

D/03/2023

Decision of The Certification Officer for Northern Ireland

In the matter of an application pursuant to Article 37 of the Industrial Relations (Northern Ireland) Order 1992 ('the 1992 Order') and 90A of The Trade Union and Labour Relations (Northern Ireland) Order 1995 ('the 1995 Order').

Mr Morgan Brannigan (Applicant)

V

Industrial Workers of the World (IWW)
(Respondent)

Date of Decision:

03 October 2023

DECISION

Upon application by Mr Morgan Brannigan (the Applicant) under Article 37 of the 1992 Order and 90A of the 1995 Order a total of five complaints were raised.

The following complaints have been determined:

Complaint number 1

Breach of Article 37 of the 1992 Order in failing to meet a request for access to the accounts of the Ireland Branch of IWW.

Complaint number 2

Breach of union rules relating to branch expenditure as set out in IWW's Manual of Policies and Procedures (MoPP).

Complaint number 3

Breach of Article 90A (2) (b) of the 1995 Order governing disciplinary proceedings by the union (including expulsion).

Complaint number 4

Breach of Article 90A (2) (d) of the 1995 Order governing the constitution or proceedings of any executive committee or of any decision-making meeting.

Complaint number 5

Breach of the complaints procedure as set out in section 21 of IWW's rules and 18.3-18.8 of its supporting Manual of Policies and Procedures (MoPP).

My decision on the complaints is as follows:

Complaint 1	Partially Upheld
Complaint 2	Not Upheld
Complaint 3	Upheld
Complaint 4	Not Upheld
Complaint 5	Upheld

DECLARATION

I hereby issue a declaration that the Respondent breached Article 37 of the 1992 Order, Article 90A (2) (b) of the 1995 Order and rule 21 of the IWW Rules and Constitution.

I have determined that an Enforcement Order is required in this case, given the Respondent's failure to take action to address admitted non-compliance with its own policy and procedures and to mitigate the risk of further non-compliance with the governing legislation and union rules.

ENFORCEMENT ORDER

The Respondent is ordered to take the following urgent actions within three months from the date of this declaration:

- Engage with the Applicant to explore the potential to resolve the formal complaints and disciplinary cases through an Alternative Dispute Resolution process.
- Issue a circular reminding all members of the importance of adhering to IWW rules and the Manual of Policies and Procedures (MoPP).
- Highlight in the circular to all members the critical importance of ensuring strict compliance with the rules governing the approval of committee expenditure and the complaints policy and procedures.

REASONS

General Background

1. Mr Brannigan (the Applicant), a member of the Ireland branch of IWW (the Respondent), registered five complaints with my office on 20 May 2022.
2. I assessed the Applicant's 5 complaints against the following tests:
 - a. Were the complaints lodged with the statutory time limits;
 - b. Did the complaints fall within the scope of the Certification Officer's authorities as established in the 1992 & 1995 Orders, and
 - c. Based on the information provided by the Applicant, was there a potential case to answer.
3. All five complaints were lodged within the statutory time limits, fell within the scope of the governing legislation, and accepted on the basis that an arguable case was made by the Applicant.
4. Following receipt of the Applicant's complaints on 20 May 2022, my office made numerous attempts to engage with the Respondent, initially through the General Secretary, and then the IWW's named Northern Ireland contact. My office was then contacted in March 2023 by the Respondent's legal department confirming its willingness to submit a response.

5. The Respondent cited COVID and the General Secretary's absence due to illness and subsequent resignation as the reasons for the delay in responding to the complaints. I have some concerns not just about the delay in responding to the complaint but also in terms of the quality of the Respondent's responses to the five complaints.
6. Article 70 of the 1992 Order provides for the Certification Officer to regulate the procedure to be followed on any application or complaint made to him.
7. Both parties were amenable to determine the case based on written submissions.

Complaint number 1

The Applicant alleged that the Respondent failed to provide access to branch accounting records as required under Article 37 of the 1992 Order.

The Applicant and Respondent have both confirmed that a handwritten note of the branch accounts was provided in response to the initial request made in October 2021.

