

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

Mrs Karen Mills

V

Unite the Union

Date of Decision

12 January 2016

DECISION

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

1. I uphold the complaint made by the claimant that Unite the Union (“Unite” or “the Union”) breached section 30(2)(a) of the 1992 Act by failing to comply within 28 days with the request for access to accounting records of the Union made by the claimant on 23 May 2014.
2. Where I am satisfied that the claim is well-founded I am required by section 31(2B) of the 1992 Act to make such order as I consider appropriate for ensuring that the claimant is allowed to inspect the accounts requested. The order I make is as follows:
 - 2.1 Unite the Union is ordered to give the claimant access to the accounting records of the BASSA branch of the Union (LE/2000) which show the individual transactions which together constitute the aggregate amounts that are entered in the quarterly and annual accounts of the branch for the years 2008 to 2013 under the headings ‘stand-down’ or ‘stand-down allowance’. The accounting records are to include the date each payment was made, the identity of the recipient and a brief description of the expenditure category of that payment or other reason for payment in accordance with the accounting conventions of the Union. The accounting records may be print-outs of the information retained electronically, or in such other form as discloses the above accounting records.
 - 2.2 The inspection is to take place on or before 26 February 2016, or such later date as the parties may agree. 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.
 - 2.3 The Union shall allow the claimant to be accompanied at the inspection by an accountant (being a person eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006). The Union need not allow the

claimant to be accompanied by such an accountant if the accountant fails to enter into such agreement as the Union may reasonably require for protecting the confidentiality of the records.

- 2.4 The Union will secure that at the time of the inspection the claimant is allowed to take, or is supplied with, any copies of, or of extracts from, records inspected by her which she may request.

REASONS

1. Mrs Mills is a member of Unite the Union (“Unite” or “the Union”). By an application received at the Certification Office on 14 March 2014, Mrs Mills made a complaint against the Union of a breach of the 1992 Act regarding access to the accounting records of branch LE/2000, also known as the BASSA branch of Unite.
2. Following correspondence with the claimant, the complaint was confirmed by her in the following terms.

“In breach of section 30(2) of the 1992 Act, Unite the Union failed to comply with Ms Mills’ requests of 23 May 2014, requesting access to and the opportunity to take copies of the accounting records of the BASSA branch relating to the period 2008 to 2013.”

3. I investigated the alleged breaches in correspondence and hearings took place on 9 April 2015 and 11 November 2015.
4. At the first hearing, on 9 April 2015, Mrs Mills was represented by Mr David Beaumont, a friend and a member of Unite. Mrs Mills presented a written witness statement. The Union was represented by Mr Michael Potter of counsel, instructed by Mr Neill Gillam, the Union’s in-house solicitor. Witness statements for the Union were presented by Mr Adrian Smith, Branch Secretary of branch LE/2000 and Mr Marcel Devereux, Treasurer of branch LE/2000. There was also in evidence the rules of the Union and a bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. I gave leave for other documents to be added to the bundle at the hearing. Both parties provided skeleton arguments. This hearing was adjourned on agreed terms as there appeared to be a prospect of it being settled amicably. No settlement was agreed and a second hearing took place on 11 November 2015.
5. At the hearing on 11 November 2015, Mrs Mills represented herself, although she was again accompanied by Mr Beaumont. I gave leave for Mr Beaumont to make certain submissions on her behalf. Mrs Mills produced a further witness statement and gave oral evidence. Oral evidence for her was also given by Mr Beaumont and Mr Singh, each of whom had presented a written witness statement. Mrs Mills had submitted a written witness statement from Mr Aidan Duffy, a member of the BASSA Branch. I refused to admit Mr Duffy’s witness statement on the grounds that its content was not relevant to the issues to be determined by me. The Union was again represented by Mr Potter of counsel, instructed by Mr Neill Gillam. Oral evidence for the Union was given by Mr Devereux and Mr Ed Sabinsky, the Union’s Finance Director. Mr Sabinsky presented a witness statement and Mr Devereux presented a supplementary statement to the one he had presented to the earlier hearing. The Union also relied upon the original witness statement of Mr Adrian Smith but he did

not attend the hearing to give oral evidence. There were three bundles of documents in evidence at this hearing. The first bundle of 163 pages contained the documents that were before me at the hearing on 9 April 2015. The second bundle of 200 pages contained correspondence and other documentation as supplied by the parties since 9 April 2015. The third bundle of 311 pages contained all the accounting records that had been submitted by either side in the course of these proceedings. At the hearing, I refused the claimant's application for the late submission of an undated email she had recently sent to the Union on the grounds of its lack of relevance to the issues I had to decide. The rules of the Union and the constitution of branch LE/2000 were also in evidence. Both sides provided skeleton arguments in advance of the hearing in accordance with my directions. On the morning of the hearing, Mrs Mills presented an additional skeleton argument prepared for her on a pro bono basis by Mr Jody Atkinson of counsel, with additions by Mr Beaumont. The Union presented a bundle of authorities which included, amongst other material, the following legal authorities: *DTC (CNC) Ltd v Gary Sargeant & Co (a firm)* [1996] (2) All ER 369, *Mortimer v Amicus (D/1/03)*, *Foster v Musicians Union (D/13-17/03)*, *King & King v TGWU (D/59-61/06)* and *Hughes v TGWU* [1985] IRLR 382.

The Issues in Brief

6. On 12 January 2014 Mrs Mills made a request for access to, and for copies of, the accounting records of the BASSA branch relating to the period 2008 to 2013. From the outset, the Union expressed its willingness to provide these accounting records and attempts were made to arrange an inspection. There was considerable delay in making these arrangements, some of which was the fault of the Union and some by reason of Mrs Mills' unavailability. Partial but incomplete access was given in November 2014 and March 2015. Eventually, following a hearing on 9 April 2015, the Union gave Mrs Mills access to what they considered to be the whole of the accounting records of the BASSA branch for the relevant period, as provided for in the 1992 Act. Mrs Mills considered these records to be incomplete. In particular, she observed that in each of the six years there were 'Sundries' listed of between £301,412 and £523,940 p.a which were not broken down or particularised. She further observed that there were payments listed as 'stand-down payments (with National Insurance)' of between £149,513 and £207,585 p.a which were not broken down to show how much was paid to whom, when or why. The Union provided an explanation of the 'Sundries' and demonstrated where they appeared in the accounts that had been provided (see paragraph 10 below). However, Mrs Mills maintained that she was still entitled to see the bank statements of the branch to test if the information in the accounting records disclosed is accurate. The Union dispute that the bank statements are accounting records within the meaning of the 1992 Act. As to the 'stand-down' payments, the Union maintains that the accounting records they have provided are all those which Mrs Mills is entitled to access. Accordingly I must determine whether the bank statements of the branch are accounting records within the meaning of the 1992 Act and whether there are any accounting records relating to stand-down payments which exist and to which Mrs Mills is entitled to have access.

