

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
UNDER SECTION 25(1) OF THE TRADE UNION AND LABOUR RELATIONS  
(CONSOLIDATION) ACT 1992**

**Mr Terry Brough**

**v**

**Union of Construction, Allied Trades & Technicians**

**Date of Decision**

**26 August 2016**

**DECISION**

Upon an application by Mr Terry Brough (“the claimant”) under section 25(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)

1. I make a declaration that the Union of Construction, Allied Trades & Technicians breached section 24(1) of the 1992 Act by having failed to secure, so far as is reasonably practicable, that the entries in its register of members were accurate and kept up-to-date

Enforcement Order

2. In respect of the declaration I have made I am required by section 25(5A) to make an enforcement order unless I consider that it would be inappropriate to do so. For the reasons I give below, particularly relating to the actions the union has taken since May 2015, I do not consider that it would be appropriate to do so.

**REASONS**

3. Mr Brough brought this complaint as a member of the Union of Construction, Allied Trades and Technicians (“UCATT” or “the Union”). His application was received at the Certification Office on 14 January 2016 and alleged the Union had breached various rules of the Union and section 24(1) of the 1992 Act.
4. Following correspondence, Mr Brough dropped his complaints of breach of union rules and confirmed that the sole complaint he sought to pursue in respect of his application was in the following terms:

### **Complaint**

*“That in breach of section 24(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union of Construction Allied Trades and Technicians failed to secure so far as reasonably practicable that its register of members is accurate and is kept up to date. The union’s membership register contains a significant number of names of individuals who are more than 26 weeks in arrears of their contributions who, under rule 7(18) of the Union’s rules should have been excluded from the union. For example, the register of members of the St Helens No 1 UD 431 branch at 17 February 2015 showed 40 of the 163 named entries as being more than 26 weeks in arrears. Those beyond 26 weeks arrears should have been excluded from the Union as per rule 7, clause 18 of the Union’s rules always providing that a degree of caution is exercised before proceeding to exclude where members pay contributions via deductions from wages; where an apparent arrears may, in fact, be due to the employer’s delay in forwarding contribution to the Union.”.*

5. I investigated the alleged breach in correspondence and a hearing took place on 15 August 2016. At the hearing, the claimant was represented by himself. Mr Brough produced a written witness statement and gave oral evidence. The Union was represented by Ms Jo Omambala of counsel, having had instruction from Ms Niamh O’Brady of OH Parsons LLP. The Union submitted two written witness statements from Mr Brian Rye, Pro Tem General Secretary of UCATT. Mr Brough and Ms Omambala each provided skeleton arguments. There was in evidence a 166 page bundle of documents consisting of letters and other documentation supplied by the parties. The 2012 version of rules of the Union, which were current at the time of Mr Brough’s complaint and legal authorities in the form of previous decisions of the Certification Officer were also in evidence.

### **Findings of Fact**

6. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
7. Mr Brough has been a member of UCATT since 1973. In that time he has served as a member of the North West Regional Council of the union from January 2008 until December 2012. Since 2015 he has been the Secretary of the St Helens No1 UD431 Branch.
8. Mr Brough has been concerned about the accuracy of UCATT’s membership register for a number of years. His concerns led to him writing a report that he called ‘UCATT’s Fantasy Membership’. This was completed in July 2015 and submitted to UCATT for the attention of the Executive Council, the General Council, the trustees of the union and the union’s auditors.
9. UCATT provides an annual return to the Certification Officer this return records the number of members the union has at the end of the calendar year. In the relevant returns the union recorded the following number of members:

