

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

Mrs Jennifer Illingworth

V

National Union of Teachers

Date of Decision

12 February 2014

DECISION

Upon application by Mrs Illingworth ("the claimant") under section 31 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

I uphold the complaint made by the claimant that the National Union of Teachers breached section 30(2)(a) of the 1992 Act by failing to comply within 28 days with the request for access to accounting records of the Union made by the claimant on 19 November 2012.

REASONS

1. Mrs Jennifer Illingworth is a member of the National Union of Teachers (the "NUT" or "the Union"). By an application received at the Certification Office on 11 March 2013, Mrs Illingworth made a complaint against the NUT of a breach of the 1992 Act regarding access to the accounting records of the Nottinghamshire Division the NUT.
2. Following correspondence with the claimant, the complaint was confirmed by her in the following terms.

"In breach of section 30(2)(a) of the 1992 Act, the NUT failed to comply with Mrs Illingworth's request of 19 November 2012 to Louise Regan, Treasurer of Nottinghamshire Division NUT requesting access to the accounting records relating to 2006 to the present day which at the time of writing the first e-mail was 19 November 2012."

3. I investigated the alleged breaches in correspondence and a hearing took place on 15 January 2014.
4. At the hearing on 15 January 2014, Mrs Illingworth was represented by her husband Mr John Illingworth. Mrs Illingworth presented a written witness statement and gave oral evidence. The Union was represented by Mr Clive Romain, Senior Solicitor employed by the NUT. Oral evidence for the Union was given by Audrey Allen-Chitwa, in-house Union Accountant, in accordance with her written witness

statement. There was also in evidence a 164 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. Further documents, relating to the Hardship Funds of the Nottinghamshire Division, were submitted by the Union the day before the hearing which I admitted into evidence and which were added to the bundle as pages 165-170. Both parties provided skeleton arguments.

Findings of Fact

5. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
6. The background to this complaint is a dispute within the membership of the Union in the Nottingham area regarding the financial affairs of its Nottinghamshire Division. This dispute has proved intractable and has still not been resolved to the satisfaction of all concerned, notwithstanding internal enquiries by the Head Office of the Union, external accountants and an attempt at ACAS conciliation.
7. The Union is organised in regions. This case concerns the Yorkshire & Midland region which is based in Doncaster. The Regional Secretary is Mr Ian Stevenson. Within the region there are Local Associations, which may combine to form Divisions. The Central Nottingham Association and the South Nottingham Association have combined to form the Nottinghamshire Division. There is also a Nottingham City Association. Mr Romain has described the Union as being established as a federation of its Constituent Associations which are given a large degree of autonomy.
8. The joint secretaries of the Nottinghamshire Division are Mr Ivan Wels and Mr Liam Conway. The Treasurer of the Nottinghamshire Division is Ms Louise Regan. Mr Wels and Ms Regan are partners who live together. Mrs Illingworth is currently the treasurer of the Nottingham City Association, although she is to relinquish that office in early 2014. Her husband, Mr John Illingworth, was the President of the Union between 2001-2002 and served on its National Executive. He ceased holding any office in the Union in July 2012, having most recently been the Assistant Secretary and Health & Safety Officer of the Nottingham City Association. The Nottinghamshire Division and the Nottingham City Association share the same office accommodation, at which both Mrs Illingworth and Ms Regan worked.
9. From 2012 Mr and Mrs Illingworth and Mr Conway have had concerns about the conduct of the financial affairs of the Nottinghamshire Division by its Treasurer, Ms Regan, in particular. Following early attempts to obtain informal access to the financial records of the Nottinghamshire Division, Mrs Illingworth sent an email to Ms Regan on 19 November 2012 in which she stated, *inter alia*, "In accordance with Section 30 of the Trade Union and Labour Relations (Consolidation) Act 1992, right of access to accounting records, I am writing to ask to see the financial records of Nottinghamshire Division from 2006 until the present day."
10. Having received no reply by 23 January 2013, Mrs Illingworth sent a further email to Ms Regan in which she repeated her request for access to the accounting records. This email stated that, in the absence of a response, Mrs Illingworth would be

referring the matter to the Certification Officer. This email was copied to the General Secretary of the Union, Christine Blower.