7. The Union accepts that it acted in breach of section 30(2) of the 1992 Act by having failed to make arrangements with Mrs Mills to be allowed to inspect the records requested before the end of the period of 28 days beginning with the day the request was made. The request was first made on 12 January 2014. It was repeated on 23 May 2014. Access to the accounting records to which the Union consider Mrs Mills is entitled was not given until 27 April 2015.

Findings of Fact

7. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
8. Mrs Mills has been employed by BA (and its predecessors) for about 30 years. She works as a purser in the Worldwide Fleet. She has been a member of Unite (and its predecessors) for about the same time. She is a member of the BASSA branch but has not held any positions within the Union.
9. Unite has about 1.4 million members and about 3,440 branches. It has a branch at Heathrow Airport known as the British Airlines Stewards and Stewardesses Association ("BASSA"). It is in the Union's London and Eastern Region. Its official number is LE/2000. BASSA is one of the largest branches in the Union. It has about 9,000 members, each now paying a monthly subscription of £19.58. Accordingly, the Union subscriptions of BASSA members are in excess of £2 million a year. The Union pays back to the branch a percentage of the subscriptions as the running expenses of the branch. BA has three 'fleets' at Heathrow. These are the Worldwide Fleet, Euro Fleet and the Mixed Fleet. The Unite members in the Worldwide Fleet and Euro Fleet are in the BASSA branch. The members in the Mixed Fleet are in a different branch. The funds remitted by the Union head office to BASSA are divided 55% to the Worldwide section, 30% to the Eurofleet section and 15% to the BASSA Central Fund. BASSA has offices in the Union's building in Bath Road, Heathrow as well as separate offices at the airport for its Worldwide section and Eurofleet section. The members of BASSA elect 38-40 lay representatives. When they are performing work for the branch they receive their basic salary from BA but no allowances. The allowances can be substantial, especially for those who normally fly long-haul. To make up for the loss of these allowances the representatives can claim stand-down pay from the Union. The representatives are not on full time release. They do union work as and when necessary. This may be for relatively short periods or for more substantial blocks of time.
10. The money remitted to the BASSA branch by the head office of Unite is paid into the bank account of the branch, the Central Fund. Payments are then made out of that account by monthly standing order to the accounts held by Worldwide and Eurofleet. These payments-out and receipts are recorded in the accounts to which Mrs Mills has been given access. For example, the branch accounts for the first quarter of 2012 shows the receipts of the money remitted to the branch from head office. They also show payments to Eurofleet on 16 January, 15 February and 15 March of £13,200 each, as well as payments to Worldwide on the same dates of £16,100 each. These payments then appear as receipts on the same date in the similar quarterly accounts that are kept by Worldwide and Eurofleet. The payments also appear in the quarterly summary as a total amount of £95,948, against the heading of 'Sundries'. The heading of 'Sundries' requires explanation. When the branch treasurer prepares the

quarterly accounts of the branch, he is required to enter expenditure on a spreadsheet. The spreadsheet has various columns with headings such as Venue/Catering /Travel, Postage/Printing/Stationery, Charitable Donations and Stand-Down Allowance. The spreadsheet is designed to be used by branches generally and is not in the control of the branch. There is no heading on the spreadsheet which accurately describes the disbursements from the Central Fund to Worldwide and Eurofleet as other branches do not normally disburse funds to different sections in this way. It is in these circumstances that the branch decided to enter its disbursements from the Central Fund to Worldwide and Eurofleet in the column under the heading of Sundry. There are of course other items of sundry expenditure which also appear in this column and they are separately itemised. When Mrs Mills inspected the accounting records that were made available to her in November 2014 and March 2015, she was only shown the annual accounts. These showed unparticularised payments under the Sundry heading of between £301,412 and £523,940 p.a. Quite understandably, she refused to accept that this was in compliance with the Union's statutory duty. She has now been able to trace the way that the Union's remittances to the branch are recorded as both receipts and payments in the accounts of the branch Central Fund, Worldwide and Eurofleet and stated that she must accept the Union's explanation, although she would have wanted to see the bank statements which back up the inter-bank transfers.

11. In order to determine this complaint, it is necessary to understand how the branch prepares its accounts in practice. This was described to me by the branch treasurer, Mr Devereux, who I found to be a credible and straightforward witness. He explained that, should it be necessary to purchase any major item or pay contractors a significant sum, he would do so by bank transfer or cheque, retaining the invoice, receipt or other contractual document. Should he or any lay representative incur a minor expense (such as a taxi fare or purchasing a stapler) they would pay for the item out of personal funds and claim it back as an expense. They would do so by filling in an online form and giving the receipt to Mr Devereux. The online form is set up so as to generate a BACS payment at the end of the month, if authorised. Similarly, representatives who wish to claim a stand-down allowance would fill in the same online form and they would receive payment at the end of the month by BACS, if authorised. Mr Devereux gave evidence that at or about the end of each month he and the branch secretary would look through the claimed expenses and approve them if appropriate. The online claim form has fields to show the date and the nature or category of the expenditure. At the end of each quarter Mr Devereux usually meets with the branch secretary to enter the transactions of the branch for that quarter in the records of the Union. They do so by entering them on the spreadsheet devised by the Union for this purpose, as described above. Two part time assistants, known as administrators, are brought in to input the data. Mr Devereux and the branch secretary go through the invoices and receipts that have accumulated since the previous quarter, check these against the bank statements and enter the information in the appropriate columns of the spreadsheet. Accordingly, the spreadsheet records the individual items of expenditure, normally with the date or the number of the cleared cheque, a brief description of the expenditure and the amount. On occasion, the amount is split between more than one column on the same line in the spreadsheet. This may occur for example when a single payment is made up of more than one component. The exception to this system of recording individual payments is the recording of payments made by BACS transfer. I was informed that

these are processed and effected by an outside payroll company, a service provided by Crowe Clark Whitehill. BASSA pays the payroll company an appropriate sum each month to cover the payments made by that firm by BACS to its members. These payments to the payroll company are listed as expenditure on the spreadsheet with the date and the description "B/P (bank payment) to CCW" or, more recently, "Direct Debit BASSA". These entries are typically around £40,000 a month. They are inserted in the spreadsheet in the column under the heading 'Stand-Down' or 'Stand-Down Allowance'. They are recorded in this way even though the payments include not only stand-down payments but also any other payment of expenses claimed through the online system and paid by BACS.

