

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE UNDER
SECTION 72A(1) AND 82(2) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

MR Y BAKHSH

V

UNISON (No. 3)

Date of Decisions

29 January 2010

DECISIONS

Upon applications by Mr Bakhsh (“the Claimant”) under section 72A(1) and 82(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)

1. The Claimant’s applications that the disputed payments made by both the former Glasgow Community Health Branch and the former North Glasgow Hospitals Branch of UNISON (“the Union”) between March and December 2003 were in breach of section 71(1)(b) of the 1992 Act are dismissed on withdrawal by the Claimant.
2. The Claimant’s applications that the disputed payments made by both the former Glasgow Community Health Branch and the former North Glasgow Hospitals Branch of UNISON between March and December 2003 were in breach of rule J1.1(a) of the rules of UNISON are dismissed on withdrawal by the Claimant.
3. I find that the following payments made by the former Glasgow Community Health Branch of UNISON between March and December 2003 were made in breach of rule J8.1 of the rules of the Union. The payments were those made to or in relation to the Scottish Labour Party in the sum of £723.40; to or in relation to Affiliated Political fund (APF) Meetings in the sum of £821.23; to or in relation to the Dave Anderson Selection Campaign in the sum of £296.10; and to or in relation to the National Labour Link in the sum of £343.68.
4. I find that the following payments made by the former Glasgow Community Health Branch of UNISON between March and December 2003 were not made in breach of rule J8.1 of the rules of the Union. The payments were those made to or in relation to the attendance at meetings of the National Labour Party in the sum of £1,800.75 and to or in relation to the attendance at meetings of the Labour Party, National Women's Forum in the sum of £493.60.
5. I find that the payment of £240 made by the former North Glasgow Hospitals Branch of UNISON to or in relation to the Scottish Socialist Voice between March and December 2003 was made in breach of rule J8.1 of the rules of the Union.

6. I find that the payment of £250 made by the former North Glasgow Hospitals Branch of UNISON to or in relation to a newsletter dated April 2004 was not made in breach of rule J8.1 of the rules of the Union.

REASONS

1. Mr Bakhsh was a member of UNISON (“the Union”) at the time he made this application. By a Registration of Complaint Form received at the Certification Office on 29 May 2009, the Claimant made complaints of breaches of the 1992 Act and of breaches of the rules of the Union, in relation to its political fund. Following correspondence with Mr Bakhsh, two complaints were confirmed by him in the following terms:-

Complaint 1

That on or around March 2003 to December 2003 the Union acted in breach of its rules and in breach of statute by making payments totalling £4,478.76 from the general fund of the UNISON Glasgow Community Health Branch which were directly or indirectly for the benefit of a political party. The sum of £4,478.76 is made up of payments to or in relation to the National Labour Party in the sum of £1,800.75; to or in relation to the Labour Party, National Women's Forum in the sum of £493.60; to or in relation to the Scottish Labour Party to the sum of £723.40; to or in relation to APF Meetings to the sum of £821.23; to or in relation to the Dave Anderson Selection Campaign to the sum of £296.10; and to or in relation to the National Labour Link to the sum of £343.68. The said payments were in breach of:

- a) Union rule J1.1 (a)
- b) Union rule J8.1
- c) Section 71 (1)(b) of the TULR (Consolidation) Act 1992.

Complaint 2

That on or around March 2003 to December 2003 the Union acted in breach of its rules and in breach of statute by making payments totalling £490 from the general fund of the UNISON North Glasgow Hospital Branch which were directly or indirectly for the benefit of a political party. The sum of £490 is made up of payments to or in relation to the Scottish Socialist Voice to the sum of £240 and to or in relation to the APF's members' newsletter to the sum of £250. The said payments were in breach of:

- a) Union rule J1.1 (a)
- b) Union rule J8.1
- c) Section 71 (1)(b) of the TULR (Consolidation) Act 1992

2. I investigated the alleged breaches in correspondence and a hearing took place on 12 January 2010. At the hearing, the Claimant represented himself and called one witness, Mr McDermott, for whom a witness statement was produced. The Claimant did not produce a written witness statement but I permitted him to give evidence during the course of his submissions. The Union was represented by Mr Rohan Pirani of counsel. The Union also called one witness, Mr Smith, its Scottish Regional Secretary, for whom a witness statement was produced. There was in evidence a 135 page bundle of documents. The 2004 rule book of UNISON was also in evidence, which, it was agreed, was identical for present purposes to the 2003 rule book. Both parties provided written skeleton arguments.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
4. Mr Bakhsh was a member of UNISON and its predecessor unions for over 23 years. His membership terminated upon expulsion following a final appeal on 8 June 2009.

