

D/2/23-24

Decision of the Certification Officer on an application made under Section 31(1) of the Trade Union and Labour Relations (Consolidation) Act 1992

Sartin

v

UNISON: The Public Service Union

Date of Decision

18 December 2023

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Decision

1. Upon application by Mr Dan Sartin (“the applicant”) under section 31(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) that:

the Union failed in its statutory duty to provide Dan Sartin with accounting records, in response to a request made under section 30 of the Trade Union and Labour Relations (Consolidation) Act 1992 on 23 December 2021

I am satisfied that Mr Sartin’s complaint is well-founded.

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 applicant is allowed to inspect the records requested. The order I make is as follows:

The Union is ordered to give Mr Sartin access to the accounting records, sought in his request of 23 December 2021, which show all facility time payments made to NEC members’ employers.

The inspection is to take place on or before Monday 8 January 2024 or such later date as both parties may agree. The inspection shall be at a reasonable hour and at the place where the records are normally kept, unless both parties agree otherwise.

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.

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 him which he may request.

Background

3. Mr Sartin is a member of UNISON: The Public Services Union (“UNISON” or “the Union”). On 23 December 2021 he sought access to the Union’s accounting records. Subsequently, on 31 January 2023, he submitted to my office an application regarding access to the Union’s accounting records.

4. Following correspondence with Mr Sartin, the complaint was confirmed by him in the following terms.

“the Union failed in its statutory duty to provide Dan Sartin with accounting records, in response to a request made under section 30 of the Trade Union and Labour Relations (Consolidation) Act 1992 on 23 December 2021.”

5. A hearing took place by Video Conference on 14 November 2023. Mr Sartin was represented by Rebecca Tuck KC. He submitted a skeleton argument, prepared by Ms Tuck, and his own witness evidence. He also submitted witness evidence from Antoinette Solera and Andrea Egan, both of whom gave oral witness evidence, and from John Jones who did not attend the hearing. The Union was represented by Oliver Segal KC. The Union submitted a skeleton argument, prepared by Mr Segal. The Union also submitted witness statements from Margaret Ferncombe (also known as Maggi Ferncombe), Kim Horne, John Gray and Angela Hamilton all of whom gave oral witness evidence.

6. There was also in evidence a bundle of documents consisting of 480 pages. The bundle contained correspondence and the rules, policies and procedures of the Union for consideration at the hearing.

Agreed facts

7. The following facts were agreed at a Case Management Meeting on 31 October 2023.
8. Mr Sartin is a member of UNISON. He is a member of the National Executive Committee and Chair of the Finance and Resource Management Committee (FRMC). As Chair of FRMC he sought access, during 2021, to the Union's financial records which related to payments made to NEC members' employers for facility time.
9. Mr Sartin was not satisfied with the Union's response to his requests. On 23 December 2021 he made a request, under s30 of the 1992 Act, for access to the Union's accounting records in relation to NEC members' facility time. In his letter to the General Secretary, he explained that:

“I am no longer content with redacted information; I require all the accounting records held by UNISON in relation to payments made or to be made in respect of facility time enjoyed by NEC members over the last two years (i.e., since 1 January 2020).”

10. On 18 January 2022 Raj Ashra, the Union's Director of Finance wrote to Mr Sartin and provided him with some of the information he had requested. He explained that:

“I have been asked to provide you with the accounting records in relation to the NEC loss of pay for the year 2020 and 2021. I am attaching a transaction list of all the payment and accounting entries in our ledgers for the required years, redacted as required under the Union's GDPR policy to maintain the privacy and confidentiality of individuals involved.

Regarding physical access to UNISON records under section 30 of the Trade Union and Labour Relations (Consolidation) Act 1992 ('the Act') for the periods you requested, under current government restrictions due

to COVID, this has not possible to arrange as required as staff continue to work from home in compliance with the guidelines [sic].”

11. Mr Ashra also explained that Mr Sartin would be required to pay a charge for viewing the physical records and would be required to sign a confidentiality agreement before the viewing. On 19 January 2022 Mr Ashra explained by email that work was still ongoing on some of the records requested by Mr Sartin:

“Information you requested as mentioned under the ad hoc release times and consolidated release time sections in Emilie’s email of 7th January are not available to me and will be gathered by the Executive Office (who in turn are reliant on the documentation held/stored at Head Office and/or off site as mentioned in the attached letter) and which will be shared at the earliest opportunity.

Information requested re legal advice costs actual or potential liabilities, I would refer you to Emilie’s previous email and confirmation that there were /are no costs attached to the legal advice and as such I understand this matter has been dealt with.

I appreciate that not all your request for information will have been met by the scheduled date of 19th January however I hope you can understand and appreciate that this is due to the current circumstances and COVID restrictions which are not within our control and we hope that normal working is resumed quickly.”

12. On 31 January 2022 Mr Sartin wrote to Mr Ashra and explained that the Union’s responses did not satisfy his rights as a Union member. He explained why and explained that he required access to the unredacted documents, either physically or electronically.