12. Accordingly, the accounting records of the BASSA branch that constitute its quarterly accounts, after the completion of the above exercises are (1) a schedule headed Expenses which shows individual payments with a date and description but which also includes an aggregated amount in respect of the payments to Crowe Clark Whitehill. (2) a schedule of receipts, being mainly the money received from the head office of the Union. (3) a bank reconciliation statement and (4) a summary balance sheet, showing an opening balance and a closing balance together with total receipts and expenditure broken down in accordance with the headings on the spreadsheet. Similar quarterly accounts are also produced for Worldwide and Eurofleet.
13. The information on the quarterly spreadsheets is subsequently transferred to the annual accounts of the branch, together with the annual accounts of Worldwide and Eurofleet. The content of the annual accounts is subsequently incorporated into the annual accounts of the Union itself, together with the equivalent information from all other branches.

Chronology of Events

14. On 12 January 2014 Mrs Mills wrote to the Union's Legal Department requesting access to the accounting records of the BASSA branch and requiring copies of the accounts to be provided to her. She referred to section 30 of the 1992 Act. The Union expressed its willingness to make the accounting records available to her and Mr Adrian Smith, the branch secretary of BASSA, invited her to a meeting on 24 January when the accounting records of the branch were to be audited for the quarterly returns in any event. He added that if 24 January was difficult she could give alternative dates. That date was inconvenient to Mrs Mills but no arrangements for a further meeting were made at that time.
15. Mrs Mills commenced this application to me by a registration of complaint form received at my office on 14 March 2014. My staff observed the willingness of the Union to give Mrs Mills access to the accounting records she sought and attempted to facilitate an agreed inspection. Mrs Mills was encouraged to renew her request to the Union, which she did on 23 March 2014.
16. As no agreement had been reached by July 2014, my staff began processing this matter to a hearing and the formal words of complaint were put to the Union on 28 August for its response. In its response of 22 September, the Union's Legal Department stated that it understood the branch had indicated that it had made the accounting records available to Mrs Mills but they would seek confirmation. The process of finding a date for an inspection which was mutually convenient continued.

The full time officer for BASSA suggested that the Union should charge Mrs Mills an administration fee for the inspection but this suggestion was not taken further. As no date for an inspection could be agreed, Mr Devereux eventually sent certain accounting records to Mrs Mills by post on 14 November. These were just the annual accounts of the BASSA branch and of Worldwide and Eurofleet for 2012, 2013 and the first two quarters of 2014. Unsurprisingly, Mrs Mills complained that the accounting records that she had been sent were incomplete. Further correspondence ensued with the branch secretary explaining that the accounting records for 2008 to 2011 were no longer immediately available to him and so would need to be retrieved. My staff was conscious of the failure of the parties to resolve matters and so the case was listed for hearing on 9 April 2015. On 18 March 2015 the Union sent Mrs Mills the annual accounts of the BASSA branch and of Worldwide and Eurofleet for 2008 to 2013. Also on 18 March, the Union wrote to my office accepting that the accounting records had not been made available within the required 28 days but asserting that Mrs Mills had now been provided with them.

17. On 22 March 2015 Mrs Mills informed my office that she did not accept that the information provided to date met the definition of accounting records in the 1992 Act. Accordingly, the hearing on 9 April went ahead. At the hearing, I asked the parties to try again to identify their differences so that appropriate disclosure could take place. Progress appeared to have been made and so I adjourned the hearing on agreed terms to enable the parties to settle the matter amicably. The agreed terms were that the Union was to give Mrs Mills, within 8 weeks (by 4 June), access to the accounting records of the branch, including the lowest level accounting records. Should Mrs Mills consider that she was still being denied lawful access she was to identify the specific records to which she alleged she had been wrongfully denied access.
18. Mrs Mills inspected further accounting records of the branch at the Union's offices in Bath Road Heathrow on 27 April 2015. Mr Devereux was present for the Union. Mrs Mills brought with her a Mr Singh who is a member of the Association of Chartered Certified Accountants (ACCA) and, as such, not qualified under section 30(4) of the 1992 Act as an accountant authorised to accompany a member at a statutory inspection of accounting records. Issues arose about Mr Singh's status at the meeting and as to whether Mrs Mills had wrongfully published on the internet the information that had previously been provided to her, which she denied. These matters are not relevant to the issues I must determine. Mrs Mills was provided with accounting records which are substantially those in bundle 3 before me. This bundle contains not only the annual accounts of the BASSA branch and its Worldwide and Eurofleet sections for 2008 to 2013 but also the quarterly accounts for the same years, as described in paragraph 12 above.
19. By a letter to my office of 3 June 2015 Mrs Mills stated that the disclosure on 27 April was inadequate and that she was still being denied access to the lowest level of accounting records of the branch. She reported her accountant, Mr Singh, as having commented that there had been no formal audit, that there were too many postings to sundry, there were no balance sheet, there were no bank statements and no details of expenses claimed. Accordingly, my staff listed this matter for a further hearing. It was originally listed for 29 July but this date had to be vacated and two further hearing dates on 16 September and 23 September were given before the final hearing date of 11 November was arranged.

20. Following the inspection of accounting records by Mrs Mills on 27 April 2015, my office continued its attempts to clarify the issues in dispute. It requested that Mrs Mills identify the accounting records that she still sought to inspect. By a letter dated 1 July, Mrs Mills explained that she “*would have expected the breakdown of the total figures and the financial records and their components considering the phenomenal amounts under sundries*”. She commented that she wished to see the ‘point of entry’ figures which go to the make up of the totals, to include individual amounts, dates and descriptions. Mrs Mills further described the accounting records she wanted to inspect in a letter to my office dated 23 July. In relation to the Sundries, she stated that she wanted to see all components of large sums leaving the Union, coming into BASSA and then leaving BASSA and arriving at the other bank accounts. In relation to expenses, she wanted to see the expense claim forms of individual members as well as the accounting records to which the information on such forms is transposed. In general, she wished to see each level of aggregation to check that each individual expenditure which appears in the aggregated sum is accounted for. My office also sought clarification of the position of the Union. In an email dated 5 August, the Union confirmed that a taxi fare would be claimed as an expense. It would not be listed as a sundry but paid directly through the web based BACS system. The Union also confirmed that the web based system could allow other reports to be compiled. In the Union’s submission, an accounting record is created when the various sums are aggregated and submitted for auditing, before which any documentation is to be regarded as a document containing financial information, not an accounting record.

The Relevant Statutory Provisions

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

Companies Act 1948

Section 147 Accounts and Audit.