Mr Bakhsh was a member of the Northumberland, Tyne & Wear Health Branch in which he held a number of positions, including Branch Secretary. He had been a member of the National Executive Committee between 2002 and 2005.

5. The Union came into existence on 1 July 1993, upon the amalgamation of NALGO, NUPE and COHSE. From the outset, it has had a political resolution and political fund rules in accordance with section 71 of the 1992 Act. In accordance with section 73, there had been periodical re-ballots on the political resolution in 1995 and 2005 which approved new resolutions, permitting the continuation of its political fund.
6. The political fund rules of the Union are unusual in that its political fund consists of two separate sections, known as the General Political Fund (“GPF”) and the Affiliated Political Fund (“APF”), sometimes referred to by the Union as the Labour Link. The rules relating to the political fund are found in rule J of the Union’s rules. The separate functions of the two sections of the political fund are dealt with in rules J8.3 and J8.5. Rule J8.3 provides as follows:

“Payments from the General Political Fund Section shall be made to promote the Union’s political objects, provided that no contribution from this fund shall be made to the funds of a political party.”

Rule J8.5 provides:

“Payments from the Affiliated Political Fund Section shall be made to promote the Union’s political objects, provided that no expenditure from this section of the Fund shall be made on behalf of or in the interests of any candidate or any representative who has not been officially adopted by the Labour Party (or, in the case of the Isle of Man the Manx Labour Party).”

7. The administration of the APF Section of the political fund is dealt with separately within the Union and the Union accepts that it is difficult to distinguish between expenditure on political fund objects and expenditure on the administration of the APF Section. Accordingly, in its written response to this claim, the Union stated that *“It is the practice of the Union that the political fund should bear the costs not only of all expenditure on political objects in relation to the Labour Party, but also of all the costs of administering (the APF) section e.g meetings, travel, subsistence”*.
8. Prior to 2005, the Union had four Health Service branches in Scotland. In 2004, however, the NHS in Scotland reorganised with the result of a single NHS Health Board for Glasgow. In response, the Union decided to merge its four branches in Glasgow. The target date for the merger was 15 September 2005. The new branch is called the NHS Glasgow Branch.
9. An issue that I must determine is whether the expenditure of £250 on a newsletter issued by the North Glasgow Hospitals Branch in April 2004 was a payment made in furtherance of the political objects set out in Rule J1 of the rules of the Union. If it was, the payment should have been made out of the Union’s political fund. This newsletter was called “Politics Today”. It describes itself as being “our first political newsletter” and was the first issue of what was intended to be a continuing newsletter. It has three main headings, namely *“What happens when UNISON Scotland disagrees with the government?”*, *“The Value of Political Campaigns”* and *“The Value of Political Links”*. It also contains pieces which call for the retention of a local hospital, Stobhill, and for support for the Amnesty International Trade Union Network.

10. In preparation for the merger, the UNISON branches in Glasgow were audited and this case arises mainly out of the revelations of those audits of the North Glasgow Hospitals Branch and the Glasgow Community Health Branch.

North Glasgow Hospitals Branch

11. The Branch Secretary of this branch was Cathy Miller. The auditors visited the branch on 27 October 2004. In their subsequent report, they stated at paragraph 6:

“Political Expenditure

Branch cheque No. 2711 in May 2004 for £240.00 was, according to the records, to Scottish Socialist Voice.

Branch cheque No. 2715 in May 2004 for £250.00 was, according to the records, for an APF Members Newsletter.

Branches are not legally entitled to spend their funds on APF activities. They may only incur such expenditure with the prior agreement of Scottish UNISON to reimburse the branch for what they have spent.”

