

D/1/25-26

Decision of the Certification Officer on an application made under Section
108A of the Trade Union and Labour Relations (Consolidation) Act 1992

Morley

v

UNISON: The Public Service Union

(on remission from the Employment Appeal Tribunal)

Date of Decision

03 April 2025

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Decision

1. Upon application by Mr Paul Morley (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I do not uphold Mr Morley’s application for a declaration that on or around 2 March 2022 UNISON breached rules C5.5 & C7.1 & C7.1.1 and also breached a number of implied terms that are inherent in the contractual relationship between member and trade union, including those in relation to elections and ballots, because I have no jurisdiction to consider the application.

Background

2. Mr Morley was a member of UNISON: The Public Service Union (“UNISON” or “the Union”) at the time of the events referred to in his complaint.
3. The complaint to which this decision relates was received by the Certification Officer from Mr Morley on 13 March 2022.
4. By a letter dated 25 April 2022 from the Certification Office Mr Morley was informed that the Certification Officer’s view was that his complaint was not within her jurisdiction.
5. Mr Morley appealed to the Employment Appeal Tribunal (EAT) whose judgment was handed down on 12 September 2024 (Morley v UNISON [2024] EAT 143). The relevant section of that judgment is in paragraphs 39-40 which are as follows:

39. Having considered the concession made by the respondent, we have concluded that the appropriate resolution of this appeal is for the matter to be remitted to the Certification Officer to hear full argument on whether

there was a breach of any of the rules relied on by the appellant and, if so, whether the appellant had made out a complaint of a breach of a rule relating to the appointment or election of a person to, or the removal of a person from, any office and/or disciplinary proceedings by the union (including expulsion).

40. We consider it is important that the jurisdictional issue be decided after the facts have been determined and upon the matter being properly argued. All of the relevant authorities about the proper construction of section 108A TULR(C)A should be brought to the attention of the Certification Officer.

6. Following correspondence with Mr Morley, the complaint was confirmed by him in the following terms:

On or around 2 March 2022 UNISON breached rules C 5.5 & 7.1 & 7.1.1 and also breached a number of implied terms that are inherent in the contractual relationship between member and trade union, including those in relation to elections and ballots.

The rules were breached in the following manner:

I was a member of UNISON in Lancashire Branch. I was the Membership Officer (an elected position) of Lancashire Branch.

I was employed by Lancashire County Council but gained new employment with a trade union called the IWGB. I informed the branch of my imminent new employment. I expressed a desire to stay within the branch. I was

informed that I needed to justify how I fitted membership criteria for UNISON membership. I did this citing other secondary employment however I believe my new role should have been acceptable in any case.

Note, under rule 2.9 UNISON paid officials are able to be members albeit under restrictions.

Unfortunately, at 07:31 on 2 March 2022 I was informed by email (letter was attached) from Branch Secretary Elaine Cotterell my membership had been ceased. I believe ceasing my membership was unjustified and not in line with the procedure. I was a candidate in an ongoing ballot for Branch Secretary against Elaine Cotterell. The ballot period was due to close at 12:00 on 2 March 2022.

By ceasing my membership Elaine Cotterell benefited as the ballot was null and voided and Elaine Cotterell was elected branch secretary unopposed.

In summary, the complaint is quite simple and clear. I was unjustly expelled from UNISON which breached a number of express and implied rules. This unjust expulsion had the effect of removing me from office (108A, 2(a)), ceasing my ability to continue in election of office (108A, 2(a)) with the expulsion itself being covered by disciplinary procedures (including expulsion) (108A, 2(b)).

7. The Certification Officer asked me to hear the complaint, and the parties were informed of this by letter dated 9 January 2025.
8. A hearing took place by Video Conference on 7 March 2025. Mr Morley represented himself. He submitted a skeleton argument and gave oral

witness evidence. The Union was represented by Stuart Brittenden KC. The Union submitted a skeleton argument, prepared by Mr Brittenden. The Union also submitted witness statements from James Rupa, Regional Organiser, NW region, John Stolliday, Director of the Executive Office of UNISON, and Kevan Nelson, Assistant General Secretary of UNISON. Mr Rupa, Mr Stolliday and Mr Nelson also gave oral witness evidence.

9. There was also in evidence a bundle of documents consisting of 461 pages, including the Union's rules, and two bundles of authorities, one prepared by the applicant, and one prepared by the Union.