- (1) *Every company shall cause to be kept proper books of account with respect to*
 - (a) *All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;*
 - (b) *All sales and purchases of goods by the company;*
 - (c) *The assets and liabilities of the company.*
- (2) *For the purposes of the foregoing subsection proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company’s affairs and to explain its transactions.*

Companies Act 1976

12. Accounting records

- (1) *Every company shall cause accounting records to be kept in accordance with the provisions of this section.*
- (2) *The accounting records shall be sufficient to show and explain the company’s transactions.*
- (3) *The accounting records shall be such as to—*
 - (a) *disclose with reasonable accuracy, at any time, the financial position of the company at that time; and*
 - (b) *enable the directors to ensure that any balance sheet or profit and loss account prepared by them under section 1 above complies with the requirements of section 149 of the Act of 1948 (balance sheet to give a true and fair view of the company’s state of affairs and profit and loss account to give a true and fair view of the company’s profit or loss, etc.).*
- (4) *The accounting records shall in particular contain—*

- (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of the assets and liabilities of the company; and
- (c) where the company's business involves dealing in goods, the statements mentioned in subsection (5) below.

Companies Act 2006

386. Duty to keep accounting records

- (1) Every company must keep adequate accounting records.
- (2) Adequate accounting records means records that are sufficient—
 - (a) to show and explain the company's transactions,
 - (b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
 - (c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).
- (3) Accounting records must, in particular, contain—
 - (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and
 - (b) a record of the assets and liabilities of the company.

Trade Union and Labour Relations Act 1974

10. Duty to keep accounting records

- (3) This section applies to every trade union and every employers association except on which consists wholly or mainly of representatives of constituent or affiliated organisations
- (4) Every trade union and every employers' association to which this section applies shall –
 - (a) cause to be kept proper accounting records with respect to its transactions and its assets and liabilities;
 - (b) establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and remittances.
- (5) For the purposes of paragraph (a) above proper accounting records shall not be taken to be kept with respect to the matters mentioned in that paragraph if there are not kept such records as are necessary to give a true and fair view of the state of the affairs of the trade union or employers association and to explain its transactions.

Trade Union and Labour Relations (Consolidation) Act 1992

28 Duty to keep accounting records.

- (1) A trade union shall—
 - (a) cause to be kept proper accounting records with respect to its transactions and its assets and liabilities, and
 - (b) establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and remittances.
- (2) Proper accounting records shall not be taken to be kept with respect to the matters mentioned in subsection (1)(a) unless there are kept such records as are necessary to give a true and fair view of the state of the affairs of the trade union and to explain its transactions.

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.
This does not apply to records relating to periods before 1st January 1988.
- (2) In section 30 (right of member to access to accounting records)—
 - (a) references to a union's accounting records are to any such records as are mentioned in subsection (1) above, and

- (b) references to records available for inspection are to records which the union is required by that subsection to keep available for inspection.
- (3) The expiry of the period mentioned in subsection (1) above does not affect the duty of a trade union to comply with a request for access made under section 30 before the end of that period.

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 statutory auditor under Part 42 of the Companies Act 2006.
- (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.

European Convention on Human Rights

Article 8

Right to respect for private and family life

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The Relevant Rule of the Union

22. The rule of the Union which is relevant is:-

17.11 The Branch treasurer shall be responsible for dealing with financial transactions concerning the Branch, ensuring that all payments are made in accordance with the rules of the Union, receiving contributions from members who pay at the Branch and banking monies. He/she shall provide the Branch secretary with a record of all financial transactions and shall ensure that they are accurately recorded in the Branch records and that all monies are dealt with in accordance with the rules and the instructions of the Executive Council.

Considerations and conclusions

23. Mrs Mills' complaint is as follows:

"In breach of section 30(2) of the 1992 Act, Unite the Union failed to comply with Ms Mills' requests of 23 May 2014, requesting access to and the opportunity to take copies of the accounting records of the BASSA branch relating to the period 2008 to 2013."

24. Sections 30(1) and (2)(a) of the 1992 Act provide as follows:

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.*

Summary of submissions

25. Mrs Mills submitted two skeleton arguments; one for the hearing on 9 April 2015 and one for the hearing on 11 November 2015. In the earlier one, Mrs Mills complained about the Union's inordinate delay in submitting any accounting records of the BASSA branch to her and that the records to which she was given access did not fulfil the criteria of audited accounts as required by the 1992 Act. In the later skeleton argument, she observed that the agreed terms upon which the hearing of 9 April was adjourned required the Union to supply her with "the lowest level" of accounting records at the branch. She argued that the accounting records she was shown on 27 April were not "the lowest level" accounting records, being only a quarterly aggregated sum. At the hearing on 11 November 2015, both Mrs Mills and Mr Beaumont made submissions. Mrs Mills invited me to consider the mischief that section 30 of the 1992 Act was intended to remedy and submitted that the Union, by only disclosing accounts that contained aggregated amounts, was not complying with

its duty in section 28 to maintain accounting records which give a true and fair view of the state of affairs of the trade union and to explain its transactions. She further argued that the delay in providing her with any records demonstrated that the Union was not keeping its accounting records “available” as it is required to do. Mrs Mills submitted that I should make an order which requires the Union to give her access to accounting records which show how the aggregated figures are made up, even if this involves requiring the Union to disclose original or source documents.

26. The Union’s skeleton argument contained detailed legal submissions. Upon being supplied with a copy, Mrs Mills sought pro bono legal advice and presented a further written submission on the morning of the hearing. This submission had been prepared by Mr Jody Atkinson of counsel but with some additions by Mr Beaumont. This submission took issue with my observations in the cases of **Mortimer v Amicus (2003/D/1)** and **Foster v Musicians Union (2003/D/13-17)** on the meaning of the term ‘accounting records’. It argued that there is a much broader meaning given to the term ‘accounting records’ in company law and that the same term in the 1992 Act should be interpreted as it is in company law, so as to include such source documents as invoices, cheque books, paying in books and bank statements. It was submitted that the approach in *Mortimer* made it difficult for both members and unions to know where they stand as it left the identification of what is an accounting record to be determined on the facts of each case. Accordingly a category of document could change its character depending upon the circumstances. In the case of **Mortimer** I commented that it was unlikely to have been Parliament’s intention that members would have been given the ability to conduct their own audit of the Union’s finances and be put in a position to audit the auditors. Mr Atkinson’s submission took issue with this observation and asked rhetorically what other purpose there could be for sections 28-30. In analysing the 1992 Act, Mr Atkinson submitted that section 28 contains two references to the word ‘transactions’ and that unions are accordingly required to keep records in respect of each transaction in such a way that the transactions are explained. The submission observes that accounting records which aggregate the cost of transactions in one lump sum do not explain those transactions. With regard to the Companies Acts, it was submitted that the broader definition of what is an accounting record is simple to understand and provides a high level of transparency. It was further argued that the draftsman of what is now section 30 of the 1992 Act clearly had the Companies Act in mind as the accountant who can accompany a member at an inspection is defined by reference to someone who is a statutory auditor under the Companies Act. The submission goes on to argue that it is unnecessary for accounting records to be defined differently in the 1992 Act from the Companies Act and that the unhappy result of excluding source documents from the definition is that the decision of the Certification Officer about the nature of accounting records is at odds with decisions of the High Court about the nature of accounting records in the Companies Act. As to the legislative intention, the submission states that it is in the interests of members, employers and the wider community that corruption be rooted out wherever possible and that the whole tenure of trade union legislation since 1984 has been to ‘give unions back to their members’. It considers that the safeguards of having statutory auditors and the supervisory role of the Certification Officer are by their nature limited in effectiveness. The submission also asks rhetorically why Parliament would have applied a lower standard to trade unions than it has to companies. It also argues that a broader interpretation of accounting records would facilitate members who wished to make internal complaints