In the recommendation part of the report, it stated the following:

“Per Sections 71 and 72 of the Trade Union and Labour Relations (Consolidation) Act 1992 political activities must be funded from a separate political fund. This is enshrined in Rule J8.1 of the Union.

Consequently branches may not pay for political activities out of their own funds. The branch must ensure that campaigning activities which may be deemed ‘political’ under the legislation (and which are defined in Rule J1.1 of the union) are subject to a claim from one of the political funds via Scottish UNISON.

Any affiliated political expenditure incurred by the branch should be approved in advance by the political contact officer at Scottish UNISON on behalf of the Scottish Affiliated Political Committee. You should be able to get a claim form seeking authorisation of expenditure for APF activities from West Campbell Street.

If the branch wishes to fund general political activities, a written request needs to be submitted to West Campbell Street outlining the nature of the activities proposed and the likely cost accompanied, wherever possible, by the proposed text of any written material.”

12. On 29 November 2004, the Union’s Scottish Regional Secretary, Mr Smith, wrote to Ms Miller for further information. He considered her response to be inadequate and so arranged for the appointment of an Investigating Officer in January 2005. Whilst the investigation was taking place, there was a further audit report of the branch in May 2005 which found that all but one of the recommendations that had been made had been implemented. No point was taken on the recommendation that was not met.

Glasgow Community Health Branch

13. The Branch Secretary of this branch was Karie Murphy, its Acting Treasurer was James Ross and its Labour Link Officer was Carol Wilson. The auditors visited this branch on 26 October 2004. In their subsequent report, they noted that the cost of conferences and group meetings in 2002 had been £10,339 whereas in 2003 it had increased to £21,909. The auditors reported that they had not seen the details of the expenditure in 2002 but listed the 16 items of relevant expenditure in 2003. This list included the following six items about which Mr Bakhsh complains.

<i>National Labour Party</i>	<i>£1,800.75</i>
<i>Labour Party, National Women’s Forum</i>	<i>£493.60</i>

Scottish Labour Party	£723.40
APF Meetings	£821.23
Dave Anderson Selection Campaign	£296.10
National Labour Link, London	£343.68

The audit report later contains a section on political expenditure, as follows:

“Political expenditure

The branch made a number of political payments (totalling £3,641.59) out of branch funds during 2003 as follows”

It then listed 16 items of expenditure by individuals. This section of the report concluded:

“Branches are not legally entitled to make political expenditure out of their own funds. Political expenditure may only be made out of an affiliated political fund, which branches do not have. Branches may only make political expenditure out of their own funds if they have prior agreement from the national or regional APF to reimburse the branch.”

The audit report went on to make recommendations in similar words to those used in the recommendations section of the audit report on the North Glasgow Hospitals Branch (see paragraph 11).

14. On 24 November 2004 Ms Murphy wrote to the Regional Officer, Mr McLaughlin, enclosing a copy of the audit report and stating that they would pay particular attention to the payments relating to political activity. Ms Murphy commented that she had already discussed the appropriate way to reimburse the branch for Labour Link expenditure. On 29 November 2004 the Union’s Scottish Secretary, Mr Smith, wrote to Ms Murphy for clarification of two matters, one of which related to political expenditure.
15. Mr Smith did not consider Ms Murphy’s response to his letter to be satisfactory and by January 2005 an Investigating Officer had been appointed. This investigation was wide ranging and took a considerable time. It dealt with issues which went beyond improper political expenditure. In November 2005 a recommendation was made that formal disciplinary proceedings would be taken against Ms Murphy, Mr Ross and Ms Wilson. Interim reports were prepared in these cases by June 2006 but the disciplinary proceedings were discontinued when each of the accused ceased membership in late 2006 or early 2007.
16. As a result of the further investigations, the newly merged NHS Glasgow Branch, was placed under administration, by which its normal democratic structures were suspended and its financial affairs controlled by the region. The branch was finally released from administration in early 2009.
17. In early 2009 Mr Bakhsh was sent a number of documents relating to the activities of the two Glasgow branches in question, including the audit reports. He submitted a registration of complaint form dated 24 May 2009 to the Certification Office, which was received on 29 May.
18. Having clarified the precise wording of Mr Bakhsh’s complaints, my office notified the Union of this application on 16 July 2009.
19. In May 2009 the Union transferred £5,969.42 from its political fund to its general fund. In August 2009 it transferred a further £2,184.41 from its political fund to its general fund.

