 10 February 2012 for access to the accounting records of the union

**REASONS**

1. Mr Flanagan brought this application as a member of the Union of Construction, Allied Trades and Technicians Union ("UCATT" or "the Union"). He did so by a Registration of Complaint Form which was received at my office on 6 February 2013.
2. Mr Flanagan's complaints were confirmed by him in the following terms:-

*Complaint One*

*"UCATT breached section 30(2)(a) of the 1992 Act, by having failed within 28 days to comply with Mr Flanagan's request of 10 January 2012 to Mr Steve Murphy, General Secretary for access to the accounting records of the union as specified in his letter."*

*Complaint Two*

*"UCATT breached section 30(6) of the 1992 Act on 6 March and on the 22 March by requiring the payment of £315 from Mr John Flanagan to inspect the accounts of the union. This amount was not a reasonable administration expense incurred by the union in respect of the accounts Mr Flanagan requested to inspect. Further to this the union did not inform Mr Flanagan of the principle in accordance with its charges before levying the charge."*

*Complaint Three*

*"UCATT breached its rule 1.3g on 6 March 2012 by requiring a generic administration charge of £315 for inspection of the general books of the union. Such a charge was not made by the Executive Committee. The EC did not use its discretion as they did not invoke nor did in fact refer to the rule 1.3g prior to the charge being demanded"*

3. It has latterly been accepted by the parties that Mr Flanagan's request to inspect the accounting records of the Union was made by a letter dated 10 February 2012 and not

10 January 2012 as originally alleged. I have therefore amended Mr Flanagan's first complaint to reflect the agreed facts.

4. On 17 July 2013 I issued an interlocutory decision striking out Mr Flanagan's second and third complaints on the grounds that they had no reasonable prospects of success and/or were misconceived. A copy of that decision appears as an annex hereto. Accordingly the only live complaint that remains to be determined is Mr Flanagan's first complaint which is as follows:

*Complaint One*

*"UCATT breached section 30(2)(a) of the 1992 Act, by having failed within 28 days to comply with Mr Flanagan's request of 10 February 2012 to Mr Steve Murphy, General Secretary for access to the accounting records of the union as specified in his letter."*

5. The parties subsequently agreed in writing that I should determine this remaining complaint without an oral hearing. Accordingly, I determine this complaint on the basis of the information before me, as submitted by each of the parties and sent by my office to the other side for its information or response.
6. Mr Flanagan is a member of UCATT. By a recorded delivery letter dated 10 February 2012, he requested that the General Secretary of the Union, Mr Murphy, give him access to specific accounting records of the Union in accordance with section 30(1) of the 1992 Act.

7. The relevant provisions of the 1992 Act provide as follows:

30(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.

30(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.

8. On the basis that Mr Flanagan's request was made on 10 February 2012, the 28 day period within which the union was obliged to make arrangements for the inspection to take place expired on 8 March 2012.
9. Of the correspondence supplied to my office by the parties, the next letter in time is a letter dated 5 March 2012 from Mr Flanagan to Mr Murphy. In that letter Mr Flanagan accepts that his letter dated 10 January was incorrectly dated and should have been dated 10 February. Mr Flanagan suggests that he inspects the relevant accounting records on 14 March. In his response of 6 March, Mr Murphy comments that 14 March is not convenient and that he will write again in due course with a suitable date.
10. By a letter dated 9 March 2012, Mr Flanagan suggested a further date for the inspection, namely 20 March. Mr Murphy responded by a letter of 15 March, stating that 20 March was not convenient and that arrangements had been made for the inspection to take place on 11 April. By a letter of 20 March, Mr Flanagan accepted this offer.
11. Mr Flanagan visited the union's general office on 11 April 2012. He paid the inspection fee of £315 that had been requested, inspected the accounting records and had his questions on the accounts answered.