13. On 1 April 2022 Maggi Ferncombe, Director of the Union's Executive Office, wrote to those NEC members whose employers were receiving payments for facility time as set out at Annex A. The letters were sent to 14 members. Of the five who responded one consented to the records relating to their payments being provided to Mr Sartin; four refused. Nine members did not reply. Accounting records relating to the NEC member who gave consent to the disclosure were provided to Mr Sartin on 23 March 2023.
14. Following a Data Protection Impact Assessment, the Union explained that they required Mr Sartin to sign a data sharing agreement before giving him access to the unredacted accounting records. Whilst there were discussions about the need for, and the terms of any such agreement, no agreement was reached.
15. On 31 January 2023 Mr Sartin made a complaint to my office. He explained that the Union had refused his request to access accounting records under s30 of the 1992 Act.

The Relevant Statutory Provisions

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

The Trade Union and Labour Relations (Consolidated) 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.

(2) 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.

(2) 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.

United Kingdom General Data Protection Regulation

Article 5

Principles relating to processing of personal data

1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and

against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

Article 6

Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by domestic law.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX. The domestic law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on domestic law which constitutes a necessary and proportionate measure in a democratic society to safeguard national security, defence or any of the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account, inter alia:

- (a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;
- (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
- (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;
- (d) the possible consequences of the intended further processing for data subjects;

(e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

Article 9

Processing of special categories of personal data

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

2. Paragraph 1 shall not apply if one of the following applies:

(a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where domestic law provides that the prohibition referred to in paragraph 1 may not be lifted by the data subject;

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by domestic law or a collective agreement pursuant to domestic law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;

(c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

(e) processing relates to personal data which are manifestly made public by the data subject;

(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;

(g) processing is necessary for reasons of substantial public interest, on the basis of domestic law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of domestic law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;

(i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of domestic law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;

(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) (as supplemented by section 19 of the 2018 Act) based on domestic law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under domestic law or rules established by

national competent bodies or by another person also subject to an obligation of secrecy under domestic law or rules established by national competent bodies.

3A. In paragraph 3, ‘national competent bodies’ means competent bodies of the United Kingdom or a part of the United Kingdom.

4.

5. In the 2018 Act—

(a) section 10 makes provision about when the requirement in paragraph 2(b), (g), (h), (i) or (j) of this Article for authorisation by, or a basis in, domestic law is met;

(b) section 11(1) makes provision about when the processing of personal data is carried out in circumstances described in paragraph 3 of this Article.

Considerations and Conclusion

The Records

17. Mr Sartin’s request is to access the Union’s accounting records which relate to paid facility time for NEC members. He has requested access to the records for 2021 and 2022. I will refer to these records as the “relevant records” in this decision.

18. In this context “paid facility time” means that the Union is directly reimbursing an NEC member’s employer for time which is spent on NEC duties. The payment is made to the employer and the NEC member receives no direct benefit. UNISON identify two types of payments: consolidated and ad hoc. Consolidated payments are made where UNISON and the employer have reached an agreement about the number of days the NEC member will be released on a regular basis, for instance two days each month. Ad hoc payments are made where there is no such agreement for regular release so

that the payment is made as and when the NEC member needs to be released.

19. There are over 60 NEC Members. Of these 60 members 14 have arrangements in place between their employer and UNISON for consolidated or ad hoc facility time.

Right to Access the Accounting Records

20. Mr Segal and Ms Tuck agreed that Mr Sartin has a right, under s30 of the 1992 Act, to access the relevant records. They also agreed that, in this case, access to the relevant records in an unredacted form would give Mr Sartin access to the personal data of some members of the NEC. I was told that this could include, for instance, details of an NEC member's employer and salary. The only real difference between the parties, in respect of this case, is whether Mr Sartin should be required to sign a confidentiality agreement before being given access to the relevant accounting records without any redactions.
21. It is worth noting that the Union provided the relevant records to Mr Sartin on 19 January 2022 and 3 February 2023. In each case, the records were provided in a similar format and were redacted so that the relevant NEC member could not be identified. The records provided in February 2023 contained a unique identifier for each NEC member so that the records could be used to calculate the total payment to each member over a given period. It is not possible, however, to link the payments to an individual member.
22. Ms Tuck accepted, at the hearing, that Mr Sartin did not have the right, under s30 of the 1992 Act, to access the source data, such as claim forms or invoices, which led to the accounting records being created.
23. Consequently, the only issue for me to resolve is whether the members of the NEC have an expectation of privacy, and/or the Union have obligations under UK GDPR such that Mr Sartin should be required to sign an appropriate

confidentiality agreement before he is given access to the unredacted accounting records.

Jurisdiction

24. On 23 December 2021, Mr Sartin made a request under s30 of the 1992 Act to access the relevant records. My jurisdiction is limited to this request, and to the Union's subsequent response. I have no jurisdiction to reach a decision on any of the requests made by Mr Sartin in his role as Chair of FRMC. That is a matter for the Union and Mr Sartin to resolve. I have included information about these requests only where that information adds context to Mr Sartin's request under s30 of the 1992 Act. It is worth noting here that much of the paperwork I have been provided with is relevant to Mr Sartin's earlier requests. Similarly, much of the witness evidence provided to me relates to those requests.

Context

25. Mr Sartin was appointed to the NEC in 2017 and joined the FRMC in 2019. He was elected Chair of the FRMC in 2021. He originally sought access to the relevant records in 2021 as part of his role as Chair of FRMC. Ms Egan told me that this may have been prompted by her. Having recently been appointed as Vice President, she had sought information about the likely demands on her time. Ms Egan's request was made to Ms Ferncombe, on 24 August 2021 which appeared to follow a meeting the previous day. She told me that the information was not forthcoming and so she asked Mr Sartin, as Chair of FRMC, whether he could assist her.

