

Decision of The Certification Officer for Northern Ireland

In The Matter of An Application Pursuant to Article 90A of The Trade Union and Labour Relations (Northern Ireland) Order 1995 ('the 1995 Order') and Article 37, Part IV, of The Industrial Relations (Northern Ireland) Order 1992 ('the 1992 Order')

Ms Tanya Spratt (Applicant)

V

Prison Officers Association (Respondent)

Date of Decision:

18 August 2023

DECISION

Upon Application by Ms Tanya Spratt (the applicant) under Article 90A of the Trade Union and Labour Relations (Northern Ireland) Order 1995, and under Article 37, Part IV, of the Industrial Relations (Northern Ireland) Order 1992 a total of six complaints were raised. Following discussions to clarify the basis for each complaint, the Applicant withdrew two complaints.

The following complaints have been determined:

Complaint number 1.

The Applicant, a trade union member of the Prison Officers Association (POA), alleged that a request to view accounts relating to HMP Magilligan Branch was not acceded to within the statutory period set out in Article 37 (3) (a) of the 1992 Order.

Complaint number 2.

The Applicant alleged that the Branch Committee failed to bring the contents of POA circulars to the attention of all members contrary to Rule 2.1(a).

Complaint number 3.

The Applicant alleged that the Branch Committee dispersed branch funds without prior approval of branch members contrary to Rule 20.4. The Applicant also alleged that no branch meetings took place between 28 March 2020 and 4 November 2021 contrary to Rules 20.12 and 20.15.

Complaint number 4.

The Applicant alleged a breach of union Rule 29.3(e) when denied access to a copy of an investigation report in a Conduct Case.

My decision on the complaints is as follows:

Complaints 1 & 4	Upheld
Complaint 3	Partially upheld
Complaint 2	Not upheld.

DECLARATION

I hereby issue a declaration that the Respondent breached Article 37 (3) (a) of the 1992 Order and rules 20.4 and 29.3 (e) of the POA Rules and Constitution in place at the time the offences occurred.

I have determined that an Enforcement Order is not required in this case given the Respondent's conciliatory and proactive approach in responding to the applicant's complaints and the positive actions that the POA has already implemented to mitigate the risk of further non-compliance with the governing legislation and union rules.

REASONS

General Background

1. Ms Tanya Spratt, a member of HMP Magilligan branch of the POA, registered six complaints with my office on 20 March 2022.
2. Based on follow up discussions with the Applicant and submissions from the Respondent, Ms Spratt withdrew two of the complaints.
3. I assessed the remaining four complaints against the following tests:
 - Were the complaints lodged within the statutory time limits.
 - Did the complaints fall within the scope of the Certification Officer's authorities as established in the 1992 & 1995 Orders; and
 - Based on the information provided by the Applicant, was there a potential case to answer.
4. All four complaints lodged within the statutory time limits; three complaints (1,3,4) did fall within the scope of the governing legislation and were accepted on the basis that an arguable case was made by the Applicant.
5. Complaint No. 2 accepted at the initial consideration stage as falling within the scope of Article 90A (2) (d) of the 1995 Order; however, the Respondent's legal representative argued that this complaint did not fall within one of the matters referenced in the governing legislation.
6. Following a more detailed examination of the legislation and the POA rules I have determined that Complaint 2 does not fall within the scope of the governing legislation.
7. 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.
8. Both parties were supportive of my decision not to hold a physical hearing and to determine this case on the basis of written submissions.

Complaint number 1

The POA has acknowledged that it failed to comply with Article 37(3) of the 1992 Order in not affording the Applicant the opportunity to inspect the union's accounting records within the statutory twenty-eight-day period.

The relevant accounts have now been provided as part of the POA's response to the Applicant's complaints.

It is on this basis that I have upheld this complaint.

I am, however, encouraged to learn that remedial action has been taken by the POA's General Secretary, Steve Gillan, to avoid a reoccurrence of this failure. The general Secretary spoke at a NI Area meeting on 28 February 2023, setting out the importance of branches complying with any requests to inspect POA accounting records within the statutory twenty-eight-day period.

The POA also reinforced the importance of good governance at a fringe meeting of the May 2023 Annual Conference.

POA organised a three-day training course for Branch officers to address the non-compliance failings in respect of Complaints No. 1, 2 & 3.