2012	84,377
2013	86,983
2014	61,229
2015	47,433

10. In 2009 a Mr Dooley brought complaints to the Certification Officer regarding the 2009 General Secretary election in UCATT. These complaints were determined in March 2011. Central to his complaint was his contention that the union had not accorded equally to all members the entitlement to vote in the 2009 Election. The Certification Officer upheld this complaint. The Certification Officer found that in that General Secretary election held in May/June 2009 about 73,000 members were not given the right to vote as they were over 26 weeks in arrears and that these members had not been excluded from the union in accordance with the procedures in the union's rule book.
11. In his decision at paragraph 42 the Certification Officer referred to "the union's collective failure to implement the exclusion of members under rule 15". Rule 15 of the rules current at the time dealt with Duties of the Branch Secretary. Sub section 6 of that rule dealt with the exclusion of members in excess of 26 weeks in arrears.
12. It would appear that in response to this finding the union made some changes to its rule book in 2012. It was the 2012 rule book that was in evidence at the hearing and it was this version of the union's rules that was referred to, as it covers the period referred to in Mr Brough's complaint.
13. Among the changes to the rule book in 2012 was the removal of the role of Branch Secretaries in excluding members over 26 weeks in arrears (rule 15 of the 2006 Rule Book). This role had been shared with the Executive Council, but the 2012 rule book made this exclusive to the Executive Council. The General Secretary retained a role in keeping a record of contributions of each member.
14. In 2015 Moore Stephens LLP, as part of their audit of the union's accounts for the year 2014, made observations and recommendations about the union's membership numbers. They estimated that the membership figures appeared to have been overstated by approximately 37,000. They went on to recommend 'that the membership system is reviewed and kept up to date'. They further recommended that 'the 6 month rule is applied whereby members are removed once no contributions are received'.
15. Mr Rye acted up as General Secretary temporarily from 15 April 2015. He was then appointed as Pro-tem General Secretary on 8 September 2015.
16. Between May 2015 and 21 April 2016 the union's membership register was reduced from 87,000 members to 47,000. This was achieved by procedures adopted by the union in May 2015 to address the issue of members remaining on the union's membership register despite being in arrears with contributions significantly in excess of 26 weeks. I was informed at the hearing that the union adopted these measures in part in response to the comment and recommendations of Moore Stephens referred to in para 13 above. Another motivating factor for the union was the intervention of the membership, I take this to include the concerns raised by Mr Brough.

17. The position regarding maintaining the membership register, based on the 2012 Rule Book provisions and the union practice, is as follows:
18. 2012 Rule Book.
  - Rule 5.1 deals with 'Entrance' to the union it states that '*members of the union...shall pay such contributions....*'
  - Rule 7.18 states that members 26 weeks in arrears are "*to be excluded from the union*".
  - Rule 21.1 Gives the EC the "*full power to administer the whole of the rules*".
  - Rule 21.2 Second Paragraph states "*The EC shall have power to ensure the exclusion of members whose arrears exceed 26 weeks. The Executive Council is empowered to exclude members in arrears and to act to ensure that membership records are up to date*".
  - Rule 24.10 States in relation to the duties of the General Secretary that "*S/he shall in the union's administration keep a record of contributions of each member in such manner as to determine whether a member is eligible for benefits and has a right to participate in the work of the union*".

#### **Administrative practice Prior to May 2015**

19. The central membership department would send an exclusion form to branch secretaries to complete and return when it appeared a member was in arrears of 26 weeks or more. There was no other system in place for excluding members in arrears of contributions of 26 weeks or more.

#### **Administrative practice Since May 2015**

20. The membership department carries out routine checks of subscriptions and membership details every four to six weeks dealing with any incoming correspondence from the branch and the members direct or from employers. Each branch is given a computer printout that records the branch membership and the contribution position for each member of that branch each time the check is completed.
21. Where the union's quarterly magazine, Building Worker, or an annual communication sent to the address of the member held is returned, the membership record is noted that the address must be incorrect.
22. A quarterly ledger is sent by the membership department to Branch Secretaries this notifies those who have ceased to pay contributions by check off or direct debit. The Branch Secretary will check to see if the member has become a branch payer, if not they will notify the general office.
23. Branches can let the membership department know that exclusion is warranted by using form UO23 entitled exclusions/deletions. The membership department will act upon such notifications.