The Respondent, in its defence, indicated that the Ireland branch did not have full access to the relevant bank account at the time of the request; and in providing a handwritten note of branch accounts, contended that IWW had complied with Article 37 of the 1992 Order. The Respondent further argued that Article 37 does not specify that accounts should be in a typed format.

Article 37 of the 1992 Order is silent in terms of the format of Trade Unions accounts.

Article 10(2) of the 1992 Order does require proper accounting records to be kept but this provision applies only to trade unions whose head or main office is situated in Northern Ireland. The Respondent is a trade union with its headquarters in GB and is therefore not subject to this provision.

However, IWW is subject to the corresponding GB legislation, Article 28 of the Trade Union and Labour Relations (Consolidation) Act 1992, which mirrors Article 10(2) of the 1992 Order in requiring trade unions to keep proper accounting records.

The handwritten income and expenditure note provided to the Applicant had omissions and queries against some of the entries which is at odds with the proper accounting standard promulgated in the 1992 Order and corresponding GB legislation.

It is encouraging that the Respondent has now confirmed that the Ireland Branch of IWW has secured full access to its bank account. The Respondent provided in its response a series of correspondence from its bank which evidenced the problems in accessing the Ireland Branch's account. A bank statement for the 2021 calendar year was also included in its response.

In determining this complaint, I must be guided by the provisions of the governing legislation (Article 37 of the 1992 Order) set out below.

Right to inspect union's accounting records

37(1) It shall be the duty of a trade union to keep its accounting records available for inspection in pursuance of this Article 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 the records relate.

(2) Where—

(a) at a time when a trade union is required under paragraph (1) to keep any accounting records available for inspection, any person who is a member of the union makes a request to the union to be allowed access to any of those records; and

(b) none of the records that are the subject matter of the request relates to a period other than one which includes a time when that person was a member of the union,

it shall be the duty of the union to comply with the request in accordance with paragraph (3) and, if the period mentioned in paragraph (1) expires before the request is complied with, to continue to keep those records available for inspection by that person until the request is complied with.

(3) The trade union shall perform its duty to comply with a request under paragraph (2)—

(a) by making arrangements with the person who made the request for that person to be allowed, before the end of the period of twenty-eight days beginning with the day on which the request was made, to inspect the records which are the subject matter of the request.

(b) by allowing that person and any accountant who may accompany him for the purpose to inspect those records at the time and place arranged; and

(c) by securing that at the time of the inspection that person is allowed to take, or is supplied with, such copies of, or of extracts from, any records inspected by him as he may require.

The Respondent did respond to the Article 37 request in providing a handwritten note of the income and expenditure. I also recognise that the Respondent had experienced difficulties with its bank account over an extended period of time, but an incomplete handwritten note of income and expenditure does not fully satisfy the requirements of the 1992 Order.

I therefore partially uphold this complaint.

Complaint number 2

The Applicant alleged that there was a breach of union rules relating to branch expenditure contrary to section 15(d) of IWW's Manual of Policies and Procedures (MoPP), with funds expended on two campaigns without prior approval of the Ireland Branch committee.

There was a discussion about expenditure on these two campaigns at the Ireland Branch committee meeting in November 2021 and the Applicant contends the draft minutes did not accurately reflect the agreed actions.

The Applicant was not going to be present at the next committee meeting and made an online request to his fellow committee members on 5 December 2021 seeking their agreement to promote a series of amendments to the November 2021 minutes at the December 2021 branch meeting.

One of the proposed amendments was that 'no expenses had been agreed or incurred'.

The Applicant confirmed that none of the proposed amendments were adopted by the branch committee. It was always open to the Applicant to attend the December 2021 committee meeting to promote these amendments.

Section 15d of the IWW's MoPP states that 'Branches are entitled to set their own policies on expenses and hold their own officers to account'. This would suggest that the Ireland Branch committee had autonomy in terms of expenditure within its geographical remit subject to any restrictions imposed by Section 15d.

Section 15d does state that expenditure, other than the cost of venues and travel to conferences, may only be approved in advance unless the branch has its own expenditure policy and current budget.