26. From the papers before me it appears that Mr Sartin first asked questions about the Union's spending on paid facility time on 4 August 2021. His questions were addressed to UNISON's Financial Controller. I have also seen correspondence, spanning several months, between Mr Sartin and the Union and, for a shorter period, between Ms Egan and the Union which relates to

these requests. Both Mr Sartin and Ms Egan appear to have been asking questions about payments for facility time. Ms Egan also appears to have been seeking assurances that former members of the NEC were no longer receiving paid facility time from the Union.

#TimeForRealChange

27. Mr Sartin told me that he belongs to a group known as #TimeForRealChange, and that, since 2021, the Union's NEC has a majority of members who belong to this group. He also explained that there has been some conflict between these lay members and the Union's General Secretariat. He described #TimeForRealChange as a collective which had formed following a campaign supporting a candidate in the most recent General Secretary election.
28. The group has a website but there is no protocol for uploading documents to the website and no authority is required before documents are uploaded. Mr Sartin, and a small number of other group members, are able to upload documents at their discretion. Some NEC members, who are also members of #TimeForRealChange, use the website to publish their own reports of NEC, or other, meetings which they have attended. Any member of the public can view the website which means that its content is not restricted to members or officers of UNISON.
29. #TimeForRealChange also uses a "Mailchimp" account which is used to send emails and newsletters which might, for instance, advertise events supported by the group's members. A small number of people have access to the account but, like the website, there is no formal process for authorising mail outs. Each member uses their own discretion when issuing an email or newsletter. For a period of time, Mr Sartin's name and address were recorded in the account's settings. This meant that any emails issued from the account would include Mr Sartin's name and address whether or not he had been involved in issuing the email.

30. Mr Sartin declined to disclose the name of the individuals who had access to the website or Mailchimp account because he believes this may lead to UNISON taking disciplinary action against them.

Release of data to Mr Sartin

31. The Union's position is that the disclosure of the unredacted accounting records to Mr Sartin will result in an unjustifiable breach of NEC members' expectations of privacy. In April 2022, following my decision in *Embery v FBU D/18/21-22*, the Union wrote to each of the 14 NEC members affected by Mr Sartin's request to see the relevant accounts. The text of the letters is included at Annex A; Ms Ferncombe told me that there were two versions of the letter; one for those members with a consolidated agreement in place and one for those with an ad hoc agreement. Of those members four wrote to the Union to refuse consent to the disclosure, one consented and nine did not reply to the correspondence.

32. At around the same time the Union's Data Protection Officer, Kim Horne, undertook a Data Protection Impact Assessment in relation to the relevant records. She took into account a number of factors including:

- a) The responses received from the four individuals who had refused consent,
- b) My decision in *Embery v FBU*, the EAT decision in *Unite the Union v Mills UKEAT/148/16*,
- c) NEC members' expectation of privacy,
- d) Mr Sartin's reasons for accessing the data, and
- e) Whether UNISON had a lawful basis for releasing the data and his alleged history of unlawful sharing of UNISON's data.

33. Having completed the Impact Assessment Ms Horne recorded that her advice was that UNISON could share the relevant accounting records as there was a legal obligation for them to do so. She also recommended that Mr Sartin should be required to sign a data sharing agreement before he was given access to the unredacted records. The agreement would restrict his ability to share or publish the accounting records. This approach was agreed for those members who had refused consent to the data being released and for those who had not replied to the Union's letter.
34. One NEC Member had consented to the release of their data. Ms Oldknow provided that data to Mr Sartin on 23 March 2023. I have seen no evidence as to why this information was provided almost a year after the Union wrote to those NEC Members affected by Mr Sartin's request.

The Impact Assessment

35. Ms Tuck raised two issues around the Impact Assessment which had been completed by Ms Horne. The first related to Mr Sartin's approach to sharing UNISON's data, with the relevant section stating:

“It is important to note that there has been a significant breakdown in communication between members of the NEC and the Union, including a history of the Chair's unlawful sharing of UNISON data which has previously been reported to the ICO.”

36. The Union included this because it had identified two instances where it asserted that Mr Sartin had shared confidential data without consent. The first related to the use of a mailing list to send an email from the Mailchimp account associated with #TimeforRealChange (see para 29 above). I have been provided with significant evidence, from both parties, about this breach. In brief, there was agreement that Mr Sartin had been provided with a mailing list by a candidate in the most recent UNISON General Secretary election. The mailing list had been provided with a strict restriction that it should only

be used for the purposes of the election and should be deleted by 27 November 2020.

37. Mr Sartin told me that the mailing list had been added to the Mailchimp account associated with the relevant election campaign and used during the election but had not been deleted as required. It was then used, inadvertently, by another member of #TimeForRealChange for a purpose which was not related to the election. The email included Mr Sartin's contact details (see paragraph 29 above) because, at that time, these were stored in the Mailchimp account settings. As soon as Mr Sartin realised the error he contacted the Information Commissioner's Office (ICO) for advice and deleted the email list. Mr Sartin accepted accountability for the breach as the email had been sent in his name; however, he was clear, in evidence that he had not issued the email himself. He did not report the incident to UNISON's Data Protection Officer.
38. It is clear that the Union and Mr Sartin take a very different view as to the scale of Mr Sartin's alleged unlawful sharing of data. From the evidence I have seen, however, it is clear that Mr Sartin has taken responsibility for the retention of a mailing list which should have been deleted and for the subsequent use of that list for an unlawful purpose. I have seen no evidence that this resulted in data being shared inappropriately or unlawfully. The ICO appear to have reached a similar position. At its highest, therefore, the breach appears to relate to the use and storage of an email list rather than unlawful sharing of personal data.
39. It is worth noting here that UNISON suggested that Mr Sartin may not have reported fully or accurately to the ICO about who had been included in the mailing list and how the emails had been obtained. This was not an issue which was pursued at the hearing by Mr Segal and I have seen no evidence to support, or contradict, this view. I have therefore, not taken it into account.