24. Between May 2015 and April 2016 there have been two waves of letters sent, to those in arrears, by the membership department. The first wave was sent to those who appeared to be in arrears for many years, the second to those who appeared to be in arrears for more than a year. Under this procedure, where no reply is received or effort made to pay the arrears the member is removed from the membership list in the next mass exclusion. The on-going process is that if any member appears to be in arrears of 12 months or more the branch is told, the member written to and if there is no reply or no effort made to pay the arrears the member is removed from the membership list in the next mass exclusion.

### **St Helens No 1 UD431 Branch**

25. As at 17 February 2015 the Branch had 163 members of which 40 were 26 or more weeks in arrears.
26. As at 8 March 2016 the Branch had 144 members of whom 44 members had arrears of 26 weeks or more. The record of members 'out of compliance' shows members with 'clearance dates' going back as far as 30 June 2012. 'Clearance date' refers to the last date that a member was in compliance in relation to payment of subscriptions. The 44 members who were identified as being in significant arrears were due to be excluded at the time the figures were provided to my office in April 2016.

### **The Relevant Statutory Provisions**

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

#### ***24 Duty to maintain register of members' names and addresses.***

*(1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.*

#### ***25 Remedy for failure: application to Certification Officer.***

*(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 or 24A (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.*

*(2) On an application being made to him, the Certification Officer shall—*

*(a) make such enquiries as he thinks fit, and*

*(b) give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.*

*(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.*

*(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.*

*(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.*

*(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—*

*(a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;*

*(b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.*

## The Relevant Rules of the Union

28. The rules of the Union which are relevant for the purposes of this application are the rules as set out in the UCATT 2012 Rule Book and are as follows:-

### **Rule 5 Entrance**

1. *Members of the Union shall be divided into four sections, called respectively No. 1 Section, No. 2 Section, No. 3 (or junior) Section, No. 4 (general, including trainees) Section and shall pay such contributions and receive such benefits as are hereinafter specified in the rules relating to the said sections respectively. ...*

### **Rule 7 Contributions**

18. *Members in arrears shall be suspended from benefit in accordance with the following table:*

<u>Weeks in Arrears</u>	<u>Weeks of Suspension</u>
12	8
<i>Suspension from all benefits except trade privileges</i>	

26 *To be excluded from the Union*

*Suspension as above shall commence at the time the member's arrears amount to 12 weeks' contributions, and s/he shall continue to be suspended from benefit until eight weeks have elapsed after his or her arrears have been reduced below 12 weeks, in accordance with the above table. A member under suspension shall not be liable to further suspension unless at the end of the term, his or her arrears exceed the limit specified by rule.*

### **Rule 21 Duties and Powers of the Executive Council**

1. *The EC shall have full power to administer the whole of the rules. The EC shall ensure that minutes of all official meetings held shall be published to the Regional Council on a regular basis and therefore to the wider membership.*

2. *Notwithstanding anything in these rules, the EC may, by giving six weeks notice in writing, terminate the membership of any member if necessary in order to comply with a decision of the Disputes Committee of the Trades Union Congress or Irish Congress of Trades Unions.*

### **Rule 24 Duties of the General Secretary**

...10. *S/he shall in the Union's administration keep a record of contributions of each member in such manner as to determine whether a member is eligible for benefits and has a right to participate in the work of the Union.*

29. Also relevant to my consideration of the application is the following rule from the UCATT 2006 Rule Book:

### **Rule 15 Duties of the Branch Secretary**

4. *S/he shall issue or cause to be issued all summonses, keep all documents, books (except those of BT), accounts forms and papers belonging to his/her branch in such place as the branch may appoint. S/he shall also one week prior to quarter night send a notice to members whose arrears will on that date amount to 12 weeks contributions.*

5. *Once each quarter s/he shall send on, where practicable, a list of members in arrears to the RS, Organisers, or Shop Stewards to be dealt with.*

6. *S/he shall announce on two successive meeting nights preceding the last in each quarter the names of all members whose arrears exceed 20 weeks, and give four*

*weeks' notice, where practicable, to members before they are excluded. S/he shall give the names of members who have been excluded during the quarter.*