12. On 14 May 2012 Mr Flanagan wrote to Mr Murphy to instigate an internal appeal to the General Council against the Executive Council's decision to require him to pay an inspection charge. By a letter dated 14 December 2012 Mr Murphy informed Mr Flanagan that his appeal had been dismissed.
13. Mr Flanagan commenced this application by a Registration of Complaint Form which was received at my office on 6 February 2013.
14. Mr Flanagan's complaints were put to the Union on 31 May 2013 and it responded through its solicitors, O.H.Parsons, on 13 June. The Union asserted that Mr Flanagan's letter dated 10 January 2012 had been misdated and that it had in fact been written on 10 February. The Union maintained that Mr Flanagan had agreed that his earlier letter was misdated when he had attended his internal appeal on 12 December, as recorded in Mr Murphy's letter to Mr Flanagan of 14 December. The Union went on to accept that the inspection that had taken place on 11 April was outside the 28 day period allowed by section 32(2)(a) (sic) of the 1992 Act. However, at that stage, the Union maintained that Mr Flanagan's application had been brought out of time, having been made more than six months from the date of the alleged breach by the Union. By a letter dated 31 July 2013, the Union's solicitors stated, "*If, contrary to the Union's contentions, the Certification Officer determines that Mr Flanagan has lodged his complaint in time then the Union accepts that it failed to permit Mr Flanagan access to the accounting records requested within the 28 day period specified by statute.*" By a letter dated 9 August 2013, the Union's solicitors withdrew its submission that the claimant's application had been brought out of time on the basis that the time limits that apply to applications of breach of union rules in sections 108A(6) and (7) of the 1992 Act do not apply to complaints of breach of statute brought under section 31. Nevertheless, the Union maintained its submission that, even if there was a breach of section 30(2)(a), it was not necessary for me to make any order as Mr Flanagan had inspected the records that he had requested to examine.

### **The Relevant Statutory Provisions**

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

#### ***Part I Chapter III***

#### ***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.*

**31 Remedy for failure to comply with request for access**

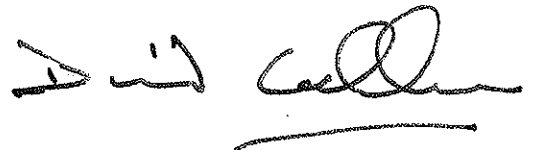
*(1) A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the court or to the Certification Officer.*

*(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.*

**CONCLUSIONS**

16. The Union has correctly withdrawn its submission that Mr Flanagan's application was brought out of time. Having done so, the Union has also correctly conceded liability in Mr Flanagan's first complaint. In my judgment, Mr Flanagan was not given access to the accounting records he requested before the end of the period of 28 days beginning with the day that he made that request. Accordingly, I uphold Mr Flanagan's complaint that the Union breached section 30(2)(a) of the 1992 Act by having failed within 28 days to comply with Mr Flanagan's request for access to the accounting records of the union.
17. When I find that such a complaint is well-founded I am required by section 31(2B) of the 1992 Act to make such orders as I consider appropriate for ensuring the claimant may exercise his or her statutory right to inspect such accounting records as have been properly requested. On the facts of this case, however, I observe that Mr Flanagan inspected the accounting records in question on 11 April 2012 and none of the outcomes which appear in section 31(2B) (a), (b) or (c) are apposite. Accordingly, I do not consider that it is appropriate that I make any order under section 31(2B) of the Act and I do not do so.



David Cockburn  
The Certification Officer

**Mr J Flanagan**

**V**

**Union of Construction, Allied Trades and  
Technicians**

**Annex to Decision dated 13 August 2013**

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER SECTION 31(1) AND SECTION 108A(1) OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**Mr J Flanagan**

**V**

**Union of Construction, Allied Trades and Technicians**

**Date of Decision:**

**17 July 2013**

**INTERLOCUTORY DECISION**

Upon application by Mr John Flanagan ("the claimant") under section 31(1) and section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

1. Pursuant to section 256ZA of the 1992 Act, I strike out the claimant's second and third complaints on the grounds that they have no reasonable prospects of success and/or are misconceived. The complaints that are struck out are as follows:

*Complaint Two*

*"UCATT breached section 30(6) of the 1992 Act on 6 March and on the 22 March by requiring the payment of £315 from Mr John Flanagan to inspect the accounts of the union. This amount was not a reasonable administration expense incurred by the union in respect of the accounts Mr Flanagan requested to inspect. Further to this the union did not inform Mr Flanagan of the principle in accordance with its charges before levying the charge."*

*Complaint Three*

*"UCATT breached its rule 1.3g on 6 March 2012 by requiring a generic administration charge of £315 for inspection of the general books of the union. Such a charge was not made by the Executive Committee. The EC did not use its discretion as they did not invoke nor did in fact refer to the rule 1.3g prior to the charge being demanded."*

2. Mr Flanagan's first complaint is to proceed to an adjudication. That complaint is as follows:

*Complaint One*

*"UCATT breached section 30(2)(a) of the 1992 Act, by having failed within 28 days to comply with Mr Flanagan's request of 10 January 2012 to Mr Steve Murphy, General Secretary for access to the accounting records of the union as specified in his letter."*

**REASONS**

1. Mr Flanagan brought this application as a member of the Union of Construction, Allied Trades and Technicians Union ("UCATT" or "the Union"). He did so by a Registration of Complaint Form which was received at my office on 6 February 2013.
2. Mr Flanagan's complaints were confirmed by him in the following terms:-