20. Since these events the Union has amended its Code of Good Branch Practice to include the following passage: “*Limitation on use of branch funds. No payments shall be made for political purposes or to political parties from branch funds. Such payments should be dealt with through the Affiliated Political fund or General Political fund which are managed nationally.*” It has also established a Fraud Investigation Sub-Committee which reports to the Finance and Resource Management Committee. This sub-committee receives comprehensive reports from internal auditors and ensures a more systematic oversight of financial problems than previously.

The Relevant Statutory Provisions

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

Restriction on use of funds for certain political objects

s.71 Restriction on use of funds for certain political objects

(1) *The funds of a trade union shall not be applied in the furtherance of the political objects to which this Chapter applies unless –*

- (a) *there is in force in accordance with this Chapter a resolution (a "political resolution") approving the furtherance of those objects as an object of the union (see sections 73 to 81), and*
- (b) *there are in force rules of the union as to –*
 - (i) *the making of payments in furtherance of those objects out of a separate fund, and*
 - (ii) *the exemption of any member of the union objecting to contribute to that fund,*

which comply with this Chapter (see sections 82, 84 and 85) and have been approved by the Certification Officer.

s.72 Political objects to which restriction applies

(1) *The political objects to which this Chapter applies are the expenditure of money –*

- (a) *on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;*
- (b) *on the provision of any service or property for use by or on behalf of any political party;*
- (c) *in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;*
- (d) *on the maintenance of any holder of a political office;*
- (e) *on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;*
- (f) *on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.*

(2) *Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of subsection (1)(e), be taken to be expenditure incurred on the holding of the conference or meeting.*

s. 72A Application of funds in breach of section 71

(1) *A person who is a member of a trade union and who claims that it has applied its funds in breach of section may apply to the Certification Officer for a declaration that it has done so.*

s.82 Rules as to political fund

(2) *A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.*

(3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been committed, he may make such order for remedying the breach as he thinks just under the circumstances.

22. The Rules of the Union which are relevant to this application are:-

J1 RULES FOR THE POLITICAL FUND

1.1 The objects of UNISON-The Public Service Union (hereafter "the Union") shall include the furtherance of the political objects to which section 72 of the Trade Union and Labour Relations (Consolidation) Act 1992 applies, that is to say, the expenditure of money:

- (a) on any contribution to the funds of, or on the payment of any expenses incurred directly or indirectly by, a political party;
- (b) on the provision of any service or property for use by or on behalf of any political party;
- (c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the Union in connection with any election to a political office;
- (d) on the maintenance of any holder of a political office;
- (e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;
- (f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.

1.2 Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with her/his attendance as such shall, for the purposes of paragraph (e) above, be taken to be expenditure incurred on the holding of the conference or meeting.

J8 AFTER THE INTERIM PERIOD

8.1 Any payments made in furtherance of the political objects defined in Rule J.1 above shall be made out of a separate fund of the Union (hereinafter called the political fund) which shall consist of two distinct sections known as (a) the General Political fund Section and (b) the Affiliated Political fund Section.

8.2 The administration of each section of the Political fund shall be the responsibility of the National Executive Council which shall delegate this responsibility to the exclusive control of two separate Committees which shall, in the case of the General Political fund, consist of members of the National Executive Council who in accordance with these rules are contributors to the General Political fund and, in the case of the Affiliated Political fund, consist of 12 members of the National Executive Council elected by members of the National Executive Council who in accordance with these Rules are contributors to the Affiliated Political fund and one representative from each Region (save for Northern Ireland) elected by members in Branches in that Region who in accordance with these rules are contributors to the Affiliated Political fund, such Committee to be called the National Affiliated Political Committee, all members of which must be contributors to the Affiliated Political fund and paid up individual members of the Labour Party.