*7. In the event of any person who has been excluded from this or any other Union applying for admission, the BS shall, if his/her proposition be accepted, immediately write to the Branch, Regional Council or Union s/he was excluded from inquiring why s/he was excluded, and whether they have any objection to his/her admission*

*...  
19. S/he shall not enter the arrears of any members at the end of the quarter if they exceed 26 weeks.*

## **Consideration and Conclusions**

30. Mr Brough's complaint is in the following terms:

*"That in breach of section 24(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union of Construction Allied Trades and Technicians failed to secure so far as reasonably practicable that its register of members is accurate and is kept up to date. The union's membership register contains a significant number of names of individuals who are more than 26 weeks in arrears of their contributions who, under rule 7(18) of the Union's rules should have been excluded from the union. For example, the register of members of the St Helens No 1 UD 431 branch at 17 February 2015 showed 40 of the 163 named entries as being more than 26 weeks in arrears. Those beyond 26 weeks arrears should have been excluded from the Union as per Rule 7, clause 18 of the Union's Rules always providing that a degree of caution is exercised before proceeding to exclude where members pay contributions via deductions from wages; where an apparent arrears may, in fact, be due to the employer's delay in forwarding contribution to the Union."*

31. Section 24(1) of the 1992 Act provides as follows:

### **24 Duty to maintain register of members' names and addresses**

*(1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.*

## **Complaints – clarification**

32. Before I asked the parties for evidence or submissions I addressed the issue of the extent to which I should be looking at the history of how the union ensured that the entries in its register of members are accurate and kept up to date. I set out that I intended to look at the situation as it stood around the time Mr Brough put his report to the union in July 2015 and the position before and after May 2015 when the union appear to have changed its practice. In looking at the position before May 2015 I did not intend to go back further than the adoption of the 2012 Rule Book. I explained that I did not take the view that section 24 is intended to require the Certification Officer to do an extended historical analysis of the membership register of a union. In arriving at this view I was mindful that the declaration and enforcement provisions in section 25 are very much aimed at recording the position at a relevant time, any remedial action the union has taken and any further action the Certification Officer orders to further rectify the position. The parties accepted this as the basis on which to proceed.

33. A further point of clarification was that the complaint was one of a breach of section 24(1) of the 1992 Act. Despite the reference to rule 7.18 in the complaint wording I said I would not be determining whether there had been a breach of this rule as allowed for in section 108B of the 1992 Act. This was on the basis that rule 7.18 was not a rule relating to one of the matters mentioned in sub section (2) of section 108A(2) of the 1992 Act. The parties accepted this.

### **Summary of Submissions**

34. Mr Brough summed up his submissions by saying that he ‘would contend that my complaint sinks or swims on the legitimacy or otherwise of the union’s membership register containing a significantly large number of names of individuals who are more than 26 weeks in arrears with their contributions.’
35. Mr Brough provided a great deal of historical context that pointed to the issue of large numbers of members in excess of 26 weeks in arrears remaining on the union’s membership register for significant periods of time. He also explained that it was his view that this was done to ensure a membership figure that would secure favourable representation for the union on external bodies such as the Trades Union Congress. I set out in para 32 that I was not going to consider the union’s membership register back further than the adoption of the 2012 Rule Book. I therefore make no findings on these earlier issues or the possible motivation for them. However, I acknowledge them as a major motivating factor in Mr Brough pursuing this issue.
36. In terms of making good his claims that the union’s “membership register, over the years, has been awash with individuals whose arrears amounted to 26 weeks or more” he referred, among other things to:
- The number of members found to be in arrears by at least 26 weeks at the time of the 2009 UCATT General Secretary Election was approximately 70,000. (Dooley v UCATT D/44-49/10-11).
  - That in January 2015 the St Helens Branch No. 1 UD431 received a document from UCATT Head Office headed “Branch Exclusion List”. The list contained the names of 73 individuals with arrears ranging from 60 to 250 weeks.
  - That as at 17 February 2015 the Branch had 163 members of which 40 were more than 26 weeks in arrears.
  - That as at 8 March 2016 the same branch was recorded by the union as having 144 members. Of these 44 members had arrears ranging from 14 months to 44 months. Mr Brough calculated the average arrears as 125 weeks.
37. Mr Brough did not dispute the union’s evidence that between May 2015 and April 2016 they had taken action to exclude members with arrears in excess of 52 weeks and that this had reduced the membership register from 87,000 members to 47,000 members. However, he saw the extent of the exclusions in this period as proof that those in excess of 26 weeks arrears had not been excluded under the rules and that this position had not been reached ‘overnight’.

