

D/01/25

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').

Ms Caroline McDermott (Applicant)

V

UNISON (Respondent)

Date of Decision:

24 April 2025

DECISION

Upon application by Ms Caroline McDermott ("the Applicant") under The Industrial Relations (Northern Ireland) Order 1992 ("the 1992 Order") it is alleged that UNISON (the Respondent) failed in its statutory duty to provide access to the union's accounting records.

My decision is that the above-mentioned complaint is upheld:

DECLARATION

I hereby issue a declaration that the Respondent breached Article 37 of the 1992 Order.

I have also determined that the following Enforcement Order is required.

The Respondent is ordered to issue a circular within a calendar month following receipt of this decision, reminding all branches/committees of the union's responsibilities under Article 37 of the 1992 Order

REASONS

General Background

1. Ms McDermott (the Applicant) is a member of UNISON and registered a complaint with my office on 28 February 2024.
2. The Applicant alleges that the Respondent failed to meet the statutory requirements set out in Article 37 of the 1992 Order in how it dealt with her request to have access to the accounts of the Derry Education Branch, to include details of the donation made to a hardship fund established by the Down Education Branch.
3. The Applicant registered a second Article 37 complaint with my office on 12 March 2024 alleging that the Down Education Branch had also failed to respond to her request to view and take copies of the accounting records relating to the above-mentioned hardship fund.
4. The second complaint will be subject to a separate determination given the differing timelines.
5. The Applicant was a member of the Derry Education Branch committee at the time she lodged her complaint in February 2024. She had previously held key positions within the branch committee as joint branch secretary, membership officer and welfare officer dating back to 2019.
6. The Applicant has not attended meetings of the branch for some time due to complaints made against her by other members of the Derry Education Branch committee; these complaints are the subject of a separate internal rulebook investigation.

7. The Applicant's non-attendance at branch meetings was confirmed in the written submissions presented by both parties.
8. I assessed the Applicant's complaint against the following criteria:
 - Was the complaint lodged within the statutory time limits.
 - Did the complaint fall within the scope of the Certification Officer's authorities set out in the governing legislation (the 1992 and 1995 Orders); and
 - Based on the information provided by the Applicant, was there a potential case to answer.
9. The complaint was lodged within the statutory time limits, fell within the scope of the governing legislation, and was accepted on the basis that the Applicant had presented an arguable case.
10. Within the complaint the Applicant also asserted that the Regional Secretary had not followed UNISON's Complaints Procedure in dealing with her complaint about the inaction of the Derry Education Branch on receipt of the request for access to its accounts.
11. Following a series of engagements with the Applicant my office sent a copy of the complaint to the Respondent on 27 March 2024 for its consideration and response.
12. The Regional Secretary wrote to the Applicant on 23 April 2024 (the letter was erroneously dated 23 April 2023) explaining that it was not understood that her request was being made under Article 37.
13. The letter invited the Applicant to indicate her availability over the next two weeks to inspect and take copies of the required accounts available for inspection.
14. The Regional Secretary also corresponded with my office on 25 April 2024 attaching a copy of the aforementioned letter of 23 April 2024 inviting the Applicant to inspect and take copies of the requested accounts.
15. My office liaised with the Applicant who agreed that a reasonable course of action was to pause any determination of the complaint and that, subject to the relevant accounts being made available for inspection and copying, she may be willing to withdraw her complaint.
16. Regrettably, the two parties have not been able to agree on what constitutes accounts for the purposes of Article 37; although a range of accounts have been made available the Applicant remains dissatisfied with the information provided to date.

17. My Office has had further engagements with both parties to seek a resolution, but the Applicant believes that her statutory Article 37 rights have still not been addressed by her union.
18. The critical issue is the opposing views on what constitutes proper accounts for the purpose of Article 37 of the 1992 Order. The Applicant strongly contends that source material such as expense claims, invoices and receipts form part of the accounts and the Respondent disagrees. Each side has referenced case law in support of their respective positions.
19. My office corresponded with both parties on 4 October 2024 to encourage them to reach an accommodation on the arrangements for viewing the totality of accounts for the Derry Education Branch and offered the following clarifications on the intent of the 1992 Order:
 - Article 37 entitles a union member to inspect any accounts held by a trade union.
 - The Requestor is not required to state the reasons for their request.
 - Article 37 does not afford a union member the right to interrogate their trade union about any perceived omissions in the records held; and
 - Article 10 defines the accounting requirements placed on trade unions.
20. It became evident to me that the parties had reached an impasse and that the most appropriate action was to move to determine the complaint as originally framed by the Applicant.
21. Article 70 of the 1992 Order provides for the Certification Officer to regulate the procedure to be followed in determining any complaint made to him.
22. Given the quite narrow focus of the complaint as well as the significant time delay occasioned by the unsuccessful attempts by both parties to resolve the matters in dispute, I advised the parties of my intention to determine the complaint based on written submissions.
23. The Applicant provided a final submission on 6 December 2024; the Respondent did not take up the offer to make a further submission.