8.3 Payments from the General Political fund Section shall be made to promote the Union's political objects, provided that no contribution from this fund shall be made to the funds of a political party.

8.5 Payments from the Affiliated Political Fund Section shall be made to promote the Union's political objects, provided that no expenditure from this section of the fund shall be made on behalf of or in the interests of any candidate or any representative who has not been officially adopted by the Labour Party (or, in the case of the Isle of Man, the Manx Labour Party).

Summary of Submissions

23. Mr Bakhsh consented to his applications under section 71(1)(b) of the 1992 Act and rule J1.1(a) being dismissed on withdrawal. He accepted that the Union had political fund rules in force and that he could not pursue an application for a breach of rule in relation to the political objects themselves. Mr Bakhsh further noted the concessions made by the Union with regard to four of the items of expenditure by the Glasgow Community Health Branch and one of the items of expenditure by the North Glasgow Hospitals Branch. Mr Bakhsh made the following submissions with regard to the items of expenditure that remained in dispute.

Glasgow Community Health Branch

Mr Bakhsh argued that those who incurred expenses in attending the meetings of the Scottish Labour Party and the National Women's Forum were longstanding Labour activists. He submitted that although he had no knowledge whether they attended as delegates, it would be ludicrous to suggest that they were present as mere attendees, taking no active part, attending no fringe meetings nor Union caucuses. He stated that in his branch in Newcastle anyone going to such a conference or meeting would have to apply to the APF for funding to go as a visitor and that if such costs were transferred to the thousand or so branches within UNISON, the expenditure of General Fund money would be considerable.

North Glasgow Hospital Branch

Mr Bakhsh submitted that the newsletter "Politics Today" was identified in the audit report as being "an APF members newsletter" and that the Union had accepted in its written response to his claim that all APF expenses should be met from the political fund. He argued that expenditure on the newsletter was on a political object, namely that in Rule J1.1(f). It was expended on the production of a document, the main purposes of which was to persuade people to vote or to not vote for a political party. In Mr Bakhsh's submissions, the newsletter extolled the Union's affiliation to the Labour Party. He stated that the only party mentioned was the Labour Party and that it was produced by the APF or Labour Link Officer. He stated that in his branch, he had received a regular APF newsletter but that it went only to APF members and its funding came from the APF. He again commented that if the cost of such publications was to be transferred to the branches, the expenditure of General Fund money would be considerable.

24. For the Union, Mr Pirani, conceded that there had been a breach of rule J8.1 in respect of four items of expenditure in the complaint concerning the Glasgow Community Health Branch. These were the payments to or in relation to the Scottish Labour Party, APF meetings, the Dave Anderson Selection Campaign and National Labour Link, London. He also conceded a similar breach in respect of the payment to Scottish Socialist Voice by the North Glasgow Hospitals Branch. As to the remaining complaints, Mr Pirani made the following submissions.

Glasgow Community Health Branch

The disputed expenditure by this branch was described in the October 2004 audit as being "National Labour Party £1,800.75 and Labour Party, National Women's Forum £493.60." Mr Pirani stated that the Union was unable to dispute that this expenditure was for a political purpose within rule J1 but that he made no admittance that there had been breaches of rule J8.1 as the Union had no evidence either way. He noted that this expenditure related to the attendance at those meetings by certain individuals and that accordingly the question was whether such expenditure fell within rule J1.2. This provides:

“Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with her/his attendance as such shall, for the purposes of paragraph (e) above, be taken to be expenditure incurred on the holding of the conference or meeting.”

Mr Pirani noted that this extended the definition of political objects in Rule J1.1(e) to include attending a conference but only “*as a delegate or otherwise as a participator in the proceedings*”. He went on to argue that the expenditure in question appeared to have been incurred for mere attendance and so fell outside the objects in rule J1. Mr Pirani also noted the evidence of Mr Smith, that the attendees were unlikely to have been delegates, as they would then have had to have gone through UNISON head office. Mr Pirani also noted that Ms Murphy’s undated letter to Mr Smith referred to most of the attendees as being “visitors”. He submitted that visitors would not ordinarily “participate” but that, even if they did, the participation would not have been in the “proceedings”, which he submitted was a reference to the formal proceedings of the meeting or conference, not fringe or caucus activity. Mr Pirani submitted that there was no evidence that the members in question had participated in such proceedings.