Agreed facts

10. The following facts were agreed at a Case Management Meeting on 28 February 2025.
11. Paul Morley worked for Lancashire County Council and was an active member of the Lancashire Branch of UNISON. Within the branch, he held the position of Membership Officer.
12. On 17 January 2022, Mr Morley was informed by James Rupa, Regional Organiser UNISON North West, that he had been nominated for the position of Branch Secretary within the Lancashire Branch and that, because there had been more than one nomination, a postal ballot would be held.
13. Ballot papers were due to be dispatched on Friday 11 February 2022. The ballot was due to close at 12 noon on Wednesday 2 March 2022.
14. On 9 February 2022, Mr Morley wrote to Mr Rupa, telling him that he had been offered a job with another trade union, the IWGB, and would be starting that job in March 2022. He indicated that he wished to remain a member of UNISON, that he wished to remain in the Lancashire Branch, and that he wished to remain in his role as Membership Officer. He told Mr Rupa that if

those three conditions were feasible, he would be happy to withdraw from the ballot for the Branch Secretary position.

15. On 10 February 2022, Mr Rupa responded to Mr Morley, asking him if he had given notice of resignation from his employment with Lancashire County Council. Mr Rupa also asked Mr Morley for the date he would be leaving Lancashire County Council and the date he would be starting employment with the IWGB. Mr Rupa told Mr Morley that continued membership of UNISON was dependent on whether his new role with the IWGB fell within scope of UNISON Rule C1, and asked Mr Morley to set out why he believed his new employer fell within scope of the Rule.
16. Mr Morley replied on the same date and told Mr Rupa that he could try to categorise his new role with the IWGB as being compliant with Rule C1, but “to keep things simple”, he told Mr Rupa that he was also employed by the Central Arbitration Committee (CAC) through Acas, which he believed met the criteria set out in Rule C1.
17. Again, on the same date, Mr Rupa emailed Mr Morley to say that he intended to take advice on the scope of Rule C1, and asked Mr Morley to confirm by 17:00 that day if he wished to withdraw from the election.
18. At 13:04 on 10 February 2022 Mr Morley wrote to Mr Rupa, saying that he thought he “may as well continue with the ballot”. Mr Morley went on to say that he felt he had nothing to lose and would weigh up the situation if he was successful in the ballot.
19. On 21 February 2022, Mr Morley wrote to Elaine Cotterell, with Mr Rupa copied in, telling her that he would be leaving Lancashire County Council "on Wednesday" (23 February 2022). Mr Morley added that this meant he would not be able to continue with his Lancashire County Council representative duties.

20. On 22 February 2022, Mr Rupa replied to Mr Morley's email of 21 February 2022, stating that he would be in contact regarding "the membership side of things". Mr Rupa thanked Mr Morley for his efforts as a representative.
21. On the same date, Ms Cotterell also acknowledged Mr Morley's email, wishing him well for the future.
22. At 07:31 on 2 March 2022, Ms Cotterell emailed Mr Morley with an attached letter. The attached letter recorded the fact of Mr Morley's resignation from Lancashire County Council, with 23 February noted as his final day of employment. The letter also stated that the effect of Mr Morley's resignation from Lancashire County Council, was that he was no longer eligible for membership of UNISON.
23. The letter from Ms Cotterell also stated that if Mr Morley wished to rely on membership of the Central Arbitration Committee as the basis for continued eligibility for UNISON membership, he would need to submit an application, using one of the Union's prescribed methods.
24. On 3 March 2022, at 20:56, Mr Morley received an email from Mr Rupa, notifying him of the results of the Branch Secretary election. The results showed Ms Cotterell receiving 408 votes, against Mr Morley receiving 217.
25. Mr Morley replied to the email from Mr Rupa on the same evening, stating that because his membership had been deactivated before the ballot period finished, he believed that the ballot was null and void.
26. On 4 March 2022, Mr Morley emailed Kevan Nelson, Regional Secretary UNISON North West. Mr Morley told Mr Nelson that he believed he remained eligible for membership, and that he believed the correct process for deactivation of membership had not been followed. Mr Morley went on to request that his membership be reinstated, that he be re-established as membership officer in the Lancashire Branch of UNISON, and that an email be sent to all Lancashire Branch members to inform them that Ms Cotterell

had acted unfairly and inappropriately by deactivating Mr Morley's UNISON membership within an election period.

27. On 10 March 2022, Mr Nelson replied to Mr Morley. Mr Nelson stated that he had reviewed the events leading up to the lapsing of Mr Morley's UNISON membership. Mr Nelson's conclusion was that there was no basis upon which to reactivate Mr Morley's membership.
28. The Notes of the Lancashire UNISON Annual General Meeting held virtually on 10-11 March 2022, record that the meeting was informed of the results of the ballot for the position of Branch Secretary. The results recorded in the notes correspond with the results recorded above at paragraph 24.