38. Mr Brough's submissions as to the membership status of those in arrears in excess of 26 weeks are two fold.
39. Firstly he submitted that a condition of membership of UCATT is that a member shall pay a contribution as per rule 5.1. He says that nowhere in UCATT's rules, with the exception of 'free cards' (rule 7.13), is there any provision for membership without the payment of the appropriate contributions: be that full or alleviated contributions.
40. Secondly he argued that rule 21.2 places a requirement on the Executive Council to ensure the exclusion of members whose arrears exceed 26 weeks. Mr Brough submitted that as a requirement rule 21.2 does not provide the Executive Council with a discretion as to the exclusion of members in arrears of more than 26 weeks. In supporting this argument he pointed to other union rules where discretion is granted, in each case he said that where there is a discretion this is explicitly referred to in the rule unlike in rule 21.2.
41. He did not argue for automatic exclusion at the point someone reaches 26 weeks arrears and urged particular caution in relation to members whose subscriptions are collected by check-off and that have not been paid over by the employer to the union. In accepting that the union did have an issue to deal with in relation to check-off, Mr Brough suggested that the union might be exaggerating the numbers of people who have previously paid via check off who were recorded as being in arrears of 26 weeks or more. In his report 'UCATT's Fantasy Membership' he estimated that the figure of such members in his own branch to be no more than 10% of the total recorded as being in arrears of 26 weeks or more.
42. Mr Brough submitted that much emphasis should be placed on the meaning given to rule 7.12 of the 2006 Rule Book (rule 7.18 of the 2012 Rule Book) by the Certification Officer in *Dooley v UCATT D/44-49/10-11*. At paragraph 41 of that decision the Certification Officer said;
- 'In my judgement, the meaning of the relevant words of rule 7.12 is clear. It is that members more than 26 weeks in arrears with their contributions are to be excluded in accordance with the procedures found elsewhere in the rule, .....*
43. Mr Brough submitted that the effect of the above is that the union isn't and hasn't done enough to discharge it's duty to ensure that the entries in its register of members are accurate and kept up to date. In particular Mr Brough submitted that the Union could be doing more to ensure that subscriptions collected via check-off are paid over promptly to the Union.
44. Ms Omambala for the union set out what she saw as the legal principles relating to trade union membership. She said that the relationship between a member and a union is essentially one of a contract of membership. The terms of the contract are, inter alia, contained in the Rule Book. A member who does not resign from membership but places him or herself in breach of the contract of membership for example by falling into arrears of more than 26 weeks gives the union the opportunity to accept the repudiatory breach of contract by bringing the contract of membership to an end. She relied on the Certification Officer's view in *Dooley v UCATT D/44-49/10-11*. At para 43 of that decision he rejected the argument that those in excess of 26 weeks in arrears were not members of the union. In para 44 he said:

*“It is not necessary for me to decide whether rule 7.12 [of the 2006 Rule Book – rule 7.18 in the 2012 Rule Book] merely gives the union a discretion to exclude a member who is more than 26 weeks in arrears or imposes a requirement on the Union to put its exclusion procedures into operation. In either event, exclusion occurs when those procedures are exhausted”.*