within their unions with a view to having disciplinary action taken against other members, where appropriate. The submission notes that trade unions are in any event required to retain financial source material for their auditors and the Certification Officer and so a broader definition of what is an accounting record would not impose any additional requirement. The submission observes that the spectre of incessant requests or fishing expeditions by members is unlikely as unions are entitled to charge for inspections and the more onerous the request the greater the charge that can be required. The submission concludes by commenting that the argument about 'fishing requests' is inappropriate as the analogy between hostile parties in litigation and the comradely relationships between members and their union is not a good one.

27. Mr Potter, for the Union, submitted a lengthy skeleton argument in which he traced the references to accounting records in the Companies Acts of 1948, 1976 and 2006. He argued that the concept and meaning of accounting records in the 1992 Act is appreciably and tangibly different from the concept and meaning of accounting records in Company law. He noted that under both regimes the phrase 'accounting records' has not been given a exhaustive 'set in stone' definition but is elastic – its compass depending on the statutory objectives, the nature of the organisation being regulated and the way it organises its accounts and financial records. He quoted from the text book 'Boyle & Bird's Company Law' which states "*What will be regarded as the right kind of accounting records to meet the Act's requirements will be treated as a question of fact to be decided in any particular case*" as well as a reference to a guidance note from the Institute of Chartered Accountants pointing out that regard will be had, among other things, to the prevailing practice at the relevant time in businesses of the type in question. In relation to the legislative history of section 30 of the 1992 Act, Mr Potter noted that its origins are in section 10 of the Trade Union and Labour Relations Act 1974 ("TULRA 1974") which imposed the duty to keep proper accounting records and which is in substantially the same form as can be found now in section 28 of the 1992 Act. He observes that the Employment Act 1988 ("EA 1988") gave members the right to inspect accounting records and that the 1992 Act was a Consolidating Act. Mr Potter submitted that the definition of an accounting record in the 1992 Act is differently worded to that in the Companies Act 2006 and is intended to be narrower and less pervasive. He noted that more extensive powers of inspection had been left to the statutory auditor and the Certification Officer. In particular, he submitted that it is significant that the requirement of the Companies Act for accounting records to contain entries *'from day to day of all sums received and expended'* was not included in the equivalent provision of the 1992 Act. He argued that in the 1992 Act the term accounting records refers to financial statements, such as quarterly and annual returns, and to such other financial records as are necessary to give a true and fair view of the state of affairs of the trade union and to explain its transactions. He further argued that source documents would rarely be accounting records and that secondary source (or intermediate) documents may be accounting records where their disclosure is necessary to give a true and fair view of the state of affairs of the trade union and to explain its transactions. Mr Potter submitted that the core question that needed to be answered when identifying whether there has been a breach of section 30(1) of the 1992 Act is whether sufficient financial records have been disclosed to meet the statutory objectives in section 28(2), which question, he submitted, must be answered objectively. He argued that the rights under sections 28 to 30 are not a charter to

incessantly interrogate the financial affairs of a union or to undertake fishing expeditions for information in the hope that something will surface that may assist those trawling for whatever reasons. In his submission, the legislation must have been intended to recognise the differences between trade unions and companies, that trade unions frequently have thousands of members and hundreds of branches, with branches being run by lay officials who deal with a considerable flow of financial information. He argued that in these circumstances it is important that the obligations of those lay officials are not onerous or oppressive but are practicably dischargeable. On the facts of this case, Mr Potter submitted that the accounting records disclosed by the Union had met the requirements of section 28 of the 1992 Act and provided Mrs Mills with a clear and accurate view of the financial affairs of the branch, one that sufficiently explained its transactions. He argued that not all the financial reports or management reports prepared on the basis of source financial information constitute accounting records. He did not accept that all financial records at a higher level of accounting than primary or source documents must be disclosed under the 1992 Act. Specifically he did not accept that every secondary record of every taxi receipt constitutes an accounting record for the purposes of the 1992 Act. He asserted that a branch does not have to evidence every transaction in its accounting records and there is no general requirement to disclose the wages of union staff. He noted that BASSA does not hold or operate any day-to-day transaction book, ledger or other similar paper-based books of account but that this was no breach in itself. He observed that the branch is not a business and that the quarterly accounting records disclosed to Mrs Mills were the lowest level of accounting records kept by the branch. He argued that the online form on which members claim expenses or stand-down payments and any print-out summarising such forms that the computer could generate, would not be accounting records. In his submission they should be viewed as being either invoices or management reports containing financial information. He further argued that it was not necessary for figures that appear in the accounting records as an aggregated sum to be broken down in order that the accounting records give a true and fair view of the affairs of the trade union and explain its transactions.

Conclusions

28. The Union concedes that it breached section 30(2)(a) of the 1992 Act by failing to make arrangements with Mrs Mills for her to be allowed to inspect the accounting records requested within 28 days of the request having been made. Mrs Mills made her formal written request for access to the accounting records on 12 January and 23 May 2014. The disclosure upon which the Union relies was given on the 27 May 2015. Nevertheless, the Union asserts that it gave Mrs Mills full access to the requested accounting records on 27 May 2015 and that accordingly I should exercise my discretion not to make an order under section 31(2B).
29. Mrs Mills strongly denies that she has been given access to the accounting records that she requested and I must therefore consider what accounting records she was able to inspect and whether there are any further accounting records which it would be appropriate for me to make an order requiring the Union to allow her to inspect. To do this I must consider again what are accounting records and what records are kept by the Union.