North Glasgow Hospitals Branch

This complaint concerned expenditure on what the audit report called “The APF Members Newsletter”. The Union maintained that although the newsletter used the word “political”, this term was used in its widest sense and the newsletter was not party political. Mr Pirani noted that the newsletter had been sent to all members of the branch, not just those who subscribed to the APF. He observed that in these circumstances the audit report had been incorrect to describe the publication as being “an APF members newsletter”. Mr Pirani further submitted that for such expenditure to fall within rule J1.1(f), the main purpose of the publication had to be “*to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate*”. He argued that the purpose of the newsletter was to inform members of the benefits of the APF, which, in his submission, was outside the scope of rule J1.1(f). Mr Pirani also observed that the scope of rule J did not include general lobbying, which a trade union without a political fund might engage in with any political party or other organisation. He submitted that the main purpose of the newsletter in question was to extol the virtues of UNISON lobbying and that members who did not belong to the APF would still expect their interests to be pursued through lobbying.

Conclusions

25. Mr Bakhsh withdrew his complaint that the disputed payments made by both the former Glasgow Community Health Branch and the former North Glasgow Hospitals Branch were made in breach of rule 71(1)(b) of the 1992 Act. He did so, having accepted that the Union does have rules in force which comply with the provisions of Chapter VI of the 1992 Act. Accordingly I dismiss these complaints on withdrawal by the Claimant.
26. Mr Bakhsh also withdrew his complaints that the disputed payments made by both the former Glasgow Community Health Branch and the former North Glasgow Hospitals Branch were made in breach of rule J1.1(a) of the rules of the Union. He did so having accepted that rule J1.1(a) sets certain additional objects of the Union (the political objects) and imposes no specific obligation on it. Accordingly I dismiss these complaints on withdrawal by the Claimant.
27. The Union conceded that four of the disputed payments made by the Glasgow Community Health Branch were made in breach of rule J8.1 of its Rules. On the information before me, the Union was correct to make this concession. Accordingly, I find that the following

payments made by the former Glasgow Community Health Branch between March and December 2003 were made in breach of rule J8.1 of its rules. These payments were those made to or in relation to the Scottish Labour Party in the sum of £723.40; to or in relation to APF meetings in the sum of £821.23; to or in relation to the Dave Anderson Selection Campaign in the sum of £296.10 and to or in relation to the National Labour Link in the sum of £343.68.

28. The sum of the above payments is £2,184.41. In August 2009, having been informed of the complaints made by Mr Bakhsh, the Union transferred an equivalent sum from its Political Fund to its General Fund. Further, since these payments were made, the Union has amended its Code of Good Branch Practice to re-emphasise that no payment should be made from branch funds for political purposes or to political parties. It has also established a Fraud Investigation Sub-Committee to consider more systematically its reports from internal auditors. I further observe that these complaints relate to events which occurred in 2003 and no complaints of further similar breaches have been brought to me in the intervening six years. In the above circumstances, I do not find that any order to remedy these breaches is necessary or would be just.
29. The Union also conceded that the payment of £240 made by the North Glasgow Hospitals Branch to Scottish Socialist Voice was made in breach of rule J8.1 of the Rules of the Union. On the information before me, the Union was correct in making this concession. Accordingly, I find that the above payment was made in breach of rule J8.1.
30. The Union did not make a transfer of an equivalent sum from its Political Fund to its General Fund upon being informed of Mr Bakhsh's complaints. However, it had made a transfer from its Political Fund to its General Fund of £5,969.42 in May 2009. The Union maintains that this transfer had been made to ensure that whatever the outcome of the financial problems that had arisen in its Glasgow branches, there could be no question of party political expenditure having been met from General Funds. However, the Union was unable to explain how it had arrived at such a precise sum for this transfer or why the transfer had been made in May 2009. I remain concerned by these unanswered questions. Nevertheless, I accept that such a transfer was made and that accordingly the General Funds of the Union have not been diminished by £240 as a result of this payment. For this reason and the reasons given in paragraph 28, I do not find that any order to remedy this breach is necessary or would be just.
31. Of the original complaints, there are just two which were the subject of argument and which required adjudication. These were the payments by the Glasgow Community Health Branch in the total sum of £2,294.34 in respect of attendance of its members at the conference of the Scottish Labour Party and the National Women's Forum and the payment by the North Glasgow Hospitals Branch of £250 in respect of a newsletter. I will deal with each in turn.