*Complaint One*

*"UCATT breached section 30(2)(a) of the 1992 Act, by having failed within 28 days to comply with Mr Flanagan's request of 10 January 2012 to Mr Steve Murphy, General Secretary for access to the accounting records of the union as specified in his letter."*

*Complaint Two*

*"UCATT breached section 30(6) of the 1992 Act on 6 March and on the 22 March by requiring the payment of £315 from Mr John Flanagan to inspect the accounts of the union. This amount was not a reasonable administration expense incurred by the union in respect of the accounts Mr Flanagan requested to inspect. Further to this the union did not inform Mr Flanagan of the principle in accordance with its charges before levying the charge."*

*Complaint Three*

*"UCATT breached its rule 1.3g on 6 March 2012 by requiring a generic administration charge of £315 for inspection of the general books of the union. Such a charge was not made by the Executive Committee. The EC did not use its discretion as they did not invoke nor did in fact refer to the rule 1.3g prior to the charge being demanded"*

3. On the material before me, the background to Mr Flanagan's complaints appears to be as follows.
4. Mr Flanagan is a member of the Everton UDO88(D) branch of UCATT. On 10 January 2012 Mr Flanagan wrote to Mr Steve Murphy, General Secretary of the Union, requesting access to specific accounting records of the Union. By a letter dated 6 March Mr Murphy informed Mr Flanagan that *"in accordance with the legislation and the Union's rule book there will be a charge of £315. Furthermore, should you require copies of any documents, this would incur and (sic) additional charge."*
5. Between 6 March and 20 March Mr Flanagan corresponded with Mr Murphy to finalise a date for inspection. On 20 March 2012 Mr Flanagan wrote to Mr Murphy accepting his offer to inspect the accounting records on 11 April. Mr Flanagan's letter also records that he disagreed with *"£315 being charged for this statutory right"* and asked how the sum of £315 was arrived at or whether it was an arbitrary sum. On 22 March Mr Murphy wrote to Mr Flanagan stating that the Executive Council had agreed the charge.
6. From the correspondence it would appear that the Inspection took place on 11 April 2012 and that Mr Flanagan paid the union £315.
7. On 14 May 2012 Mr Flanagan wrote to Mr Murphy to instigate an internal appeal to the General Council against the Executive Council's decision to require him to pay an inspection charge of £315. By a letter dated 14 December 2012 Mr Murphy informed Mr Flanagan that his appeal had been dismissed.
8. Mr Flanagan submitted a Registration of Complaint Form to my office which was received on 6 February 2013. The thrust of the complaints was that the Union had failed to give him access to the accounting records of the Union within 28 days of his request as required by section 30(2)(a) of the 1992 Act, that the Union had breached its rules by introducing a charge of £315 for accessing the Union's accounting records and that the charge was not a re-imbusement of reasonable administrative expenses incurred by the Union as provided for in section 30(6) of the 1992 Act but an attempt to deliberately frustrate and dissuade members from inspecting the

accounting records of the Union. After an exchange of correspondence with my office, Mr Flanagan identified the three complaints set out above.

9. Mr Flanagan's complaints were put to the Union on 31 May 2013 and it responded on 13 June. The Union accepted that Mr Flanagan had not been given access to the accounting records of the Union within 28 days of his request on 10 January 2012. However, it submitted that Mr Flanagan's second complaint should be struck out as being misconceived having regard to my decision in *Dooley v UCATT (No.4)* (D/26-27/12-13) that section 30(6) of the 1992 Act was not within my jurisdiction. The Union also submitted that Mr Flanagan's third complaint of an alleged breach of its rule 1.3g should be struck out on the grounds that it had no reasonable prospect of success. It noted that rule 1.3g gives the Executive Council a discretion to make a charge for such inspections and that, in this case, the Executive Council had delegated the responsibility of determining the amount of the charge to the General Secretary, as General Treasurer of the Union, which he duly did. The Union argued that rule 1.3g was not engaged on the facts of this case as the Executive Council had delegated its powers for levying the charge to the General Secretary.
10. Pursuant to section 256ZA(4) of the 1992 Act, my office sent a show cause letter to Mr Flanagan on 31 May 2013 giving him an opportunity to show why his second and third complaints at paragraph two above should not be struck out on the basis that they had no reasonable prospect of success and/or were otherwise misconceived. Mr Flanagan responded on 8 June, referring to the arguments in his previous correspondence. In that correspondence he submitted that his complaints should not be struck out on the following four grounds. First, the obligation to pay only arises after the union has complied with a request for inspection. He argued that this is how the Union had put its case in *Dooley v UCATT (No.4)* but that the Union had not informed him that he could access the accounting records prior to making payment. Secondly, the Union had incurred the expenses in preparing the documents for inspection before he had made his request as the documents had already been prepared in response to a request by another member who had previously been charged the administrative expense of £315. Thirdly, he had not been informed before the charge was levied of the principles in accordance with which the which the amount of the charge was determined. Fourthly, the Executive Council did not make the decision to impose a charge on him as there was no evidence showing how the Executive Council reached a decision on the amount charged and made no reference to rule 1.3g prior to the charge being demanded.