Documentation in relation to the mitigating actions referred to under complaint No. 1 was included in the bundle submitted to my office as part of the POA's response.

Complaint number 2

The Applicant alleged that the Branch Committee failed to bring the contents of POA circulars to the attention of all members contrary to Rule 2.1(a).

The Respondent argued that this complaint falls outside the scope of the governing legislation.

This rule needs to be read alongside **Rule 20 – Branch Organisation**

Rule 20.3 (d) requires branches to ensure that the content of **Branch Circulars** are brought to the attention of all branch members, but the POA's rules are silent on who should circulate general **POA circulars**.

It is on this basis that I determined that this complaint does not fall within the scope of Article 90A of the 1995 Order and cannot be upheld.

In the union's response it averred that all POA circulars are published and are available to view on the POA website. The Union's response also included a copy of a branch circular dated 13 February 2023 to all Branch Secretaries reminding them of their responsibility to circulate branch circulars and to promulgate POA circulars.

POA may wish to consider a redraft of its rules to clarify who is responsible for the circulation of POA circulars.

Complaint number 3

The applicant alleged that the Branch Committee dispersed branch funds without prior approval of branch members contrary to Rule 20.4.

In its response the POA has accepted that this was a breach of rule 20.4 and in a circular, dated 13 February 2023, reminded Branch Secretaries of the need to secure prior approval of any branch expenditure. The circular was included in the POA response.

It is on this basis that I have upheld this complaint.

A further complaint from the applicant stated that no branch meetings were held during a 20-month period between 28 March 2020 and 4 November 2021.

Covid created huge challenges for all organisations and the period March 2020 to November 2021 coincided with the most severe restrictions on business and social gatherings. Decisions about holding POA branch meetings did not rest solely with trade unions at a local and national level; the employers of POA members (Prison Governors) had primary responsibility for determining whether physical meetings of local POA branches could proceed.

I do have sympathy for the view expressed in the POA's response that it would be inequitable to penalise an organisation for what could be described as a technical breach.

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

Complaint number 4

The Applicant alleged a breach of union rule 29.3(e) in that she was denied access to a copy of an Investigation Report into a conduct case where she was the complainant.

The 2021 POA Rule Book was in place at the time this complaint arose; and Rule 29(3)(e) inter alia states:

The Investigation Committee shall: 'provide copies of its report to the member who is subject to the complaint, the complainant, the members' branch and the Deputy General Secretary.'

The POA, in its response, stated that the request was denied upon discovering the accused person was unaware and uninformed of the allegations. The POA also claimed that they had concerns about potential GDPR breaches if the investigation report had been released to the complainant in this case and more generally in other disciplinary cases.

In its response, the POA averred that it took necessary action to mitigate potential GDPR risks. At the POA's 2022 Annual Conference, a motion was carried to amend rule 29(3)(e) to read:

'The Investigation Committee shall provide copies of its report to the member who is subject to the complaint, and the Deputy General Secretary'.

It is not for the Certification Officer to make judgements about the GDPR implications of releasing an unseen investigation report. These are matters for the Data Controller (in this case the POA) and it was always open to the POA to seek advice from the Information Commissioner.

It is also not evident that someone in authority took time to explain to the complainant the rationale for the decision not to release the investigation report in line with Rule 29(3)(e). I note that the Applicant had approached the POA National Chairman on this issue and there is no record of him responding to the Applicant.

I do understand that in an employment setting the circulation of investigation reports as part of a disciplinary process is treated very sensitively.

I also recognise that the POA has sought to repair what they understood to be a fault line in its disciplinary procedures, but the facts are that the POA did breach Rule 29(3)(e).

I therefore uphold this complaint.

Final conclusions

I note that the POA has undertaken to treat allegations of statutory breaches or rules breaches most seriously, which is to be commended. They accept when a breach has occurred, recognise shortfalls and take action to set out remedial steps to ensure similar breaches are mitigated against. There appears to be a concerted effort to ensure Branch compliance with statute, constitution, governance and best practice.

It is for these reasons that I have determined that the issuing of an Enforcement Order is not required.

Tom Evans OBE

A handwritten signature in black ink, appearing to read 'T Evans', written in a cursive style.

Certification Officer for Northern Ireland