Glasgow Community Health Branch

32. As to the payments by the Glasgow Community Health Branch, the audit report of October 2004 refers to a payment of £1,800.75 in respect of the National Labour Party and to a payment of £493.60 in respect of the Labour Party, National Women's Forum. These appear to be made up of the following, albeit with minor discrepancies. Expenditure on attendance at Labour Party conferences is listed in the audit report as being

*20 Mar K. Murphy Scottish Labour Party Conf. £340.80;
20 Mar C Wilson Scottish Labour Party Conf. £220.80;
20 Mar S Taylor Scottish Labour Party Conf. £161.80;
30 July K Murphy Labour Party Conf. Accom. £450.00;*

Expenditure in relation to the National Women's Forum is listed as being

*"19 Oct Flight National Women's Forum £195.00;
19 Oct M Dunbar – expenses re above £298.50".*

33. The Union neither disputes nor admits that these payments were made in breach of rule J8.1 of its rules. It maintains that it has no evidence either way. The evidence before me in support of Mr Bakhsh's complaint is that the auditor considered the expenditure to be political, that the individuals in question were mainly Labour Party activists, that visitors pay a fee for admission to Labour Party conferences and that expenditure on attendance at Labour Party conferences is generally regarded within the Union as falling within rule J1. On the other hand, there was evidence before me that those who attended these conferences did so as visitors, not as delegates or 'participators'. The description of 'visitor' was given to them by Ms Murphy in her undated letter to Mr Smith. Mr Bakhsh, who described himself as a friend of Ms Murphy, stated that he had no knowledge whether they attended as delegates. Mr Smith stated that the expenses of any delegate would have had to have been processed through National Office and the Union had no evidence of the status of these attendees. Weighing this evidence, I am most persuaded by the description of the attendees given by Ms Murphy and find, on the balance of probabilities, that they attended as visitors, not as delegates.
34. Neither party presented any evidence regarding the nature of what is described as "Labour Party, National Women's Forum" or any more specific evidence about the expenditure thereon than is contained in the auditors report. The hearing before me proceeded on the basis that this expenditure was to be considered in the same way as the expenditure in relation to that described as "National Labour Party" and I treat it as such in this decision.
35. The object of the Union relating to party political conferences and meetings is found in rule J1.1(e) and applies to the expenditure of money:

"J1.1(e) on the holding of any conference or meeting by or on behalf of the political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party."

This is supplemented by rule J1.2, which deems certain expenditure to have been incurred on the holding of any such conference or meeting. It provides as follows:

"J1.2 Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with her/his attendance as such shall, for the purposes of paragraph (e) above, be taken to be expenditure incurred on the holding of the conference or meeting".

36. Rule J of the Union rules follows verbatim section 72 of the 1992 Act. It would appear that the draftsman of that provision considered that the sub-section relating to the holding of meetings did not deal adequately or at all with attendance at those meetings and that accordingly a further sub-section was necessary. It is therefore necessary that I consider the deeming provision dealing with attendance at conferences and meetings. This deeming provision is contained in section 72(2) of the 1992 Act and rule J1.2 of the Rules of the Union. It is identical in both the statute and the rules. It applies "*Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings*".