The Complaint

24. The Applicant has alleged a breach of Article 37 of the 1992 Order which governs how trade unions deal with requests from union members seeking access to union accounts.
25. The complaint form submitted by the Applicant stated that she made a request to view and take copies of branch accounts; that the request was not facilitated and that she made a complaint to the Regional Secretary as per UNISON's complaints procedure and was again ignored.
26. I have set out the timeline beginning with the Applicant's initial request for information on donations made to a hardship fund up to the date my office received this complaint.
- 1 & 27 February 2023, the Applicant emailed the Regional Secretary requesting the total amount donated from all Unison branches to an individual member from a recently established Hardship Fund.
 - 2 March 2023, the Applicant emailed the Regional Secretary referring to her emails of 1 & 27 February 2023 querying donations to an individual member: and raising a formal complaint under UNISON's complaints procedure that her request of 1 February 2023 'had not been honoured'.
 - 2 March 2023, the Regional Secretary responded advising that a Regional Committee donation of £300 had issued; that she was not privy to any branch donations but had been advised that a donation from the Derry Education Branch (the Applicant's Branch) had been reported at a recent AGM; and stated that the Applicant was only entitled to information relating to her own branch. The Regional Secretary also asked why the Applicant was seeking this information.
 - 2 March 2023 the Applicant responded stating that it was her understanding that her union membership entitled her to ask any questions pertaining to Unison's finances.
 - 21 August 2023 the Applicant emailed the Regional Secretary asking for a response to her request of 1 February 2023.
 - 21 August 2023 the Regional Secretary responded stating that the Applicant was given full information on the Regional Committee donation and that any further queries should be directed to the branch that established the Hardship Fund.

- 2 October 2023 the Applicant made a request to the Derry Education Branch to view the branch accounts for the last two years; the Regional Secretary was copied into that request.
- 30 October 2023, the Applicant emailed the Regional Secretary lodging a complaint that she had received no response to her request of the 2 October 2023 to view the Derry Education Branch accounts within the statutory 28-day period.
- 12 November 2023 – 23 February 2024 the Applicant sent fifteen emails to the Regional Secretary asking whether her complaint of 30 October 2023 had been reviewed.
- UNISON offered no evidence that the Regional Secretary or any other union officials had responded to any of these communications.
- 28 February 2024 the Applicant lodged a complaint with my office alleging a breach of Article 37 of the Industrial Relations (NI) Order 1992 and UNISON's Complaints Procedure.

Considerations

27. In determining whether to uphold or not uphold this complaint I must be guided by the requirements of Article 37 of the 1992 Order; the following provisions are particularly relevant to this case:

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.

(4)Except where the parties to any arrangements made under paragraph (3) otherwise agree, an inspection under any such arrangements of any accounting records shall be at a reasonable hour and at the place where the records are normally kept.

(5)A trade union shall not be required to allow a person inspecting any accounting records under this Article 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)a trade union complies with a request made by any person under paragraph (2); and

(b)that person had been informed by the union, before any arrangements were made in pursuance of that request—

(i)of the union's intention to charge for allowing that person to inspect the records to which the request relates, for allowing that person to take any copies of, or of extracts from, those records or for supplying any such copies; and

(ii)of the principles in accordance with which its charges will be determined, that person shall be liable to pay to 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 the principles of which that person was so informed.

28. The Applicant submitted her request to the Derry Education Branch on 2 October 2023, as directed by the Regional Secretary in her email of 23 August 2023.

29. The Applicant emailed the Regional Secretary on 30 October 2023 to lodge a complaint about the Derry Education Branch's failure to respond to her request. The Applicant sent fifteen follow up emails to the Regional Secretary seeking an acknowledgement of her complaint as per UNISON's complaints procedure. I have not

seen any evidence that would indicate that the Regional Secretary responded to any of these communications.

30. The Regional Secretary made the following points in her letter of 25 April 2024 by way of response to the Applicant's complaint:

- The Applicant would have had access to the branch accounts at monthly meetings of the Derry Education Branch committee but chose not to attend those meetings.
- It was not understood that the Applicant's request was being made under Article 37.
- A reminder will issue to branches to comply with requests to inspect and take copies of accounting records in line with the governing legislation.

31. I have already highlighted (para 6) the reasons why the Applicant had absented herself from branch meetings.

32. The Regional Secretary did not indicate that copies of branch accounts were circulated to committee members in advance of meetings which may have gone some way to satisfying the requirements of Article 37.