40. The second instance was a report of the FRMC meeting in January 2022 which was published on the FRMC website. The report states that it was prepared by Karen Reissmann. Mr Sartin told me, in evidence, that he did not upload the document on to the website and that he was not aware that it had been uploaded. He also explained that he did not regard the contents of the report as confidential. I have seen no evidence to suggest that Mr Sartin uploaded the document; however, I think it worth dealing with the wider issue of NEC members' approach to confidentiality to give some background to this (see paragraphs 49 to 67 below).

41. Ms Tuck's second issue related to Mr Sartin's reasons for seeking access to the data and how he intended to use it.

“Without knowing the reason for the Chair [Mr Sartin] requesting the data in an unredacted format the processing cannot achieve any known purpose.”

Ms Tuck pointed out that Mr Sartin had explained why he needed access to the accounting records. He explained what he was seeking to understand when he first approached UNISON's Financial Controller on 4 August 2018. At that stage he was not explicitly asking for access to the accounting records themselves but for information such as the total hours (or days) release facilitated by the payments to employers, the total cost of ad hoc and consolidated arrangements and whether any arrangements persisted for those NEC Members whose previous terms of office ended. He was provided with the total cost of the arrangements and was directed to Ms Ferncombe to seek the further breakdown of figures. Mr Sartin then sought some further information from the Financial Controller. The Director of Finance replied on 8 September 2021 with some additional information (although offering no more financial detail) and a recommendation that Mr Sartin discuss the issue with Ms Oldknow.

42. Over the next few weeks there were various exchanges of emails between Mr Sartin and officers at the Union. It seems clear that the Union were seeking to understand the nature of, and perhaps the reasons behind, Mr Sartin's request; however, they do not at any stage provide the information he has requested. It is worth noting that the Union made several offers to meet with Mr Sartin to discuss the request but that he did not take up that offer. Mr Sartin told me at the Hearing that he did not take up the offers because the Union did not "set up" a meeting.

43. Until 23 December 2021 Mr Sartin had been content to see the financial information in a redacted format. On that date, however, he formally requested access to the accounting records under s30 of the 1992 Act and explained that he was no longer content with the redacted information. He explained why he believed that he was entitled to access the information in his role as Chair of FRMC and why it would not be a breach of UK GDPR to do so. I note, however, that there is nothing in this email which sets out his reasons for seeking access to the data, other than that he believes that it is necessary for him to do so to fulfil his role as Chair of FRMC. He did, however, set out his reasons in an email dated 11 March 2022 to Ms Ferncombe:

"It cannot be the case that my legitimate interest to access this data is "...overridden by the interests or fundamental rights of the data subject which require protection of personal data." However, you have asked me to provide my rationale for wanting access to this financial information. My rationale includes the following:

1. To provide oversight of this expenditure
2. To ensure it makes an effective use of resources
3. To ensure there is equitable and fair distribution of resources
4. To ensure fair access for low-paid NEC members

5. To ensure the expenditure meets legitimate need
6. To check for any potential irregularities
7. To make recommendations for the most economic use of this expenditure, in line with the Financial Standing Orders.

If provided in redacted form in the way done so far, the information provided is not fit for purpose and prevents me from carrying out my role.

As the Chair of the Finance and Resource Management Committee, I am an Officer of UNISON and should be treated as such with the right to see financial information to allow me to perform my functions and carry out my duties. In that capacity, I, the Committee, the staff and, indeed the membership are governed by UNISON's Financial Standing Orders. These provide for me to have access to the financial information I have requested.

Clearly, it would be anomalous for a range of staff have access to this financial information but not the chair of the critical and relevant oversight committee.”

44. When giving evidence Ms Horne explained that she believed that the references to Mr Sartin having a history of the unlawful sharing of UNISON data were accurate. I have not, however, been provided with any evidence to support this view. Mr Sartin has accepted that he retained data, through a Mailchimp account, for longer than was appropriate and that the data was processed for an inappropriate purpose. This appears to be supported by the ICO's view that no personal data was shared. I have also not seen any evidence to suggest that Mr Sartin was responsible for publishing the report prepared by Ms Reissmann.

45. Ms Horne also explained that she could not recall whether she had seen Mr Sartin's email of 11 March 2023 to Ms Ferncombe. She told me that, having

now seen the email, she did not believe that the reasons he gave were sufficient to release the data without a data sharing agreement. It is worth noting here that Mr Sartin provided a copy of the email to Ms Horne on 31 August 2022, after the Impact Assessment had been completed; he has recorded that this followed a “separate 30 minute meeting to discuss the data sharing agreement”.