The Respondent has stated in its response that the budget for these campaigns was approved by the Ireland Branch Committee. I have no evidence, other than the allegation made by the Applicant, that expenditure was not approved in advance in line with IWW's MoPP. In the papers provided by the Applicant a number of the committee members argued that the two funded initiatives had been in existence for some time and the Applicant also indicated that these initiatives were worthy causes; his sole concern being that prior approval was not secured for the recent expenditure.

The two issues that I took account of in reaching my decision were:

- Did the Ireland Branch breach its own rules; and
- If it did, whether the breach of the rules had a material impact on the committee's spending decisions, with the real possibility of the committee coming to a different expenditure decision if the prior approval requirement had been met.

I received no definitive evidence that prior approval of the expenditure was not secured or whether the funding decisions were retrospectively approved by the committee: and even if the Applicant's allegation was proven it was clear from the papers presented by both parties that there was substantial support for the continuance of these funded initiatives within the committee.

The Applicant was one of seventeen members of the Ireland branch committee: the accepted convention is that the adoption of minutes of meetings and approval of organisational expenditure will always be determined by a majority of its members.

It is for these reasons that I do not uphold this complaint.

Complaint number 3

The Applicant alleged a breach of Article 90A (2) (b) of the 1995 Order governing disciplinary proceedings by the union (including expulsion). The Respondent's General Secretary wrote to the Applicant on 13 May 2022 advising the applicant he was suspending his membership on a temporary basis (pending an investigation) following allegations around his conduct. The General Secretary offered the Applicant assurance that the disciplinary process would be expedited with the early appointment of the complaints committee.

The Applicant has remained on temporary suspension for almost seventeen months with no action taken by the Respondent to progress the disciplinary process.

In response to this complaint the Respondent has advised that the Applicant was suspended for breaches of the IWW equality policy and failed to engage with the mediation process or disciplinary process. The Respondent does accept that there was a delay in dealing with the disciplinary process due initially to COVID and then the General Secretary's sickness and subsequent resignation.

I am not persuaded by any of the reasons offered by the Respondent. By May 2022 society had come to terms with COVID with many organisations returning to their workplaces on either a full or part-time basis. The General Secretary's absence and subsequent resignation is not a sustainable reason for such a protracted delay, important priorities such as a disciplinary process, should be taken forward by someone nominated by the IWW's ruling authority, the Delegate Executive Council. The Respondent also states that the Applicant refused to engage with the mediation or disciplinary process.

Section 18 of the IWW MoPP sets out in detail the process to be followed in a disciplinary case. Given the seriousness of the alleged breaches of the equality policy that persuaded the General Secretary to temporarily suspend the Applicant, the Respondent has completely failed to comply with its own policies and procedures but more fundamentally, has not offered the Applicant a right of reply and a fair hearing.

I note that the Respondent has recently confirmed that the union has reached out to the Applicant on a number of occasions to initiate the disciplinary process, but the Applicant has not responded.

I would encourage both the Respondent and the Applicant to meet to agree a way forward in line with the IWW complaints procedure.

For all of the above reasons I uphold this complaint.

Complaint number 4

The Applicant alleged a breach of Article 90A (2) (d) of the 1995 Order governing the constitution or proceedings of any executive committee or of any decision-making meeting.

This complaint is not dissimilar to Complaint 2, as it centres on the operations and decision-making of the Ireland branch committee of IWW. The Applicant cites a number of concerns which he asserts constitute a breach of the governing legislation, in that the committee:

- Did not censure one of the committee members for posting what the Applicant described as ‘an inaccurate and misleading information on social media’.
- Passed a finance motion conferring authority on the treasurer to determine what constituted allowable committee expenditure.
- Was critical of the Applicant’s conduct at its 9 January 2022 meeting.

I am not required to make a judgement about the merits of a social media post unless the post is potentially unlawful, not the case in this instance as confirmed in the Applicant’s submissions. The issue for determination is whether the branch committee had the authority to support the continuance of this post; the IWW’s Rules and MoPP allow for branch committees to regulate their proceedings and any local campaigns.

The passing of a finance motion is also within the gift of IWW branch committees. Section 15d of the IWW’s MoPP is very clear in stating that ‘Branches are entitled to set their own policies on expenses and hold their own officers to account’. Branch members, except for the Applicant, were supportive of this proposal.