33. That said, the Article 37 right is open to all union members irrespective of the position they hold.

34. The Regional Secretary states that it was not understood that the Applicant's request was being made under Article 37; and I am very content to accept the genuineness of this statement. However, this does not absolve the Respondent from its responsibilities under the governing legislation.

35. The legislation is silent on how a request should be made and certainly does not require a union member to cite Article 37 when making a request to inspect union accounts.

36. The Applicant's email of 2 March states that it was her understanding that 'as a member of UNISON I am entitled to ask this question, or indeed any other questions pertaining to the finances of my union'.

37. This was in response to the Regional Secretary's email of 2 March in which she stated that the Applicant was only entitled to receive information relating to her own branch and enquired about the reason she was seeking this information.

38. The legislation is explicit in allowing a member to request access to any accounting records held by a union and does not require the member to disclose the purpose of the request.

39. The Applicant's email of 30 October to the Regional Secretary was more explicit in quoting the twenty-eight statutory period for meeting her request. The Regional Secretary should have interpreted this to constitute an Article 37 request.
40. It is clear from the timeline at paragraph 25 and the various submissions provided by both Parties that the Respondent breached Article 37(3)(a) of the 1992 Order in not responding to the Applicant's request within the twenty-eight-day statutory period.

Final Conclusions

41. Having upheld the Applicant's complaint, I am required under Article 37(7B) of the 1992 Order to determine whether it is appropriate to issue an Enforcement Order:

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.**

42. I am interpreting that the wording in Article 37 (7B) 'as he considers appropriate' provides me with the necessary flexibility to determine the need for and nature of any enforcement order.
43. I have reviewed all correspondence exchanges between the parties following the Regional Secretary's letter of 15 May 2024 to the Applicant offering two dates to inspect the Derry Education Branch accounts.
44. The Applicant has had access to a significant level of accounting records not only in respect of the Derry Education Branch but also the Regional Council which was not covered by the current complaint.
45. The issue that has continued to divide the parties is the Applicant's assertion that she is entitled to have access to and take copies of source documents such as expense claim forms, invoices, and receipts. The Applicant has referenced two determinations by the GB Certification Officer (*Sartin v UNISON* and *Mills v Unite*) in support of her request to have access to completed expense claim forms, invoices, and receipts. The

Respondent has also cited the Sartin case to support its position that source material does not form part of its accounting records.

46. I have reviewed the GB Certification Officer's decisions in the Mills and Sartin cases which define expense claims, invoices, and receipts as source information, that are not ordinarily released under Article 37 request except where that source information has yet to be uploaded to a union's accounts.
47. I have also considered the Employment Appeals Tribunal (EAT) judgement in the *Unite the Union v Mills* case which averred that the Certification Officer had not erred in holding that the appellant union, Unite, had failed to comply with Section 30(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), by not giving the respondent member of Unite access to accounting records showing 'stand down' payments to each trade union official of her branch.
48. The EAT held that Unite had been obliged, under Sections 28 and 29 of TULRCA, to keep available for inspection accounting records of its transactions necessary to give a true and fair view of the state of affairs of the trade union and to explain its transactions. In dismissing the respondent's cross-appeal, the EAT held that the Certification Officer had not erred in refusing her application for access to bank statements when she had been given access to the accounting records regarding sundries to which they related.
49. The **TULRCA** provisions cited in the EAT judgement mirror Articles 10 and 37 of the **1992 Order** that are central to this complaint.
50. Article 37(10)(a) states that any request to inspect accounting records relates to records that are required to be kept under Article 10 of the 1992 Order.
51. Article 10(2)(a) of the 1992 Order requires a trade union to keep 'proper accounting records with respect to its transactions and its assets and liabilities'.
52. The critical learning from the EAT decision is that union members should have access to accounting records that include all transactions. And if the quarterly/annual accounts only show aggregate amounts, the union should be able to provide print outs of individual payments.
53. Source material such as bank statements, invoices/receipts and expense claim forms do not constitute accounting records for the purposes of Article 10(2)(a) of the 1992 Order.

54. The Applicant's final submission confirms that she has received online bank accounts for the 2019-2023 financial years. The submission also confirms that the accounts provided included expenses payments for an individual branch officer, which would suggest compliance with the governing legislation, in relation to individual transactions.
55. The Applicant is requesting bank statements, invoices/receipts, and expense forms for the period 2018-2024, which I have determined that she is not entitled to under the 1992 Order.
56. It is my assessment that the Applicant has already been provided access to the accounting records of the Derry Education Branch and that it would be a nugatory exercise to issue an Enforcement Order.
57. However, I have concerns about the way in which the Respondent handled the Applicant's Article 37 request and have deemed it necessary to issue an enforcement order requiring the Respondent to issue a circular reminding its branches/committees of the union's responsibilities under Article 37 of the 1992 Order.

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

Tom Evans OBE

Certification Officer for Northern Ireland