The relevant statutory provisions

29. The statutory provisions which are relevant for the purposes of this application are as follows:-

108A Right to apply to Certification Officer

(1) A person who claims that there has been a breach or threatened breach of the Rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are –

(a) the appointment or election of a person to, or the removal of a person from, any office;

(b) disciplinary proceedings by the union (including expulsion);

- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- e) such other matters as may be specified in an order made by the Secretary of State.

The relevant rules of the Union

30. The Rules of the Union which are relevant for the purposes of this application are as follows:-

***C Membership**

1 SCOPE OF REPRESENTATION

1 The Union shall seek to represent:

1.1 those employed by any body, authority, company or corporations which has a public, charitable, educational, or statutory function, including those employed in the local government service, the health services, the electricity supply industry, the gas, transport and water industries, the education services, the police and justice sectors and in the voluntary and community sectors.

1.2 those employed in such other areas of work and such other persons as may be provided for in these Rules, and as the National Executive Council may from time to time determine.

2.9 EMPLOYEES OF THE UNION

2.9.1 This category of membership shall extend to employees of the Union who shall pay contributions as provided in Schedule A(1). A central register of such members shall be maintained at Head Office. Except as specified below all such members shall be eligible for all the rights and benefits of membership.

2.9.2 Members in this category shall be excluded from eligibility to:

.1 seek or hold office in any lay structure of the Union

5 BECOMING A MEMBER

5.5 Where the branch has reason to believe an applicant may be ineligible for membership, the applicant shall be given notice in writing by the branch secretary of the proposal to exclude or expel him/her and the reasons for that proposal; the individual will be given a fair opportunity to make representations in respect of that proposal, and those representations will be considered fairly.

5.6 Any person whose application for membership or transfer has been rejected has the right of appeal to a regional appeals committee against the decision of the Branch. The procedure to be adopted will be the same as in the case of a disciplinary hearing.

7 CEASING TO BE A MEMBER

7.1 *LOSS OF ELIGIBILITY*

Any member ceasing to be eligible for membership within Rule C.1, and who does not fall within the classes of membership set

out at Rule C.2, shall automatically cease to be a member unless:

7.1.1 the National Executive Council decides otherwise;

Findings and conclusions

Introduction to my findings and conclusions

31. Mr Morley's complaint is a complaint about a breach of UNISON's rules in relation to the cessation of his membership. However, his complaint also refers to his belief that what happened to him was 'unjust'. This suggests that his complaint goes beyond questions of procedural compliance with the Union's rules and extends to the reasoning behind matters.
32. Because of this, particular care is needed in determining the scope of Mr Morley's complaint and in determining whether any part of it falls within the jurisdiction of the Certification Officer.
33. In considering these matters, I was greatly assisted by the skeleton arguments submitted by both parties, as well as the submissions I received on the day. I am grateful to both parties for the evident care taken in preparing for the hearing.
34. I was also greatly assisted by the participation of the witnesses, to whom I am also grateful.

My findings on the evidence

35. In addition to the agreed facts, I have reached the following findings of fact based on the available evidence and the balance of probabilities. I have been careful to restrict my findings to those necessary to determine the complaint before me.
36. In his evidence, Mr Morley told me that he believes he was unfairly expelled from UNISON. He told me that the question of eligibility for membership was,

in fact, a smokescreen. Mr Morley told me that the Union's true motivation was to remove him from the ballot for the position of Branch Secretary in the Lancashire Branch, as a disciplinary sanction for events that had occurred earlier in his membership of the Union.

37. To support this position, Mr Morley told me that during his membership of the Union, he had complained to the Certification Officer and had queried some of the Union's accounting practices. He also told me that he had been successful in bringing a claim of victimisation at the Employment Tribunal, without support from the Union. Mr Morley told me that he believes these matters gave motive to paid officials of the Union to expel him. However, Mr Morley provided no evidence of any connection between the earlier episodes referred to in this paragraph and the events that are the subject of the complaint before me.
38. Mr Morley told me that when he wrote to Mr Rupa on 10 February 2022 to tell him of his change of employment, he was uncertain if his new role with IWGB was compatible with the eligibility requirements for UNISON.
39. Mr Morley also told me that the Union had shared his doubts about his continued eligibility for membership. He pointed to a statement in the letter he received from Ms Cotterell on 2 March 2022, which told him that eligibility resulting from his role with the CAC:

[...] will need to be considered and advice will be sought on this. Queries as to eligibility are determined by the Branch in the first instance. This will therefore require a decision at the next Branch Committee, in accordance with Rule C5, which is scheduled for the 7 April 2022. [...]
40. Mr Morley told me that he believes a single decision about his eligibility for membership was taken by the Union, and that the decision focussed on whether his newly declared role with the CAC was compatible with Rule C1.