46. It appears to me, therefore, that the Impact Assessment included information which did not accurately reflect the position. I have seen no evidence to suggest that Mr Sartin had a history of the unlawful sharing of personal data, and it is clear that he had given reasons for requesting access to the records.

Data Sharing Agreement

47. Following the Impact Assessment Ms Horne prepared a data sharing agreement. UNISON’s position was that the unredacted data could not be released until Mr Sartin had signed the agreement. There appears to have been significant discussion around the need for, and terms of, the agreement and some disagreement about where responsibility lay for settling the terms of the agreement. Mr Sartin did not sign the agreement.

48. I note, however, that there has been some movement on the terms of any agreement in the days ahead of the Hearing.

Information governance arrangements within UNISON

49. During the Hearing it became clear that there were differences of opinion, and a lack of understanding about the Union’s arrangements for maintaining confidentiality within the Union and compliance with UK GDPR.

50. Ms Horne told me that, following an earlier data breach UNISON, on the advice of the ICO, instituted mandatory UK GDPR training in 2019 for all branch officials, activists, NEC members and staff handling personal data. The training takes about 20 minutes and is completed online. There is a

separate module for staff and officials (including NEC members). The training for officials takes about 20 minutes and is updated annually where necessary; regular reminders are sent to everyone who is required to undertake the training. The Development and Organisation Committee (D&O Committee) monitor the completion rates for the training.

51. Ms Egan told me that the D&O Committee is responsible for compliance with UK GDPR across UNISON and took the decision that UK GDPR training should be mandatory across the Union. She is Chair of that Committee and explained that they monitor compliance rates across the Union. She told me that there was no sanction for those who did not undertake the training and the Committee do not separately monitor whether NEC members complete the training.
52. Ms Egan told me that she first completed the training about 18 months ago but has not subsequently completed any annual refresher training. She told me that this is because there are a number of demands on her time and she has not received any reminders to complete the annual update.
53. Mr Sartin told me that he had completed UK GDPR training in October 2021 after the inappropriate use of the mailing list described at paragraph 36 above. He has not, however, subsequently completed the annual refresher training. He told me that this was because he had not received any reminders and has been extremely busy with his roles as Branch Secretary and Chair of FRMC.
54. Ms Horne confirmed that Mr Sartin had undertaken the initial training in October 2021. UNISON records showed that he had not completed any updates. She also told me that UNISON had no record of Ms Egan completing the training since 2019.
55. As to confidentiality more widely, Ms Ferncombe told me that NEC members receive induction training following each election as well as a handbook which

includes a chapter on confidentiality. There is also a process, known as starring, for identifying papers at NEC which are regarded as confidential and so should not be discussed or shared outside NEC. Both Ms Hamilton and Mr Gray confirmed that this was the case when giving evidence. Ms Hamilton recalled there being an understanding that all issues raised at FRMC and at the Staffing Committee should be treated as confidential to that Committee until the issue was considered at NEC.

56. Mr Sartin and Ms Egan agreed that papers at the NEC meetings were often starred to show that they were confidential. Mr Sartin explained that there was no such process at FRMC. His view was that FRMC papers were not generally considered to be confidential.

57. Ms Solera explained to me that she had not been provided with a handbook when she joined NEC in June 2021. She was eventually provided with a handbook on request but this was an old version from the previous year. She could not recall whether it contained information about data protection or confidentiality although she had undertaken the UK GDPR training. Ms Ferncombe explained that the handbook was usually provided to NEC Members at the induction which immediately followed the election. This was usually the previous version as it contained photographs of all NEC Members and so the new version, with new photographs, would not be available for some time. Once it was ready, it was provided to NEC Members.

58. I have not been provided with a document which sets out UNISON's position on confidentiality. Witnesses told me that this was included within the Members' Handbook; however, there was a clear difference of opinion about how much guidance or policy was contained in the handbook. Neither party provided me with the handbook as part of their evidence.

59. I recognise that many NEC members have significant demands on their time. This is especially the case where they are activists and hold positions elsewhere in the Union at Regional and Branch level. That does not,

however, absolve them of the need to ensure they have an appropriate understanding of UK GDPR and the Union's policies on data handling, including through active participation in training. That is particularly so where they hold positions where they are responsible for ensuring that staff and members are compliant with UK GDPR and where they may themselves handle sensitive personal data. In particular, I was surprised that Mr Sartin, as Chair of the FRMC, and Ms Egan, as Chair of the Committee responsible for implementing mandatory UK GDPR training, have, by their own admission, not completed the mandatory updates.

60. I was also surprised to be told that there is no formal process for identifying which FRMC papers are considered confidential especially as there is an existing process for NEC meetings. Such a process would ensure that FRMC members and staff had an agreed understanding of what could be shared with other members, and the wider public, following a meeting.

Personal Data

61. It is clear that the relevant accounting records contain information which would enable Mr Sartin to identify personal data about those members of NEC who have arrangements in place for paid facility time. This could include details of their salary and employment arrangements. Mr Sartin told me that he recognises this and the need to maintain appropriate confidentiality. He has also told me that he does not believe that there is any evidence to suggest that the records will enable him to identify any fraud or inappropriate behaviour. Nevertheless, he believes that he, like any other member of UNISON, has a right to access that data. He does not have any intention to share the data, other than with the Union's Presidential team and senior staff. He believes that this is a reasonable approach.

62. Ms Ferncombe told me that four members objected to the disclosure of the unredacted accounting records which relate to them. There were a number of

reasons for this and I have seen correspondence from the two NEC members who gave evidence.