45. Ms Omambala submitted that the consequence of this was that the inclusion of individuals who are in excess of 26 weeks arrears of contributions in the register of members does not in itself render the register inaccurate or not up to date.
46. Ms Omambala submitted that in determining this complaint the emphasis should be placed on the action that the union has been taking since May 2015. She said that in his evidence Mr Rye had set out a holistic approach that he had taken to the maximising of subscription income and the maintenance of an accurate and up to date membership register. This approach had included:
- Routine checks of membership and subscription details by the union’s Membership Department every month to six weeks,
  - The dealing with of incoming correspondence from branches, members and employers.
  - Membership status details provided to branches on a regular basis with the scope for branches to initiate the exclusion procedure.
  - A new system of writing to members in arrears alerting them to the arrears. Where no reply is received or effort made to pay the arrears the member is removed from membership at the next mass exclusion. Initially these letters went out to those appearing to be in arrears for many years, a second set of letters went out to those who appeared to be in arrears of more than one year. The following mass exclusions resulted in the union’s membership register being reduced from 87,000 to 47,000 members between May 2015 and 21 April 2016.
  - Further letters will be written to members as and when they appear to exceed 12 months in arrears. Again if no reply is received or effort made to pay the arrears the member will be removed from the membership list at the next mass exclusion.
47. Ms Omambala submitted that the steps taken since May 2015 were evidence of significant efforts on the union’s part to ensure an accurate and up to date membership register. She said that the actions taken were in response to what she called ‘two wake-up calls’;
- The observations and recommendations of Moore Stephens LLP in their audit for the year ended 31 December 2014 relating to members over 6 months in arrears, and
  - The intervention of members.
48. Ms Omambala submitted that the reactions to these ‘wake-up calls’ amounted to reasonable and proportionate steps and noted that Mr Brough had not sought to challenge them in his evidence or submissions.

49. Ms Omambala emphasised the evidence given by Mr Rye about the costs of such procedures and the need to balance ensuring an up to date membership register, with attempts to clear arrears and ensure that members are not excluded by virtue of subscriptions they have paid via check-off not being passed on to the union in a timely fashion.
50. As to the position before May 2015. Ms Omambala was not able to point to a systematic process by which the union had dealt with those in significant arrears between the adoption of the 2012 Rule Book and May 2015. She did point to a document submitted by the union entitled 'UCATT Recruitment and Membership Analysis 2014 Summary'. This recorded membership rising from 86,983 to 88,659 over the year 2014 with a total of 6,869 new members and 5,193 members excluded – the record does not record the reason for the exclusions.
51. Ms Omambala accepted that the exclusion of 40,000 members for arrears between May 2015 and April 2016 was suggestive of numbers of members who should not have been on the register. In evidence Mr Rye had said he was not able to give evidence as to the position prior to May 2015.

## **Conclusion**

52. This complaint is that UCATT breached section 24(1) of the 1992 Act. Section 24(1) requires the union to:-

*'compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.'*

53. Mr Brough has argued that UCATT has not secured, so far as is reasonably practicable, that the entries in the register are accurate and are kept up to date. His concerns revolve around the status of those members in arrears of contributions of 26 weeks or more that UCATT rule 7.18 says are 'to be excluded'. Mr Brough has argued that the rules of the union, principally rule 21.2 places a requirement on the Executive Council to ensure the exclusion of members whose arrears exceed 26 weeks. Mr Brough also argues that membership of UCATT is only available to members who pay a contribution. For both of these reasons Mr Brough argued that members in 26 weeks or more arrears should be excluded from the union by the Executive Council. He is careful to urge a degree of caution in excluding those members who may appear to be in arrears due to subscriptions having been collected by their employer but not passed on to the union.
54. I do not accept Mr Brough's argument in regard to either of these submissions. The union argued that "the relationship between a member and a union is essentially one of a contract of membership. The terms of the contract are, inter alia, contained in the Rule Book. A member who does not resign from membership but places him or herself in breach of the contract of membership for example by falling into arrears of more than 26 weeks gives the union the opportunity to accept the repudiatory breach of contract by bringing the contract of membership to an end." I accept this submission and note that it is consistent with the views expressed by the Certification Officer in both *Dooley v UCATT (D/44-49/10-11)* and *Hicks v Unite (D/32-39/14-15)*.