Mr Morley told me that because a degree of doubt remained over this question, the correct procedure according to the rules of the Union would have been to allow him to remain in membership until the next meeting of the Branch Committee.

41. I do not agree with Mr Morley. From the evidence available to me, I am satisfied that the Union considered Mr Morley's eligibility in two stages. First determining Mr Morley's loss of eligibility as a result of his decision to leave the employment upon which his eligibility was founded. Second, beginning initial enquiries to consider eligibility for membership on the basis of Mr Morley's newly declared role with the CAC. Mr Morley has not provided anything to contradict this finding.
42. Mr Morley's eligibility for membership of UNISON derived from his employment with Lancashire County Council. Mr Nelson told me that if a member chose to end the employment upon which their eligibility for membership was founded, eligibility for membership would be lost and so Rule C7.1 would operate. This would automatically bring membership of the Union to an end. Mr Rupa and Mr Nelson both told me that this was why Mr Morley had been asked to confirm the date he would be leaving Lancashire County Council.
43. Mr Morley wrote to Ms Cotterell and Mr Rupa on 21 February 2022, telling them that he would be leaving on 23 February 2022.
44. Having received this information, Mr Rupa sought advice from Mr Nelson, who concluded that eligibility for membership pursuant to employment with Lancashire County Council had been lost.
45. Mr Nelson told me that he was almost certain that Mr Morley's role with the CAC did not make him eligible for membership of the Union. Irrespective of this, Rule C.5 sets out a procedure for taking such decisions, which begins with the receipt of a new application form.

46. It was on this basis that Mr Rupa drafted the letter that was sent in Ms Cotterell's name as the Branch Secretary. The letter was dated 1 March 2022, and was sent to Mr Morley on 2 March 2022, the same day as the ballot for the position of Branch Secretary concluded. The letter made no reference to the ballot for the position of Branch Secretary, and I have neither seen nor heard any evidence to suggest that there was any connection between the contents of the letter sent to Mr Morley, and the ballot for the position of Branch Secretary. Consequently, I find the timing to be coincidental.
47. The letter addressed to Mr Morley dated 1 March 2022 made three points:
- i. In accordance with Rule C7.1, by ceasing his employment with Lancashire County Council Mr Morley had lost eligibility to be a member of UNISON and so his membership ceased.
 - ii. In order to remain a member of UNISON on the basis of alternative employment, he would need to submit an application using one of the Union's prescribed methods.
 - iii. Eligibility, on the basis of Mr Morley's alternative employment, would be considered and advice sought.
48. When he received the letter, Mr Morley emailed the Union to say that he was, in fact, using up remaining annual leave during his final week and so 23 February 2022 was not his final date of employment. However, in his oral testimony, Mr Morley agreed that no one could be criticised for understanding his email of 21 February 2022 to mean that 23 February 2022 would be his final day of employment with Lancashire County Council. Mr Morley also agreed that the Union was entitled to act on that information.
49. Mr Nelson told me that every person who ceases to be eligible to remain a member of their current branch is required to submit a new application form for membership. This principle is referred to in the Union's Code of Good

Branch Practice, and it feeds into the branch transfer provisions in Rule C5. I found Mr Nelson to be a credible witness and have no reason to doubt his evidence. I therefore find that it is a requirement of the Union that if a member changes employer, place of work, or occupation, such that they may need to be transferred to a different Branch, and the member wishes to remain in membership, they must submit a new application for membership.

50. Mr Morley told me that he has not, at any stage, submitted an application form on the basis of his role with the CAC. Therefore, a necessary step to open the door to a consideration by the Branch was not taken, and a final decision was not made. Mr Nelson told me that because of this, he asked Mr Rupa to ensure it was made clear to Mr Morley that he could make an application for membership on the basis of his role with the CAC to allow further checks by the Union. Mr Nelson told me that by making an application for membership, Mr Morley would have brought Rule C5.5 and C5.6 into scope, including a right of appeal against any decision that the role with the CAC did not make him eligible for membership.
51. In his witness statement, Mr Morley told me that he believed Ms Cotterell acted in bad faith and decided to remove him from membership in order to allow herself to be elected as Branch Secretary unopposed. I have neither seen nor heard any evidence to support Mr Morley's view. Conversely, I have heard the accounts of Mr Rupa and Mr Nelson and found them to be credible accounts, supported by the various processes set out in the Rules of the Union.
52. In any event, I am satisfied that the Union considered Mr Morley's loss of eligibility for membership as a separate matter to his inclusion in the ballot that was due to close on 2 March 2022. I reach this finding on the basis that the letter sent to Mr Morley on 2 March 2022 made no reference to the ballot, no announcement was made to the electorate regarding any change to the names on the ballot, the votes were counted, and the results were

announced, both to the candidates and the Branch more widely. This finding is supported by the witness evidence of both Mr Rupa and Mr Nelson, which detailed the Union's separate handling of the two matters. This finding is also supported by the documentary evidence in the bundle, including the record of the results being reported to the Branch in the minutes of the Branch AGM on 10 and 11 March 2022.