37. I have found that the expenditure in question is not in relation to persons who attended those meetings as delegates. The remaining question is whether they attended as “participants in the proceedings”. The interpretation and application of this phrase is not an easy matter and will in most cases be fact specific. In my judgment, however, this phrase ordinarily describes those who attend such a meeting as specific as a delegate or general invitees to further the purposes of the meeting other than for the purposes of providing information or lobbying. Thus, for example, a union without a political fund may spend money on the attendance of its General Secretary at a conference of any political party to make a speech. Such a union may also spend money on attending a conference of any political party for the purpose of lobbying. However, an expenditure to attend a political party rally or march to further the ends of that event would need to be made from a political fund.
38. Applying the facts of this case to rule J1.1 and J1.2, I find that those who attended the conferences or meetings in question as visitors did not do so as “participants in the proceedings”. I have no evidence that they were invited or that their presence furthered the purpose of the meeting. I also had no evidence that the expenses in question included any payment by or on behalf of those individuals directly to the Labour Party. I reject Mr Bakhsh’s submissions that their activities on the fringe of the conference, if any, made them participants in the proceedings. Visitors to a political conference are ordinarily there for their own interest and do not contribute to the proceedings, certainly not as participants. I therefore find that the expenditure by the Union on the attendance of these members was not made in furtherance of any of the political objects defined in rule J1.1 or J1.2.
39. For the above reasons, I dismiss the complaint that the payments made by the former Glasgow Community Health Branch of the Union between March and December 2003 were made in breach of rule J8.1 of its Rules.
40. By way of observation, I note that this case concerns facts which arose almost seven years ago. It is therefore not surprising that the evidence upon which I have to adjudicate was sparse. The Union stated that its practice is to pay the expenses of those attending political conferences from its political fund. This is no doubt good practice. The application of any rule in identical terms to section 72(2) of the 1992 Act is far from certain and will in most cases be fact specific. Future cases may well be determined on better evidence. Payment of such expenses from the political fund minimises risk.

North Glasgow Hospitals Branch

41. I turn now to the payment of £250 by the North Glasgow Hospitals Branch in respect of what the audit report refers to as “the APF members newsletter” of April 2004. Mr Bakhsh maintains that the political object in furtherance of which this payment was made was that in rule J1.1(f). This relates to expenditure:

“On the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.”

42. The relevant newsletter is called “Politics Today”. It describes itself as being “our first political newsletter” and was the first issue of what was intended to be a continuing newsletter. It has three main headings, namely “What happens when UNISON Scotland disagrees with the government?”, “The Value of Political Campaigns”, and “The Value of Political Links”. It also contains pieces which call for the retention of a local hospital, Stobhill, and for support for the Amnesty International Trade Union Network.

43. Mr Bakhsh gave evidence that in his branch in Newcastle such newsletters were produced by the APF Section, circulated only to members who subscribe to the APF and were paid for out of the APF. I have no evidence about the origins of this newsletter, other than the name of the person to whom correspondence should be sent. I note however that it was issued in the year before the Union had to re-ballot on its political fund and find that it was circulated to all the members of that branch.
44. Rule J1.1(f) does not apply to all publications of a political nature. It specifically restricts its application to those publications “*the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate*”. Whilst this formulation may go beyond the persuasion of people to cast their votes in a particular way in a particular election, it restricts the scope of the rule to the persuasion of people in respect of their voting intentions for a political party.
45. The newsletter in question seeks to persuade its readers of the value of lobbying, even where the Union disagrees with Government policy. At the relevant time, the Government in Scotland was a coalition of the Labour and Liberal Democrat parties. It also seeks to persuade members of the value of political campaigning and the value of political links. In my judgement, the newsletter stopped short of persuading members to vote (or not to vote) for a political party. This would be consistent with the wish of the authors to procure support for a continuation of the political fund as a whole, having regard to the fact that the political fund is divided into two sections and that a substantial number of members choose not to belong to a fund which supports the Labour Party, namely the APF. Accordingly, I find that the expenditure of money on this newsletter was not made in furtherance of object J1.1(f) of the rules of the Union. In these circumstances, the expenditure was not made in furtherance of one of the objects in rule J1 and there was no breach of rule J8.1.
46. For the above reasons, I dismiss the complaint that the payment made by the former North Glasgow Hospital Branch of the Union in respect of the newsletter “Politics Today” dated April 2004 was made in breach of rule J8.1 of the rules of the Union.

David Cockburn
The Certification Officer