The final issue, the discussion at a branch committee meeting on 9 January 2022 about the Applicant’s conduct, falls within the territory of the IWW’s complaints and disciplinary procedures which I have considered separately under Complaints 3 & 5.

The Applicant alleged that the comments by individual committee members at the 9 January 2022 meeting were defamatory. I have no authority to determine whether individual or collective statements constitute defamation; it is always open to the Applicant to pursue a separate defamation claim through the Courts.

Any member of a committee has the right to raise concerns about the conduct of a fellow committee member. The minutes of the meeting on 9 January 2022 portrayed a strength of feeling about the conduct of the Applicant who was not in attendance at the meeting. The discussion came under the Agenda Item dealing with the union’s Safer Spaces policy. A motion to lodge a complaint about the Applicant’s conduct was passed by twelve of the thirteen members present at the meeting.

It is for these reasons that I do not uphold this complaint.

Complaint number 5

The Applicant alleged a breach of the complaints procedure as set out in section 21 of IWW's rules and 18.3-18.8 of its supporting Manual of Policies and Procedures (MoPP).

The Applicant has submitted a number of internal complaints to the General Secretary and Regional Treasurer over the period October 2021 – February 2022;

- 29 October 2021, complaint to the General Secretary about being locked out of his email account.
- 4 January 2022, complaint to the Regional Treasurer regarding Ireland branch financial transactions.
- 6 February 2022, complaint to the General Secretary about the matters which I considered above under Complaint number 4.

The Respondent offered the same mitigations as in its response to Complaint number 3, that there was a delay in dealing with the Applicant's complaints due initially to COVID and then the General Secretary's sickness and subsequent resignation.

Again, I am not persuaded that there is any defence to explain why the Respondent has yet to deal with the Applicant's complaints as required under the IWW's agreed complaints policy.

I therefore uphold this complaint.

Final conclusions

Three of the Applicant's complaints centred around his concerns about the operations and decision making of the Ireland Branch Committee; the fourth related to the inaction of the Delegate Executive Council, the General Secretary and Regional Treasurer in responding to his complaints and the fifth, that the Applicant has been temporarily suspended since May 2022 with no opportunity to offer a defence as per the IWW Complaints Policy.

Having reviewed the submissions of both Parties, it is clear there were tensions within the Ireland branch committee because of the concerns being constantly raised by the Applicant.

It is my view that the inaction of the Respondent in relation to the Applicant's complaints and the lack of progress with the subsequent disciplinary process has been a major contributor to what has become a very difficult situation.

The Applicant has been suspended for almost seventeen months pending the outcome of a disciplinary process that has still to be progressed: this is not a sustainable position, and the Respondent needs to consider carefully how to bring closure to this matter. Similarly, the Applicant's complaints were submitted October 2021-February 2022, and again, these complaints have remained unresolved.

Given the passage of time, I see no value in issuing an Enforcement Order requiring the Respondent to unilaterally respond to the Applicant's complaints submitted in February 2022 and to complete a disciplinary process initiated in May 2022.

Instead, I am directing that the Respondent takes the lead in seeking to reach an accommodation with the Applicant about how to bring these two competing processes to a satisfactory conclusion.

In relation to the complaints about the operation and decision making of branch committees, the Respondent should also take action to ensure that all members are reminded of the requirement to comply with IWW's rules and MoPP.

It is for these reasons that I have determined that it is appropriate to make the following Enforcement Order.

ENFORCEMENT ORDER

The Respondent is ordered to take the following actions within three months from the date of this declaration:

- **Engage with the Applicant to explore the potential to resolve the formal complaints and disciplinary cases through an Alternative Dispute Resolution process.**
- **Issue a circular reminding all members of the importance of adhering to union rules and the Manual of Policies and Procedures (MoPP).**
- **Highlight in the circular to all members the critical importance of complying with the rules governing the approval of committee expenditure and the complaints policy and procedures.**

Tom Evans OBE

A handwritten signature in black ink, appearing to read 'T Evans', with a stylized flourish above the 'E'.

Certification Officer for Northern Ireland