The jurisdiction of the Certification Officer

53. The Certification Officer's jurisdiction to hear complaints of breach of union rules is narrow. To fall within jurisdiction, the complaint must be about a breach, or threatened breach, of a rule relating to one or more of the following matters:
 - (a) the appointment or election of a person to, or the removal of a person from, any office;
 - (b) disciplinary proceedings by the union (including expulsion);
 - (c) the balloting of members on any issue other than industrial action;
 - (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
 - (e) such other matters as may be specified in an order made by the Secretary of State.
54. Complaints about breaches of rules that do not relate to any of these specific matters remain to be enforced through the Courts.
55. The breadth of the jurisdiction has been considered on numerous occasions, in particular the requirement that the rule complained of must 'relate' to one of the listed matters.

56. The most recent case considering this aspect of the Certification Officer's jurisdiction was *Dawes v Royal College of Nursing* (D/42-43/10-11) in which the former Certification Officer, David Cockburn summarised several earlier cases:

47. The above provisions limit my jurisdiction in respect of claims of breach of rules of a trade union. A claim is only within my jurisdiction if it is of a breach or threatened breach of the rules relating to any of the matters mentioned in subsection (2). In the case of *Re UNISON* (D/11/00 - 16 June 2000) my predecessor stated at paragraph 23:-

"I do not have a general jurisdiction over breaches of union rules. Whilst I do not accept Mr Langstaff's argument, that I have jurisdiction only over rules which are on their face concerned with the matters set out in 108A(2) - there may well be rules which are of general application but which in the context in which they are allegedly breached, clearly relate to one of those matters - I do not consider that the relationship is close enough in this case."

In the case of *Lynch* I observed as follows at paragraph 48:-

"The Certification Officer had no jurisdiction to determine potential breaches of trade union rules prior to the Employment Relations Act 1999. By that Act, section 108A was inserted into the 1992 Act. This section gives the Certification Officer a limited jurisdiction over a restricted category of union rules. It also gives the Secretary of State power to extend the jurisdiction to breaches of other types of rule. In my judgment, the history and structure of section

108A demonstrates an intention by Parliament that my jurisdiction under this section should be viewed restrictively.”

Ms Lynch laid emphasis on the breadth of the word “relate”, as does Mr Dawes in the present case. In that connection, I further observed in the Lynch case at paragraph 49:-

“In my judgment, however, the use of the word “relate” does not have the effect of extending my jurisdiction to all those rules which touch upon, no matter how obliquely, the matters set out in section 108A(2). I find that the connection between the rule allegedly breached and the matters set out in section 108A(2) must be clear and direct. Whether a rule is one relating to a matter listed, in section 108A(2) is a matter of fact and degree to be determined in the circumstances of the particular case.”

In the case of *Finlay v. Unite the Union*, I observed that a variety of union rules may have an impact on the appointment, election or removal of a person from office but that does not automatically make them rules relating to such matters for the purposes of section 108A(2). I went on to comment at paragraph 49:-

“There is clearly a continuum of rules impacting on appointments and elections, some of which are rules relating to appointments, and some of which are not. The decision on where the line is to be drawn falls to be decided in the context of the union

rule book as a whole and custom and practice of the union.”

Most recently in *McDermott v. UNISON*, I observed at paragraph 47:-

“Whether a rule does relate to any of the prescribed matters is to be considered firstly on an objective reading of the rule, disregarding the facts of the instant case. If it does not objectively and obviously relate to any of the matters in subsection (2), I may exceptionally consider whether it is a rule which is so closely related with any of the prescribed matters that it can properly be found to “relate” to one or more of them.”

Whilst Mr Ford did not dissent from this general approach, he respectfully submitted that I had wrongly applied the statutory provision to one aspect of Mr McDermott’s complaint of breach of rule, which complaint he considered to be within my jurisdiction on other grounds. I agree with the view expressed by Mr Ford that the use of a test for jurisdiction based upon whether a rule merely affects or impacts upon one of the listed matters would not be the correct approach to take. In this matter, I adopt the restrictive approach referred to in paragraph 48 of my decision in *Lynch*.

48. On the facts of this case, the rules allegedly breached are not on their face rules which deal directly with the appointment or removal of a person from office or to the balloting of members. I must therefore consider whether Mr Dawes can rely upon the breadth of the word “relate” to

argue successfully that this is an exceptional case in which the rule allegedly breached is so closely connected with any of the prescribed matters that I can properly find that it “relates” to one or more of them.