30. I have previously considered the meaning of the term “accounting records” in section 30 of the 1992 Act, in the cases of **Mortimer v Amicus** and **Foster v Musicians Union** both decided in 2003. Both Mrs Mills and the Union invited me to reconsider these decisions and interpret the meaning of ‘accounting records’ differently. Mr Atkinson’s submission for Mrs Mills argues that my previous interpretation is too narrow or restrictive and that source documents should come within the meaning of accounting records, adopting the same interpretation as the term has been given in company law. On the other hand, Mr Potter, for the Union, argues that my previous interpretation is too wide and gives rise to the disclosure of financial information which does not come within the term accounting records, correctly interpreted.
31. In the above circumstances I have reconsidered my decisions in **Mortimer** and **Foster**. I am pleased to do so as in neither of those cases had I the advantage of being addressed in such detail, or at all, on the equivalent provisions in the Companies Acts. I am therefore grateful for the researches of counsel, particularly Mr Potter. However, my first observation is that I am called upon to interpret section 30 of the 1992 Act, not the Companies Act. The meaning attributed to similar words in other legislation is not conclusive of its meaning in the 1992 Act, although it is of course a relevant consideration. I also observe that the duty to keep proper accounting records derives from TULRA 1974 and that sub-section 10(2) and (3) of that Act are in virtually identical form to sub-sections 28(1) and (2) of the 1992 Act. Insofar as it is appropriate to consider the intentions of Parliament, I must therefore consider its intention in 1974, not, as Mr Atkinson suggested, in 1984. There were of course different political parties in power in 1974 and 1984. Further, in 1974 the relevant Companies Act was that of 1948 and I observe that section 147(2) of the 1948 Act is in similar terms to section 28(2) of the 1992 Act. However, the equivalent provisions in the Companies Act of 1976 and 2006 are substantially different and Parliament did not see fit to amend section 10 of the 1974 Act when that Act and those provisions were next considered by it in 1988. This is a factor which weighs against the equivalent sections of the Companies Act of 1976 and 2006 being effectively read across to give a common definition of accounting records. Further, I note that section 30(4) of the 1992 Act expressly refers to the Companies Act 2006 in the context of providing the meaning of “accountant” in section 30(2)(b). Accordingly, Parliament did consider the Companies Act in constructing section 30 of the 1992 Act and could have adopted the Companies Act treatment of “accounting records” if that had been its intention. It did not do so and that may also be a relevant consideration. Beyond such technical points, however, I consider that the legislative framework appropriate for regulating companies is not to be treated automatically as the appropriate framework for regulating trade unions. Companies and trade unions may have points of similarity but they also have fundamental points of difference. The essential difference is that trade unions are voluntary associations reliant to a considerable extent on lay members (in many cases unpaid) for their organisation and frequently their administration. The same is unlikely to be true for most companies. Further, many trade unions are comparatively small. In my annual report 2014/15 I reported that about 20% of trade unions have less than 100 members. In addition, unlike companies, the democracy within trade unions operates through elections at every level and trade unions are frequently troubled by internal political divisions which gives rise to factionalism. Indeed, it has been said that the organisation of trade unions has more in common with the organisation of political parties than it has with companies. Accordingly, in reconsidering my observations on

the nature of accounting records in **Mortimer** and **Foster** I have had regard to the equivalent provisions of the Companies Act but I am not persuaded that I should interpret section 30 of the 1992 Act in such a way as to give 'accounting records' the same meaning as it has in the differently worded provisions of the Companies Act.

32. Since the second hearing of this matter, I caused there to be a search of Hansard to find out if there were any helpful references to the meaning of the term "accounting records" when the relevant provisions of the 1974 and 1988 Acts were considered by Parliament. The only reference that emerged was in a speech by the Earl of Dundee on 7 March 1988 during the committee stage in the House of Lords of the 1988 Act. The committee was considering section 10 of the 1974 act and, in explaining the government's position, he stated,

"I should like to say a few words about the nature of accounting records in that context. Section 10 of the 1974 Act does not provide a list of the documents or non-documentary records that would fall within the definition of "accounting records". It specifies that the records kept must be: such records as are necessary to give a true and fair view of the state of the affairs of the trade union ... and to explain its transactions". It may be helpful to the noble Baroness if I also comment on what is likely to happen in the case of a dispute where it would be ultimately for the courts to decide what did or did not constitute such accounting records. In the absence of a court judgment a union in doubt about the matter may well ask its auditors for their view or seek a legal opinion. Bearing those considerations in mind, I would expect such records to consist of the records of completed financial transactions. Such completed financial transactions may be unlikely to contain information that would come within the definition of confidentiality to which the amendments propose to apply."

As there was no reference to Hansard at the hearings before me, I informed the parties that the above extract had been brought to my attention and invited them to submit any other passages that their researches might unearth or to comment generally. In the response received on behalf of the claimant, reference was made, amongst other things, to a contribution earlier on 7 March 1988 by the Earl of Dundee in which he said,

"Those accounting records to which the clause applies are required to be records, necessary to give a true and fair view of the state of affairs of the trade union ... and to explain its transactions". Nothing in any such records should be denied to the union member.

The claimant also referred to a passage in a speech of the Earl of Dundee on 28 March 1988 in which he said,

"It is a fundamental principle of the clause that nothing in the proper accounting records which his union is already under a duty to keep under Section 10 of the 1974 Act should be denied to a member who wishes to inspect any of them".

In the response received from the Union, it referred, amongst other things, to a speech by the Earl of Dundee on 7 March 1988 in which he said,

"I agree with him [Lord Wedderburn] straightaway as regards his remarks concerning public companies. I do not believe that it would ever have been a good idea for the Government to equate the arrangements for public companies with what they have in mind in this clause. I believe that such analogies are very misleading between unions and companies. Companies and trade unions have quite different purposes and there is really no valid analogy concerning the relationship between a trade union and its members and that of a company and its employees or shareholders".