63. Ms Hamilton told me that she was concerned about the potential for wider disclosure of the data to other members of #TimeforRealChange and that she would then feel the need to justify what she was earning. She told me that she was concerned about the previous behaviour of other members of the group and that she had been shouted at by Mr Sartin. During the hearing she was clear that she regarded her salary as confidential and could not understand why it could be shared with others. She was also concerned that disclosure of salaries of NEC members could lead to employers using the information as a comparator in job evaluation exercises and that some employers, including hers, would regard this as confidential.

64. Mr Gray was also concerned that disclosure of his salary could be used by those who held different political views to him who may also twist and distort the facts. He had previously been harassed on social media for his political beliefs and the police had arrested the person responsible. He doubted Mr Sartin's motives for accessing the records and believed that his request was politically motivated. He also explained that, in his view, Mr Sartin's conduct towards him at NEC meetings had been politically motivated.

65. It is worth noting here that Ms Tuck told me that Mr Sartin denied that he had shouted at Ms Hamilton and that he also denied that his conduct towards Mr Gray had been inappropriate or politically motivated. Additionally, there has been no suggestion that the person who harassed Mr Gray was linked to Mr Sartin or to #TimeForRealChange.

66. It was clear, at the hearing, that both Ms Hamilton and Mr Gray had real concerns about Mr Sartin's access to the relevant records and, consequently, their personal data. It is also clear that they were unaware that Union members had a right to access such records. Ms Hamilton told me that she had an expectation that such data would be protected. Ms Solera and Ms

Egan also told me that nobody had drawn this to their attention when they joined NEC.

67. Ms Ferncombe told me that, from memory, the remaining members of NEC who refused consent did so for similar reasons to Ms Hamilton and Mr Gray. She believed that one member may have said that they would not have taken on the NEC role had they understood that their information may be disclosed. Ms Horne told me that UNISON had taken the decision not to disclose the names of the nine members who had not replied to the correspondence because those members had not given explicit consent.

Conclusions

68. It is accepted by both parties that Mr Sartin has a right to access the relevant accounting records and that the Union must act within UK GDPR when processing the personal data which is contained within those records. The 1992 Act places no limits on the purpose for which a member can seek access to the accounting records of the union nor restrict how they may use that data. My approach in this case will be, as it was in *Embery v FBU* D/18/21-22, that a member should have access to the accounting records of their union without any further restriction on the use of the data in those records unless granting that access would unjustifiably restrict the rights of those named in the relevant records.

69. Ms Tuck encouraged me to consider Article 6(1)(c) of UK GDPR. In her view, this would enable UNISON to disclose the data because it would be relying on its obligation to comply with s30 of the 1992 Act following Mr Sartin's request to access the relevant records. Mr Segal told me that it was questionable whether Article 6(1)(c) could be relied upon before a complaint had been made to me and I have reached a decision as to whether to make an enforcement order. This was because it had already been established, in *Unite the Union v Mills* and *Embery v FBU*, that I had the power to require the Union to redact the records before disclosure.

70. I agree with Ms Tuck that, in principle, Article 6(1)(c) would enable the Union to disclose the data to Mr Sartin because s30 of the 1992 Act imposes on them a statutory obligation to give him access to the records. I am not persuaded by Mr Segal's position, because it appears to defeat the purpose of Article 6(1)(c) in cases such as this where a court, tribunal or other body has a power to deal with a complaint about non-compliance. I am, however, conscious that Ms Horne explained to me that the Union must, in disclosing personal data under Article 6(1)(c) also comply with the data protection principles in Article 5.
71. Consequently, I do not think that there is much between the positions taken by Ms Tuck and Mr Segal provided that, whilst relying on Article 6(1)(c) the Union also considers Article 5 of UK GDPR and, in particular, Article 1(a) which requires that data be processed lawfully, fairly and transparently. In my view, this enables the Union to take into account the rights of the NEC Members when considering whether to enable Mr Sartin to access the relevant records even where they are relying on Article 6(1)(c) of UK GDPR to disclose the relevant records to Mr Sartin. In this case Article 6(1)(c) provides a lawful basis for the processing and so the remaining issues are whether it is fair and transparent.
72. I note that this is also the view taken by Ms Horne when she completed the Impact Assessment discussed at paragraphs 35 to 46 above. That impact assessment, however, identified that Mr Sartin had a history of the unlawful sharing of UNISON's data. As I have explained above, I have not been given any evidence which supports UNISON's view that this was the case. It is also clear, from the evidence, that Mr Sartin had given UNISON reasons for his request to view the accounting records. I am not satisfied, therefore, that the impact assessment in its current form can be relied upon for the purposes of my decision.

73. Consequently, I must consider whether the individual NEC members who are the subject of the relevant records have rights which would justify restricting Mr Sartin's access to their records. It is clear, from NEC members' evidence to me, that they were not aware that the right to access union records could include accessing a document which identified a named individual and details of their salary and employment arrangements. It seems likely, therefore, that NEC members would first have become aware that this was a possibility when Ms Ferncombe wrote, on 1 April 2022, to those affected by Mr Sartin's request. The letter explained that Mr Sartin had made a request to see the records and that, following *Embery v FBU*, the Union considered that it must disclose those records and would do so without delay. I have attached a copy of the text of the letter which was sent at Annex A. In summary, it explained that UNISON had received a request from Mr Sartin for access to the relevant records, that following my decision in *Embery v FBU* it was obliged to provide that access and that it would do so without delay. The letter also confirmed that it would ask Mr Sartin not to place the information in a public forum and highlight that this would be to protect the individual's rights. It is important to note that the letter did not seek the NEC members' consent to, or their views on, the disclosure. Nor did it seek a reply.