57. Mr Cockburn went on to apply this jurisdictional analysis to Mr Dawes’ complaint, concluding that it was within the jurisdiction of the Certification Officer:

49. [...] I find that it is material that Mr Dawes previously held office and was seeking nomination for an elected position. These facts are relevant to any finding I make as to whether the alleged breaches of bye-law 2 and rule 3.1 fall within my jurisdiction. Absent the specific circumstances of Mr Dawes, a breach of bye-law 2 and/or rule 3.1(i) may or may not fall within my jurisdiction. That would depend on the facts and circumstances of the particular case. [...] I do not consider that, on the facts of this case, the rules allegedly breached merely affect or impact upon the section 108A(2) matters, nor that their connection with such matters is “oblique and coincidental”. In my judgment on the facts of this case, the connection between the rules allegedly breached and the matters mentioned in section 108A(2) is sufficiently clear and direct that I find they are rules which relate to the removal of a person from office and/or the balloting of members. I therefore find that this complaint is within my jurisdiction.

58. On 25 April 2022, Mr Morley was told by the Certification Office that the Certification Officer’s view was that his complaint was not within her jurisdiction. Mr Morley appealed that decision at the EAT.

59. The Union conceded the appeal on the basis of the former Certification Officer's reasoning in Dawes, quoted above.
60. In his submissions for this hearing, Mr Morley argued that the Union's concession at the EAT amounted to an acceptance that membership rules do fall within the Certification Officer's jurisdiction. From this, he argued that since his complaint is also about membership rules, it too falls within the Certification Officer's jurisdiction.
61. In his skeleton argument for the Union, Mr Brittenden argued that, in order to be transparent, the Union wished to refer me to the test formulated in Dawes. He also told me that the Union reserved its right to argue that Dawes was incorrectly decided and that it is not binding on the Certification Officer. Additionally, Mr Brittenden argued that, irrespective of the finding in Dawes, Mr Morley's complaint was not within the jurisdiction of the Certification Officer.
62. I asked Mr Brittenden to elaborate on the Union's position regarding Mr Cockburn's decision in Dawes. In response, he argued that if I were to follow the reasoning in Dawes to the letter, a breach of a membership rule may be within the jurisdiction of the Certification Officer.
63. I agree with Mr Brittenden. However, I do not find this problematic. Section 108A(2) establishes positivity, not exclusivity. The requirement is that the rule must relate to one of the listed matters, not that it cannot also relate to something else.
64. Addressing whether Mr Morley's complaints are within jurisdiction, Mr Brittenden argued that none of the three explicit rules relied upon by Mr Morley has a sufficiently clear and direct relation to the appointment of a person to, or removal of a person from, any office. He argued that the connection was oblique and coincidental.

65. For his part, in addressing jurisdiction, Mr Morley referred me to a skeleton argument that had been prepared for him by Jesse Crozier and John Platts-Mills for his appeal at the EAT.
66. The primary argument advanced therein by Mr Morley was that the proper relationship required by section 108A is between the alleged breach and the listed matters. He argued that the rule is merely the device by which to identify the breach, but it is the breach (not the rule) that must 'relate' to the listed matters.
67. This argument is at odds with the interpretation of section 108A set out by Mr Cockburn in Dawes. Beyond setting out the alternative interpretation, Mr Morley has not presented me with any reasons to consider revisiting such a fundamental aspect of the Certification Officer's jurisdiction.

Jurisdictional analysis of Mr Morley's complaint

68. As with Mr Cockburn's decision in Dawes, I must consider the facts and circumstances of Mr Morley's complaint in order to reach a finding on jurisdiction.
69. My first consideration must be an objective reading of the relevant rules themselves. An objective reading of Rules C.5.5, C.7.1, and C.7.1.1 indicates that they do not explicitly deal with the appointment, election, or removal of a person from office, or with disciplinary proceedings.
70. Therefore, I must decide if Mr Morley is correct that the Rules are so closely connected with those matters that I can find that they 'relate' to them.
71. On the facts of Mr Morley's complaint, there is a logical sequence through the relevant rules, beginning with Rule C7.1 and C7.1.1:

7.1 LOSS OF ELIGIBILITY

Any member ceasing to be eligible for membership within
Rule C.1, and who does not fall within the classes of

membership set out at Rule C.2, shall automatically cease to be a member unless:

7.1.1 the National Executive Council decides otherwise; [...]