33. Having considered the more detailed material that is now before me, it remains my judgement that the meaning of 'accounting records' in section 30 of the 1992 Act is as I determined it to be in **Mortimer** and **Foster** for the reasons that I gave in those cases. I find that accounting records are those created or kept principally for the purposes of accounting and that primary or source documents created for effecting or evidencing a transaction, such as a bill, an invoice or a receipt may be described as a record of financial information but they are not ordinarily an accounting record. In certain circumstances, however, source materials such as invoices and receipts may have been retained principally for the purposes of accounting and thus be categorised as accounting records. In the case of **Foster** I had in mind a small union which created no specific accounting records, whether in ledgers or electronically, but kept all its receipts and invoices in a proverbial carrier bag to be examined by auditors at the year end. I observed that in such circumstances there may be an inference that the source material has been retained as an accounting record to enable the union to comply with its statutory obligations. Similarly, it may be presumed that where a union fails to create a secondary or accounting record from a primary or source document, that the primary or source documents have been retained for the purposes of accounting. Mr Atkinson's submission criticised this approach as leading to a lack of certainty about the status of any particular document at a given time. I do not accept this submission. Parliament has not seen fit to give a precise definition of accounting records in either the 1992 Act or the Companies Act. The meaning of accounting records is rather dealt with by setting out a number of outcomes that must be achieved by whatever method of record keeping the union or company chooses to adopt. Such an approach has the merit of recognising the many forms of organisation that exist as trade unions and as companies, their different sizes, their different levels of resource and the changing nature of industrial and commercial life. I find that it is consistent with the intention of Parliament that judicial authorities are to be left with the task of determining what is an accounting record within the meaning of the relevant statutory provisions. Accordingly I reject the submission of the claimant that I should widen the meaning of accounting records to include all source material and perhaps even all documentation containing financial information. I also reject the submission of the Union that I should narrow the meaning of accounting records to exclude accounting information not yet transferred to a formal accounting record.
34. I must now apply the meaning of accounting records in the 1992 Act, as I have determined it to be, to the facts of this case. I find that for the most part the quarterly accounts kept by the BASSA branch satisfy the requirements of being the accounting records of the branch. They mainly record each transaction of the branch, giving a date, an amount and a description of the expenditure or the source of the receipt. Upon examining these records Mrs Mills had two main concerns; the phenomenal (as she put it) amount of Sundries and the aggregate sum that appears under the heading of Stand-down Allowances.
35. As to the Sundries, Mr Devereux explained that the large sums involved were the result of the entire income of the branch from the head office of the Union being treated as a Sundry and its disbursement to the Worldwide and Eurofleet sections. He was able to demonstrate where in the accounting records this amount is recorded as a receipt by BASSA Central Fund, where it is treated as an expenditure when it is subsequently disbursed to Worldwide and Eurofleet, as well as where it is treated as

a receipt in the accounting records of Worldwide and Eurofleet. Mr Devereux also explained that the anomaly of treating these sums as Sundries arose because of the design of the spreadsheet for use by branches generally, without regard to the particular circumstances of BASSA, and that a more appropriate description has since been devised. In these circumstances I find that Mrs Mills has had access to the accounting records of the BASSA branch with regard to the Sundry items that appear in the quarterly and annual accounting records of the branch. Late in the hearing, Mrs Mills mentioned that she should also have access to the bank statements of the branch and of its Worldwide and Eurofleet sections in order to check that the entries in the relevant accounting records are correct. Consistent with my decisions in **Mortimer** and **Forster**, I find that such bank statements in the circumstances of this case are not accounting records and accordingly are not documents to which the Union is required to give Mrs Mills access to inspect.

36. The sums that appear in the quarterly and annual accounting records of the branch as 'stand-down' or 'stand-down allowance' are aggregate sums. As I have found, they are the aggregate of the individual sums that have been claimed through the online system and paid at the end of each month by BACS, after having been approved by Mr Devereux and/or Mr Smith. The Union asserts that the quarterly accounting records are the lowest level accounting records of the branch dealing with these items. Mrs Mills asserts that the aggregate figures in these accounts lack all transparency and she wishes to see a record of each individual item that together makes up the aggregate sum.
37. I accept that there is no separate written document which serves as an accounting record of the individual payments that together make up the aggregate sum by way of a schedule or regular print-out. However, I find that the information inputted by a person making a claim exists as an identifiable electronic record and that the Union has the capability of generating a report of this transaction from its computerised system which would be an accounting record of it.
38. The duty of a union to retain such information is contained both in the 1992 Act and the rules of the Union. Section 28(1)(a) of the 1992 Act provides that a union shall "*cause to be kept proper accounting records with respect to its transactions ...*". Section 28(2) provides, "*Proper accounting records shall not be taken to be kept ... unless there are kept such records as are necessary to give a true and fair view of the state of affairs of the trade union and to explain its transactions*". In my judgement, the payment to members of the sums claimed online is a transaction and accordingly proper accounting records of these payments must be kept. Mr Potter argued that the Union had satisfied section 28(2) in that the Union had explained those transactions by having a heading of "Stand-down Allowance". He contrasted the wording in the 1992 Act with the equivalent wording in the Companies Act 2006 that requires the accounts of companies to both "*show and explain the company's transactions*". In his submission, the absence of a requirement to show the transactions in the 1992 Act is significant. I disagree. First, I find that the 1992 Act is a separate enactment dealing with a different type of legal entity. The assistance to be gained by a forensic reading across from a different enactment may be limited. Secondly, section 28(2) does not set out an exhaustive definition of what constitutes proper accounting records. It rather provides for an outcome that the accounting records must achieve. In my judgement, the transactions of a trade union cannot be

explained if the payment made in respect of each transaction is not recorded and described in brief. Indeed, this is consistent with the duty of a union under section 28(1)(b) to “*establish and maintain a satisfactory system of control of its accounting records ... and all its receipts and remittances*”. Thirdly, on the facts of this case, the heading ‘Stand-down Allowances’ does not correctly describe all the payments made under that heading. The aggregated sum consists not only of stand- down payments but also all other expenses claimed by means of the online system and paid by BACS. At the hearing, there was discussion of the purchase of staplers and taxi fares that were reimbursed to members by the BACS system. Accordingly, I find that the Union has a duty to separately record each payment or remittance that it makes in such a way as to explain that transaction.

39. The statutory duty in section 28 of the 1992 Act is also reflected in the rules of the Union. Rule 17.11 deals with the duties of the branch treasurer and provides, amongst other things, that:

“He shall provide the branch secretary with a record of all financial transactions and shall ensure that they are accurately recorded in the branch records.”

40. At the time of TULRA 1974 and the EA 1988, computerised record keeping in the branches of trade unions either did not exist or was in its infancy. Branch records would ordinarily be kept in books of account or ledgers. Claims for expenses would be made on claim forms and entered in a day book or ledger. Claims for stand-down pay would be recorded individually in a similar way. Is it to be said that if the same operation is performed electronically and no separate print out of the transaction is ordinarily generated, that a union has no such accounting records? Mr Potter did not seek to make such a point. In a written submission, he commented, “No issue is taken on the general proposition that information held on computer could amount to documentation for the purposes of section 31.” Further, it is overwhelmingly probable that if Unite wished to question any particular payment that forms part of the aggregated sum for the purposes of an internal enquiry, it could produce a record of that payment. Indeed, that would be necessary both for the statutory auditor to sign off the accounts and for compliance with section 28 of the 1992 Act.
41. For the above reasons, I find that the Union breached section 30(2)(a) of the 1992 Act by failing to comply with Mrs Mills’ request for access to the accounting records of the branch that she made on 23 May 2014 within 28 days of her request and by having failed to give her access to the accounting records which record the individual transactions that had been aggregated and appear in the quarterly and annual accounts of the branch as ‘stand-down’ or ‘stand-down allowance’.
42. Where I am satisfied that a claim is well founded, I am required by section 31(2B) of the 1992 Act to make such order as I consider appropriate for ensuring that the claimant is allowed to inspect the records requested.
43. This is an unusual case as it concerns accounting records kept electronically and which do not currently exist in a paper format. I have previously observed that the right to access accounting records of a trade union is a right to access existing records and not a right to oblige a union to create additional records. That said, I find that the records to which Mrs Mills seeks access do exist, albeit electronically, and

that it is appropriate that I order the Union to generate such reports as are appropriate and provide her with access to them.