11. Having not received a reply to either of these emails, Mrs Illingworth commenced her present complaint to me on 11 March 2013.
12. My office put Mrs Illingworth's complaint to the Union on 19 March 2013. Neither the Union Solicitor, Mr Romain, nor the Union Accountant, Ms Allen-Chitwa, were made aware of Mrs Illingworth's request of 19 November 2012 until they received her complaint from my office. The Union made an appointment for Mrs Illingworth to inspect the relevant accounting records at its regional office in Doncaster on 7 May. It is said that Ms Regan was so distressed by events that it would not have been appropriate for the inspection to have taken place in the Nottingham office.
13. On 7 May 2013, Mrs and Mr Illingworth inspected the accounting records that had been made available for them at the Union's regional office in Doncaster. They found two problems which Mrs Illingworth put to the General Secretary in an email dated 10 May. First, the accounts of the Nottinghamshire Division for 2012 were missing. Secondly, Mrs Illingworth complained about the records relating to the reimbursement to Mr Ivan Wels in respect of the landline telephone at the house he shared with Ms Regan. Mrs Illingworth noted that the only page of the Virgin Media bill that was provided was the first page, with the total amount. She requested to see the remainder of each bill with the details of the services for which payment was being made. At this inspection, Mrs Illingworth also saw the cash book entries for each of the telephone expense claims made by Mr Wels. Mrs Illingworth was aware that Ms Regan and Mr Wels lived together and that, in effect, Mr Wels was passing their Virgin Media bills to Ms Regan, as the Treasurer of the Nottinghamshire Division, for approval.
14. The General Secretary asked the Regional Secretary, Mr Stevenson, to make the necessary arrangements for a further inspection. He informed Mrs Illingworth that the 2012 accounts had not been available for inspection on 7 May as they had been with the auditor. It was explained at the hearing that they were with external regional auditors. Mrs Illingworth was too unwell to attend an inspection at that time and so it was arranged that Mr Illingworth and Mr Conway would inspect the remaining accounting records on 26 June 2013. This inspection did not take place as the relevant records had now been transferred to the Union's Head Office, as part of a further enquiry into the dispute in the Nottingham area.
15. The relevant records were redelivered to the regional office in Doncaster by 16 July 2013 and were inspected by Mrs Illingworth and Mr Conway on 18 July. At this inspection, Mrs Illingworth discovered for the first time that the Nottinghamshire Division had a separate Hardship Fund, but accounts for this fund had not been made available. Accordingly, Mrs Illingworth sent an email to Ms Regan on 23 July asking to be shown the relevant accounts. Ms Regan did not reply to Mrs Illingworth but on the next day, 24 July, she sent some accounts relating to the Hardship Fund to Ms Allen-Chitwa, together with a note explaining the history of the fund. Ms Allen-Chitwa was about to go on leave to Jamaica.

16. On 2 October 2013, Ms Allen-Chitwa sent to Mrs Illingworth the information that she had received from Ms Regan regarding the Hardship Funds. At the same time Ms Allen-Chitwa sent Mrs Illingworth further details of Mr Wels' Virgin Media bills. Ms Allen-Chitwa gave evidence that she had contacted Mr Wels and that he had volunteered to send her from his own private records such additional paperwork as he had retained. This was limited to the second page of his Virgin Media bills for 10 months of 2011.
17. By an email dated 3 October 2013, Mrs Illingworth informed Ms Allen-Chitwa that she was still not satisfied with the Virgin Media bills that had been provided. In particular, she was concerned to find out why the amount of the service charge had fluctuated and whether Mr Wels was claiming expenses for receiving Virgin TV. Ms Allen-Chitwa took this up again with Mr Wels, who informed her that he did not have any more records and that he had been informed by Virgin Media that they did not have records for bills going back to 2009/10. He further informed Ms Allen-Chitwa that he had never made any payment for a Virgin TV package as they had the equivalent from Sky. Copies of a bank statement showing payments to Sky were shown to Ms Allen-Chitwa and those Virgin Media bills provided showed a zero amount against the heading 'TV Size:M'.

The Relevant Statutory Provisions

18. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

30 Right of access to accounting records

(1) A member of a trade union has a right to request access to any accounting records of the union which are available for inspection and relate to periods including a time when he was a member of the union.

In the case of records relating to a branch or section of the union, it is immaterial whether he was a member of that branch or section.

(2) Where such access is requested the union shall -

- (a) make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of twenty-eight days beginning with the day the request was made.*
- (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.*

31 Remedy for failure to comply with request for access

(1) A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the court or to the Certification Officer.

(2B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant -

- (a) is allowed to inspect the records requested,*
- (b) is allowed to be accompanied by an accountant when making the inspection of those records, and*

(c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

CONSIDERATION AND CONCLUSIONS

19. Mrs Illingworth's complaint is as follows:

"In breach of section 30(2)(a) of the 1992 Act, the NUT failed to comply with Mrs Illingworth's request of 19 November 2012 to Louise Regan, Treasurer of Nottinghamshire Division NUT requesting access to the accounting records relating to 2006 to the present day which at the time of writing the first e-mail was 19 November 2012."