74. Nine members did not reply to Ms Ferncombe's letter. Ms Ferncombe told me that no further letters were sent and that the matter was not discussed at an NEC meeting. The Union disclosed the records relating to the NEC member who gave consent to the disclosure but redacted the names of those who did not reply or who refused, or objected to, disclosure.

75. Ms Horne told me that UNISON redacted the names of those members who did not reply to the letter because they had not given explicit consent to the disclosure of the records. Having found that Article 6(1)(c) enables the Union to disclose the records I can see no reason to redact these records. The disclosure is lawful, and UNISON have acted transparently and fairly by informing the individuals of their intent to give access to the records.

76. Turning now to the reasons given by the remaining four members which cover a wide range of issues:

- a) NEC members were not aware that another member might have a right to access records which included their personal information including their salary and employment arrangements;
- b) NEC members had not made their employer aware that their salary may be disclosed and did not know what the employer's attitude to that would be.
- c) Disclosure of a salary may cause an issue around job evaluation;
- d) A suggestion that they would not have joined the NEC had they known that their information might be disclosed in this way;
- e) A belief that Mr Sartin would disclose their personal information to other members of #TimeForRealChange which might result in personal attacks or harassment through social media;
- f) A feeling that Mr Sartin was seeking access to the records for reasons other than those stated;
- g) The payments being disclosed were made to their employers, unlike those in *Embery v FBU* which were expense payments made to the NEC members themselves.

77. It is striking that many of these reasons arise from a lack of trust in Mr Sartin and a belief that he would share the information he received with other Union members and, potentially, more widely. The Union has not, however, provided me with any evidence that Mr Sartin has personally been involved with the unlawful sharing of data as they have alleged.

78. More widely, Mr Segal has been clear in his submissions that he believes that a union has a right to maintain the confidentiality of its accounting records. I

agree with him. That is why I found it surprising that the witness evidence demonstrated such significant inconsistencies in NEC members' understanding of, and approach to, confidentiality and UK GDPR. Neither Mr Sartin nor Ms Egan had completed their annual UK GDPR training despite their senior roles in UNISON and Ms Egan's role as Chair of the Committee with oversight for data protection. Both Mr Gray and Ms Hamilton identified that the induction training for NEC members covered confidentiality and that they had access to a members' handbook which included information about confidentiality. Ms Ferncombe confirmed that this was the case. Mr Sartin, Ms Egan and Ms Solera could not, however recall whether this was the case.

79. It is also worth noting that the Union have not provided me with any information around the confidentiality obligations it places on its NEC members or, more widely, its branch officials, reps, activists and members. Any member could make a request for access to the Union's accounting records and may, as a result, have access to information which the Union considers to be confidential. More broadly, of course, those working in branch or activist roles may already have access to data which UNISON regards as confidential. I was assured that the Union could use its disciplinary process where a member disclosed data unlawfully.

80. Whilst I am concerned at the apparent inconsistency in approach to confidentiality, I am conscious that I have seen no evidence that Mr Sartin has shared personal data outside of UNISON. The 1992 Act does not place any restriction on his right to access the data nor on his use of it. It does, however, enable UNISON to place obligations on any accountant who accompanies him; however, as I reflected in *Embery v FBU*, had it been Parliament's intent to enable a Union to place a similar obligation on a union member then it would have done so. It is open, however, for a union to rely on rules and internal policies to require a member to comply with their confidentiality obligations and to use any disciplinary procedures where appropriate. On balance, therefore, I am not persuaded that Mr Sartin's

attitude to confidentiality is sufficient, by itself, to require him to sign a confidentiality document.

81. Turning to disclosure itself, the NEC is the most senior committee of the Union with executive decision-making responsibility. Payments which are made direct to members may be disclosable in the Union's annual return to my office which is then published on my website. There is, therefore, an expectation of transparency for any payments which are made direct to an NEC Member.
82. There is, of course, a difference here because the payments in question are not being made to the NEC member but to their employer. And disclosure of the accounting records could enable Mr Sartin to identify the salary which the NEC member receives from their employer for work which is not related to their role within UNISON. As discussed at paragraphs 62 to 64 above I have been told that some members believe that there are some risks associated with disclosure of their salary. The Union has not provided me with any evidence to show the likelihood of these risks or the impact it might have on the individual. Nor was this an issue considered in the Data Protection Impact Assessment.
83. The issue which remains, therefore, is whether the disclosure of salary itself justifies restricting Mr Sartin's rights. He has told me that he recognises the importance of protecting this information and has no intention of disclosing it. I have already identified that I have seen nothing to support the Union's position that Mr Sartin has a history of unlawful disclosure of data. I have also seen no other evidence that Mr Sartin intends to disclose the information.
84. It is clear that some NEC members were not aware that the right of access to UNISON's accounting records might include access to information about the employment data. There is, however, a clear statutory right in s30 of the 1992 Act. As I have seen no evidence that Mr Sartin intends to disclose the information to anyone outside the Union, I do not believe that NEC Members'

lack of awareness of a Union member's statutory right is sufficient to justify restricting Mr Sartin's right to access the relevant records. I am also satisfied that UNISON acted transparently and fairly to these four members by explaining that the data would be shared and why.