### **The Relevant Statutory Provisions**

18. 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 1<sup>st</sup> 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.*

#### **108A Right to apply to Certification Officer**

(1) *A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*

(2) *The matters are -*

- (a) *the appointment or election of a person to, or the removal of a person from, any office;*
- (b) *disciplinary proceedings by the union (including expulsion);*
- (c) *the balloting of members on any issue other than industrial action;*
- (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) *such other matters as may be specified in an order made by the Secretary of State.*

#### **256ZA Strike 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,*

....

(3) *An order this section may be made on the Certification Officer's own initiative and may also be made-*

- (a) *if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or*
- (b) *if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1)*

(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*

### **The Relevant Rules of the Union**

19. 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.*

## CONCLUSIONS

20. Mr Flanagan's second complaint is as follows:

*Complaint Two*

*"UCATT breached section 30(6) of the 1992 Act on 6 March and on the 22 March by requiring the payment of £315 from Mr John Flanagan to inspect the accounts of the union. This amount was not a reasonable administration expense incurred by the union in respect of the accounts Mr Flanagan requested to inspect. Further to this the union did not inform Mr Flanagan of the principle in accordance with its charges before levying the charge."*

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

*30(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.*

22. In the case of *Dooley v UCATT (No.4)* I considered whether my jurisdiction extended to determining the various issues that might arise section 30(6) of the 1992 Act. In that decision I found the following.

*"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."

23. My office informed Mr Flanagan of my decision in *Dooley v UCATT* (No.4) when requiring him to show cause why his second complaint should not be struck out. In his response, Mr Flanagan set out his arguments why he considered there had been a breach of section 30(6) of the 1992 Act but he did not engage with the issue of my jurisdiction nor did he seek to argue that the reasoning that I had applied in considering this provision in *Dooley* (No. 4) was flawed. Having re-considered this issue on the facts of the present case, I am not persuaded that the reasoning behind my decision on this point in *Dooley v UCATT* (No.4) is wrong. Accordingly, I find that I do not have jurisdiction to determine the alleged breach of section 30(6) of the 1992 Act about which Mr Flanagan complains in his second complaint. I therefore strike out this complaint on the grounds that it has no reasonable prospects of success and/or is otherwise misconceived.

24. Mr Flanagan's third complaint is as follows:

*Complaint Three*

*"UCATT breached its rule 1.3g on 6 March 2012 by requiring a generic administration charge of £315 for inspection of the general books of the union. Such a charge was not made by the Executive Committee. The EC did not use its discretion as they did not invoke nor did in fact refer to the rule 1.3g prior to the charge being demanded.*

25. Rule 1.3g of the Union's rules provides as follows:

*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.*

26. Mr Flanagan's third complaint alleges a breach of the rules of the Union. I have been given only a limited jurisdiction over alleged breaches of rules by Parliament. Section 108A(1) and (2) of the 1992 Act provide as follows:

**S.108A Right to apply to Certification Officer**

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).


(2) The matters are -

- (a) appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Secretary of State.

27. Mr Flanagan asserts that his complaint of a breach of rule comes within section 108A(2)(d) of the 1992 Act but it was pointed out to him in correspondence that I had previously decided that section 108A(2)(d) does not give me jurisdiction over every decision taken by the National Executive Committee of a union. Mr Flanagan was referred to my decision in *Fradley v Transport Salaried Staff Association (D/28-30/03)* in which I held:

*"26. In my judgement, section 108A(2)(d) describes two types of rule. These are (i) rules which relate to the constitution of the executive committee or of any decision making body ("relevant committees"), such as rules about the membership or quorum of those committees or other such issues relating to their constitution, and (ii) rules which relating to the proceedings of relevant committees, such as procedural rules as to the way business must be conducted."*

28. Mr Flanagan's response to the show cause letter on this point did not provide any sufficient grounds to persuade me that there was an arguable case that rule 1.3g of the rules of the Union is a rule within my jurisdiction under section 108A(2)(d) of the 1992 Act. Accordingly, I find that I do not have jurisdiction to determine the alleged breach of rule 1.3g about which Mr Flanagan complains in his third complaint. I therefore strike out this complaint on the grounds that it has no reasonable prospects of success and/or is otherwise misconceived.



David Cockburn  
The Certification Officer