44. Accordingly, I order that on or before 26 February 2016 Mrs Mills is given access to inspect print-outs of the accounting records of the BASSA branch for 2008 to 2013 which include the individual transactions which together constitute the aggregate amounts that are entered in the quarterly and annual accounts of the branch under the heading 'Stand-Down' or 'Stand-down Allowance'. The print-outs are to show the date each payment was made, the identity of the recipient and a brief description of the expenditure category or reason for the payment, consistent with the accounting conventions of the Union. My more detailed order appears under paragraph 2 of my decision above.
45. At the conclusion of the second hearing before me, Mr Potter submitted that, in the event that I make an order in the above terms, I should provide that the names of the recipients of the payments in question may be redacted. He observed that the 1992 Act pre-dates the Human Rights Act 1998 and that accordingly the provisions of the Human Rights Act should prevail. In an oral submission which was not developed in any detail, he referred to sections 3, 6 and 7 of the Human Rights Act and Article 8 of the European Convention on Human Rights ("the Convention"). Subsequently I requested and received written submissions from the parties on this novel point.
46. Mr Potter argued that I must take 'apposite cognizance' of the 1998 Act and the Convention. He trailed a subsidiary argument which questioned the legality of section 30 of the 1992 Act in the context of Article 8 of the Convention on the grounds of its lack of certainty. However, Mr Potter's main contention was that Article 8(1) of the Convention was engaged as the disclosure of the identities of the lay representatives who received stand-down allowances would infringe their right to a private life. He argued that the test for what constitutes private life is whether there was a reasonable expectation that the relevant material would not be disclosed and that, in this connection, it is necessary to examine not just the information that is to be disclosed but also the anticipated use to which it will be put. On the basis that Article 8(1) was engaged, Mr Potter argued that Article 8(2) did not operate in such a way that the statutory duty to provide access to accounting records prevailed over the right to a private life enjoyed by the lay representatives. He submitted that Article 8(2) requires me to carry out a balancing exercise which is fact-specific and that such an exercise overwhelmingly favours the protection of the privacy of the lay representatives. He argued that the legislation could be applied compatibly with the Human Rights Act by redacting any information that may be subject to a disclosure order so as to anonymise the identity and prevent identification of the branch officers. In his submission such redaction would be proportionate and not oppressive to members' statutory rights to disclosure.
47. In a written submission prepared by Mr Atkinson for Mrs Mills, it was argued that Article 8 of the Convention was not engaged on the facts of this case. He submitted that union officials could have no reasonable expectation of privacy, as against other union members, as to how much of the members' money they have been paid for performing duties on behalf of those same members. Indeed he submitted that it is hard to see how a union, which is no more than the sum of its members, could have any privacy rights against its members whatsoever, contrasting them with prying third

parties. He argued that every union official, like any person who claims any expense payment, knows that they may one day be called upon to explain how they justified that expense. He distinguished many of the cases referred to by Mr Potter on the basis that this case does not concern the state prying into the private affairs of citizens but a statutory right of members of an organisation to inspect its books.

48. Section 6 of the Human Rights Act provides that it is unlawful for any public authority to act in a way that is incompatible with a Convention right and, accordingly, as a public authority, I am required to have regard to Convention rights in applying the 1992 Act. I note, however, that by section 31(2B) of the 1992 Act, the order I must make if a union is in breach of section 30 is one that I 'consider appropriate'. Accordingly, the legislation provides me with a discretion which enables me to ensure that any order I may make is not incompatible with a Convention right.
49. As to the substance of this point, I find that Article 8(1) of the Convention is not engaged on the facts of this case. In my judgement, the '*right to respect for his private and family life, his home and his correspondence*' of union lay representatives who are paid stand-down allowances or members who are paid other expenses are not infringed by ordering the disclosure of the Union's accounting records relating to the payment of those allowances and/or expenses. I find that such persons have no reasonable expectation that the payments they receive from the Union will remain private from other Union members. I accept the claimant's argument that, in many respects, unions are no more than the sum of their members. This is another example of the differences between trade unions and companies. The funds of a union are derived from members' contributions and are to be expended for the benefit of members. Members have a legitimate interest in knowing how the funds they have contributed are expended. Correspondingly, those who receive expenses from a union are or should be aware that they are accountable for the monies they claim. In my judgment the recipient of such allowances and/or expenses cannot have a reasonable expectation of privacy, having regard in particular to the statutory right of members to access to the union's accounting records. I contrast the position of a member who claims expenses from a union with the position of someone who is merely a member of a union who seeks to prevent the disclosure to others of the fact of his/her membership. The fact of membership may be a matter of great sensitivity and its disclosure could give rise to significant detriment to the individual. In my view a member has a reasonable expectation of privacy of the fact of membership in most circumstances, even from other union members, and the disclosure of the names of members of a union without their express or implied consent may well engage Article 8.
50. Having regard to my finding with regard to Article 8(1) of the Convention, it is not necessary that I consider Article 8(2). However, should I be wrong about Article 8(1), I would have found on the facts of this case that the statutory requirement for a union to give a member access to its accounting records which disclose the identity of the recipients of expense type payments is a justifiable interference with the privacy of those recipients "*for the protection of the rights and freedoms of others*". I find that such an interference is necessary and proportionate in the specific circumstances of a voluntary organisation which is funded by members' contribution and which pays expenses to other members from those contributions. I have considered whether the disclosure of such records with the names of the recipients having been redacted

would be a proportionate response but I conclude that the protection of the statutory right of other members to have access to those accounting records requires that they be produced without redaction in order that access is given to accounting records which meet the requirements of section 28 of the 1992 Act and which, in particular, explains its transactions in a sufficiently transparent manner. Accordingly, on the facts of this case and having carried out the balancing exercise required by Article 8(2), I find that section 30 of the 1992 Act and an order which requires the disclosure of accounting records that reveal the identity of persons to whom payments in respect of stand-down allowances and/or expenses do not amount to interference by a public authority with the exercise of the Article 8(1) rights of the named individuals, should they (contrary to my primary finding) have any such rights.

51. For the above reasons, I reject the Union's submission that I should not make an order requiring the Union to give access to accounting records which disclose the identity of the recipients of stand-down allowances and/or other expenses on the grounds that to do so would be a breach of Article 8 of the Convention.



David Cockburn
The Certification Officer