72. I have found that the Union approached the question of Mr Morley's eligibility in two stages. First, a conclusive loss of eligibility was legitimately observed as a result of Mr Morley ceasing the employment upon which his eligibility was founded. Second, while expressing doubt, the Union explored the possibility that Mr Morley's role at the CAC might make him eligible for membership. The Union also outlined to Mr Morley the procedure he would need to follow to explore that further. It is the initial loss of eligibility outlined here as the first stage that led to the operation of Rule C7.1 and the cessation of Mr Morley's membership.
73. Self-evidently the impact for individuals captured by Rule C7.1 will be broad. In Mr Morley's case, following its automatic operation, he became ineligible to hold office within the Union. However, as observed by Mr Cockburn in Dawes, a clear and direct relationship with one of the matters listed in section 108A is not established simply because the application of a rule has an impact on one of the listed matters.
74. Mr Morley argued that Rule C7.1.1 places an obligation on any decision-maker to seek the views of the NEC before Rule C7.1 can operate. The Union accepted that the views of the NEC were not sought but argued that this was not a valid interpretation of the Rules. Mr Brittenden argued that the construction proposed by Mr Morley was not sustainable because of the explicit wording of the rules. Further, Mr Stolliday told me that given the volume of members falling within scope of Rule C7.1, consulting the NEC each time would place an unreasonable workload on that committee.
75. I agree with Mr Brittenden. It is clear to me that when read together, the words of Rule C7.1 and C7.1.1 indicate that the cessation of membership

happens immediately once eligibility ceases. An active decision by the National Executive Council is needed in order to trigger the saving provision found in Rule C7.1.1. In the absence of an active decision, the automatic operation of C7.1 remains. There is nothing in the Rule which requires the National Executive Council to consider each and every case, and I agree with Mr Stolliday that doing so would bring an unreasonable workload to the National Executive Council. It cannot, therefore, be the intention of the Rule.

76. In addition, I have neither seen nor heard any evidence that would lead me to conclude that Mr Morley's construction of the relationship between Rule C7.1 and C7.1.1 is supported by any custom and practice.
77. In reaching a decision on jurisdiction, I find that it is determinative that while Rule C.7.1.1 introduces a discretionary saving provision, Rule C.7.1 itself is non-discretionary and operates automatically. The Rule includes no scope for discretion on the part of the Union, and there are no procedural steps associated with it.
78. The non-discretionary nature of Rule C.7.1 means that it cannot be breached in a conventional sense. The Rule operates, either correctly or incorrectly. At paragraph 41, I have found that the Union approached the question of Mr Morley's eligibility in two stages. In his evidence, Mr Morley accepted that the Union could not be criticised for concluding that the employment upon which his eligibility was founded, had ended on 23 February 2022. Mr Morley also accepted that the Union was entitled to act on this information. Mr Morley did not accept that these two concessions mean the Union was entitled to apply the Rule to him. However, he did accept that allowing him to remain in membership, once a determination that he was ineligible had been reached, would not have been compatible with Rule C.7.1.
79. In the facts and circumstances of Mr Morley's complaint, I find that Rule C.7.1 operated correctly and that its prescribed outcome followed automatically.

80. In my judgement therefore, and on the facts of this case, the connection between Rule C.7.1, and the matters listed in section 108A is not sufficiently clear and direct. I therefore find that I do not have jurisdiction to determine Mr Morley's complaint of breach of this Rule.
81. As to the merits of the complaint, should I be wrong about my jurisdiction, I can see no breach of rule in the operation of Rule C7.1.
82. I reach this finding on the basis that I have neither seen nor heard any evidence that leads me to conclude that Rule C.7.1 operated for any reason other than Mr Morley's decision to bring his employment with Lancashire County Council to an end.
83. Mr Morley's complaint of a breach of Rule C.7.1.1 is based on a construction of the relationship between Rule C.7.1 and C.7.1.1 that I have found to be incorrect (paragraph 75). Therefore, for the avoidance of doubt, I have not reached a finding regarding whether a complaint of breach of Rule C.7.1.1, correctly constructed, would have been within the Certification Officer's jurisdiction.

Other rules

84. I explained at paragraph 71 that there is a logical sequence through the Rules referred to in Mr Morley's complaint. Having considered Rules C.7.1 and C.7.1.1, I will now turn to Rule C.5.5.
85. In the initial response to Mr Morley's complaint, in a letter dated 22 November 2024, the Union argued that Rule C.5.5 refers to the situation of 'Becoming a member'. Since Mr Morley was already a member at the time of the events complained about, the Union argued that Rule C.5.5 did not apply to his situation.
86. In his skeleton argument, Mr Morley argued that since Rule C.5.5 includes references to exclusion and expulsion, it must refer to members as well as

applicants. In his skeleton argument, Mr Brittenden did not disagree with Mr Morley on this point. He argued that Rule C.5.5 makes provision for two situations, (i) non-members who have applied to join the Union, and (ii) existing members who need to be transferred to another branch. Mr Brittenden argued that this is supported by the inclusion of a reference to an application to transfer in Rule C.5.6.