20. Section 30(1) and (2)(a) of the 1992 Act provides as follows:

(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.....

(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.

21. Mrs Illingworth requested access to the accounting records of the Union on 19 November 2012. She was initially given access to some records on 7 May 2013 but that access was incomplete. Further documents were made available for inspection on 18 July 2013. Yet further documents were made available to her the day before this hearing.

22. By a letter dated 7 October 2013 the Union accepted, as it had to, that it had made no arrangements for Mrs Illingworth to inspect the accounting records to which she had requested access within 28 days of her request. I accordingly uphold her complaint in this regard.


23. By section 31 of the 1992 Act, where I am satisfied that the claim is well founded, I shall make such order as I consider appropriate for ensuring, inter alia, that the applicant is allowed to inspect the records requested.

24. In a letter to my office dated 24 October 2013, Mrs Illingworth confirmed that the remaining accounting records to which she sought access were those of the Hardship Fund and *"complete Virgin Media bills submitted for reimbursement by Mr Wels or Ms Regan to include the detailed breakdown of services provided for the period 2009-2011"*.

25. With regard to the Hardship Fund, the Union provided my office and Mrs Illingworth with additional accounting information the day before this hearing. On the basis of this further information, Mrs Illingworth no longer wished to pursue any issue with regard to the Hardship Fund.

26. With regard to the Virgin Media bills, Mr Romain on behalf of the Union, submitted that these were not accounting records within the meaning of section 30(1) of the 1992 Act. He referred to my decision in **Mortimer v. AMICUS (D/1/2003)** and argued that, rather than being accounting records, the bills were primary or source documents for effecting or evidencing a private transaction between Mr Wels and Virgin Media. He observed that, notwithstanding this submission, the Union had given Mrs Illingworth access to such of those bills that it had in its possession, namely the first page of almost all monthly bills, together with access to such other pages that Mr Wels had retained and volunteered. Mr Illingworth argued, on his wife's behalf, that the first pages of the Virgin Media bills do not provide enough information to be able to verify that members money was spent in their interests and that Mrs Illingworth was entitled to see the whole of Mr Wels' Virgin Media bills 2006-2012 so that she could satisfy herself that he was only claiming reimbursement for those expenses to which he was entitled.
27. By section 30(1) of the 1992 Act, a member of a trade union has a right to request access to any accounting records of the Union which are available for inspection. Accordingly, the right to request access is limited to the accounting records "of the Union". There is no right of access to other accounting records no matter how relevant they might be to members' concerns. On the facts of this case, I find that the usual method by which Mr Wels claimed reimbursement of his Virgin Media bills was to submit the first page of each monthly bill containing the total to be paid. It would appear that this page, or a copy of it, was retained by the Union and used by it as evidence of the amount subsequently entered in the cash book or relevant ledger. It was this page which was shown to Mrs Illingworth at her inspections. On the evidence before me, the remaining pages did not come into the possession of the Union (except for those pages volunteered by Mr Wels for the purposes of this case) and cannot therefore be described as accounting records of the Union. The pages of the Virgin Media bills retained by Mr Wels remained exclusively his records and his property. Accordingly, even if the Virgin Media bills were accounting records for the purposes of section 30 of the 1992 Act, I find that those pages to which access is sought are not accounting records "of the Union" and I do not have jurisdiction to order the disclosure of financial information retained by third parties. I further find that the telephone bills of Mr Wels are primary or source documents from which information is transferred into the accounting records of the Union and are not accounting records in themselves.
28. For the above reasons, I do not consider it appropriate to make any further orders consequent to my finding that Mrs Illingworth's claim is well founded.
29. Mr Illingworth made the point that without the intervention of my office, it appears unlikely that his wife would have been able to inspect any of the accounting records to which she had a statutory right of access. Indeed, the chronology of the disclosure of the relevant accounting records does the Union no credit, extending as it does to the day before this hearing. Not only did the Union fail to comply with Mrs Illingworth's request in time, but it failed to ensure that all relevant accounting records were made available to her at her first or second inspection. I'm aware of the difficulties to which the dispute in the Nottingham area has given rise, but Mrs Illingworth was unreasonably delayed from being able to exercise a statutory right. The Union's breach of her statutory right is a serious matter in itself, regardless of my

decision not to make any consequential orders. On the other hand, notwithstanding the Union's lack of urgency and its failure to give inspection of the records at the correct time, it is to the Union's credit that it eventually sought to give Mrs Illingworth access to all those records that she sought and which were within its possession, even those to which it considered she was not entitled.

A handwritten signature in black ink, appearing to read 'David Cockburn', written over a horizontal line.

David Cockburn
The Certification Officer