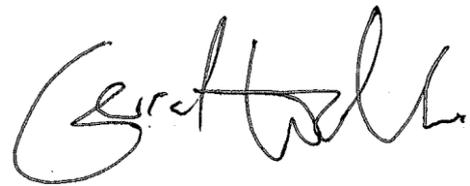
55. This leads me to accept the union's submission that the inclusion of individuals who are in excess of 26 weeks arrears of contributions in the register of members does not in itself render the register inaccurate or not up to date. This deals with the issue of whether there is a prima facie case that members in arrears of 26 weeks or more remain members and should therefore be included in the union's membership register. I do not make a determination as to whether rule 21.2 places a duty on the Executive Council to exclude members 26 or more weeks in arrears of contribution. As set out in para 33 this is not a rule that I have jurisdiction to consider under section 108B of the 1992 Act. That is not to say that the inaction or inadequate action of the Executive Council as alleged by Mr Brough does not merit consideration. Rather I have looked at the overall actions of the union in meeting their obligation to secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up to date.
56. To arrive at such a conclusion I need to consider the position of members over 26 weeks in arrears that rule 7.18 says are 'to be excluded' but have not been. In *Hicks v Unite D/32-39/14-15* at paragraph 81 the then Certification Officer found that even where members were in arrears, "*such persons remain members until their membership terminates by resignation, expulsion, exclusion or otherwise in accordance with the rules of the union or by operation of law*".

He went on to say "*On the other hand the existence of a considerable number of members over 26 weeks in arrears is prima facie evidence that some of them may have died and their membership ceased by operation of law, or that their membership might otherwise have terminated by, for example, in certain unions, no longer qualifying for membership. The greater the number of members in substantial arrears and the longer those arrears, the greater is the duty on the trade union to ensure that its membership register remains compliant with section 24(1)*".

I agree with him when he concludes that; "*accordingly in my judgement, it is necessary for a trade union to have a system for determining whether members in substantial and continuing arrears with their subscriptions are still members in order to secure that the entries on its membership register are accurate and kept up to date so far as is reasonably practical, in accordance with section 24(1) of the 1992 Act*".

57. In UCATT's case we know that the issue of union members being in a significant amount of arrears has been an issue for some time. For instance, the Dooley decision in 2009 recorded that the union had approximately 73,000 members in arrears of 26 weeks or more. We know from the St Helen's branch that in February 2015 40 of the 163 members of the branch were more than 26 weeks in arrears with many of those substantially in excess of 26 weeks arrears. We also know that as a result of action taken by the union between May 2015 and April 2016 40,000 members in arrears exceeding 12 months were excluded. In my judgement this is evidence that the union was not ensuring that the entries in its membership were accurate and being kept up to date. In this regard I note that the union was not able to point me to any systematic process, prior to May 2015, by which they dealt with large numbers of members in substantial arrears.

58. I therefore make the declaration that the union was in breach of section 24(1) of the 1992 Act prior to May 2015 in that it did not secure, so far as is reasonably practicable, that the entries in the register are accurate and kept up to date.
59. Where I make a declaration that a union is in breach of section 24(1) and I am satisfied that steps have been taken by the union with a view to remedying the declared failure I shall specify those steps in that declaration. I am satisfied that the new processes adopted by the union in May 2015 and summarised at para 46 are such that the union is not currently in breach of section 24(1) of the 1992 Act. In arriving at this conclusion I was mindful of the union's understandable concern not to exclude too quickly members whose arrears exceeded 26 weeks for fear of excluding those who paid by check-off whose subscriptions were not paid to the union in a timely fashion by the employer. I also accept that the union has a right to be mindful of the resources required in implementing systems to ensure compliance with section 24(1); I consider the words 'reasonably practicable' in that section allow for this. I also accept that the union would wish to balance a desire to reduce arrears and maintain its membership with the need to ensure members in long term arrears are excluded. The practices adopted by the union from May 2015, that largely become operative when a member reaches 12 months in arrears, appear to me to address all of these concerns whilst meeting the union's section 24(1) duty.



**Gerard Walker**  
**The Certification Officer**