85. On that basis I am satisfied that Mr Sartin's application is well founded and that he has a right to access the accounting records, in unredacted form, without the need to sign a confidentiality agreement. In reaching this conclusion, however, I am conscious of the very real concern around disclosure and confidentiality. The Union may, therefore, wish to remind Mr Sartin of his obligations under UK GDPR and the need to maintain confidentiality. In turn, I encourage Mr Sartin to complete his annual UK GDPR update training as soon as is reasonably possible and to consider the potential impact of any disclosure of the information whether inadvertent or otherwise.

86. For the reasons set out above I agree to make the enforcement order in the terms requested by Mr Sartin. Mr Segal agreed that it was practical for disclosure to be made within 14 days. As we are approaching a holiday period I believe that it is reasonable to extend that period to 21 days.

Observations

87. I have considerable empathy with Ms Hamilton and Mr Gray. Their concern about confidentiality was clear and it was evident that they were not aware that a request under s30 of the 1992 Act could result in another union member having access to information about their salary and employment arrangements. I would urge the Union to ensure that NEC members are aware of members' rights in this respect.

88. It is clear that Mr Sartin first made his request to access the Union's financial records in his role as Chair of FRMC. There is significant correspondence between him and members of the Union staff including Ms Ferncombe, Ms

Oldknow, Mr Ashra, Ms Horne and her predecessor. It is not for me to decide whether Mr Sartin should have access to this data as part of his role; however, it is clear that it took him some considerable time to make progress and that he, and the Union's staff, had different views as to the access he should be given. I would urge the Union to reach an agreed position on the access which is necessary and appropriate for NEC members and Committee Chairs to avoid such delays occurring again. This will also reduce the likelihood of a request being made under s30 of the 1992 Act from those in a position of responsibility in the Union.

89. I have highlighted above the significant disparity in NEC Members' approach to confidentiality and UK GDPR. I would encourage the Union to ensure that there is a common approach to this area and to ensure that NEC Members undertake appropriate training. I also expect those in positions of responsibility, including Mr Sartin and Ms Egan, to take personal responsibility for their own training and development in this area.

90. I was surprised by Mr Sartin's reluctance to meet with staff, including Ms Oldknow and Ms Ferncombe, to resolve his request at an earlier stage. There is clear evidence that meetings were offered to him to help the Union understand the issues he raised. He told me that he did not meet them because they did not arrange a meeting. I can understand that this may have caused staff to have concern about his reasons for seeking access to the records. I would urge Mr Sartin to adopt a more cooperative approach in the future.

Financial penalty

91. It is open to me to impose a financial penalty in relation to the Union's breach of section 31(1) of the 1992 Act. Mr Sartin did not seek such an Order and Mr Segal did not consider one necessary.
92. I have not seen any evidence that those dealing with Mr Sartin's request were seeking to deny Mr Sartin his right to access the relevant records without justification. On the contrary it was clear that they were seeking to meet his request whilst also trying to protect the rights of other NEC members. It is also clear that UNISON staff considered my decision in *Embery v FBU* and sought to change its position once it had done so.
93. I am concerned that the Impact Assessment includes assertions about Mr Sartin which were not evidenced at the Hearing before me; however, on balance I do not think that this is sufficient for me to impose a conditional financial penalty order and I have chosen not to do so on this occasion.



Sarah Bedwell
The Certification Officer

Annex A

Text of the letter to the NEC members affected by the request

Dear xxxxx

The Chair of the Finance & Resources Management Committee has been looking at the Union's finances, and has asked to see details of facility time payments made in respect of your role on UNISON's NEC. He has made this request in his role as Chair and also under s.30 Trade Union and Labour Relations (Consolidation) Act 1992.

As you know, UNISON has previously reimbursed you when taking unpaid leave to attend meetings or has reimbursed your employer accordingly. The Chair of FRMC wishes to know the amount that was paid to you or your employer for this purpose in 2020 and 2021.

I have to inform you that a recent decision of the Certification Officer *Embery v FBU* [2022] (<https://www.gov.uk/government/publications/access-to-accounting-records-decision-embery-v-firebrigades-union-pdf-format>) indicated that unions have to provide accounting records of "expense claims" made by NEC members. I understand that this decision is being appealed, but UNISON needs to comply with the legal principles in this judgment.

In accordance with Article 35 of the UKGDPR "Data protection impact assessment", UNISON's Head of Data Protection & Information Compliance carries out an assessment for any new types of processing where it is likely to result in a high risk to an individual's rights and freedoms. The assessment considers the nature, scope, context and purposes of the processing and is

required for the processing on a large scale of special category data. Additionally, as a data controller, UNISON must comply with Article 30 of the UKGDPR “Records of processing activities” and maintain a record of processing activities under its responsibility.

UNISON considers that this judgment requires it to share expense claim information for NEC members where a request is made under s.30 TULRCA and the Chair of FRMC has made such a request. UNISON has agreed in principle to comply with this request without delay. We will ask that the Chair of FRMC agrees he must not place this information on any public forum and highlight that this is to protect your rights governed by UNISON Rules and UK data protection law.

Yours sincerely