87. On an objective reading of Rule C.5.5, it does not relate to any of the matters listed in section 108A. On the evidence before me, the operation of the Rule in the context of the Union's Rulebook does not relate to any of the matters listed in section 108A. Mr Morley was not able to present any evidence of a custom and practice within the Union whereby the appeals process outlined in the Rule would be applied to situations such as his.
88. Consequently, in my judgement on the facts of this case, the connection between Rule C.5.5 and the matters listed in section 108A is oblique and coincidental. I therefore find that I do not have jurisdiction to consider the element of Mr Morley's complaint concerning Rule C.5.5.
89. Should I be wrong about that, I find that Rule C.5.5 was not breached.
90. At paragraph 49, I found that the process set out in Rule C.5 only begins when the Union receives a completed application form. Since Mr Morley did not submit an application form, the process set out in the Rule never began.

Implied rules

91. As well as referring to explicit rules within the Union's rulebook, Mr Morley's complaint refers to

[...] a number of implied terms that are inherent in the contractual relationship between member and trade union, including those in relation to elections and ballots [...]

92. In correspondence before the hearing, I asked Mr Morley to set out those implied terms. He set them out as follows:
- i. the trade union will act in good faith towards its members at all times,
 - ii. the trade union will not unjustifiably expel/remove its members,
 - iii. the trade union will ensure that its processes and procedures comply with the principles of natural justice,
 - iv. the trade union will ensure any election process/procedure is conducted fairly and in good faith.
93. In his submissions, Mr Morley again referred me to the skeleton argument that had been prepared for him by Jesse Crozier and John Platts-Mills for his appeal at the EAT. Here it was argued that where no express provision is made in the rules to protect candidates in elections from improper interference, further rules should be implied.
94. For the Union, Mr Brittenden argued that the implication of any of the terms listed at paragraph 92 would negate the express terms included in the rulebook that led to Mr Morley's cessation of membership.
95. Mr Brittenden also argued that the implied terms proposed by Mr Morley did not satisfy the tests of necessity. In simple terms, Mr Brittenden argued that the terms could only be considered necessary if they are so obvious that the parties to the contract would have immediately agreed to them if someone had pointed them out, and that the contract wouldn't work as intended without the implied terms.
96. A key tenet of Mr Morley's complaint in relation to the proposed implied terms was that the Union knew he wished to remain in membership, yet continued with the application of Rule C7.1. He argued that by ignoring his wishes, the Union breached the proposed implied terms.

97. Mr Brittenden addressed this by arguing that the effect of implying Mr Morley's proposed terms would be to create an incompatibility with the Union's rights under Article 11 of the European Convention on Human Rights. He drew my attention to paragraph 39 of the decision of the European Court of Human Rights in *ASLEF v United Kingdom* [2007] IRLR 361:

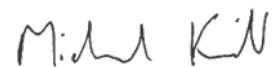
[...] Article 11 cannot be interpreted as imposing an obligation on associations or organisations to admit whosoever wishes to join. Where associations are formed by people, who, espousing particular values or ideals, intend to pursue common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their membership. By way of example, it is uncontroversial that religious bodies and political parties can generally regulate their membership to include only those who share their beliefs and ideals. Similarly, the right to join a union 'for the protection of his interests' cannot be interpreted as conferring a general right to join the union of one's choice irrespective of the rules of the union: in the exercise of their rights under Article 11(1) unions must remain free to decide, in accordance with union rules, questions concerning admission to and expulsion from the union [...]

98. I agree with Mr Brittenden that to imply the terms proposed by Mr Morley into UNISON's rulebook would amount to interference with its right to freedom of association. Consequently, I do not agree with Mr Morley that they can be implied in the Union's rulebook.

99. Since I have concluded that the proposed implied rules cannot be implied in the Union's rulebook, I do not need to consider whether the alleged breaches of these proposed rules fall within the jurisdiction of the Certification Officer.
100. Should I be wrong in reaching this conclusion, I find that the Union has not breached any of the terms as set out by Mr Morley. I reach this finding on the basis that I have neither seen nor heard any evidence to suggest that Rule C.7.1 is inherently problematic, and the evidence before me supports the conclusion that it operated correctly.

Observations

101. A key aspect of Mr Morley's argument has been that his role with the CAC qualified him for membership of the Union. At paragraph 49, I found that the Union's process for resolving questions of membership eligibility begins when it receives an application form. At paragraph 50, I found that Mr Morley did not submit an application form, and so the process for determining eligibility on the basis of his role at the CAC did not begin.
102. For the avoidance of doubt, I have not reached any findings about whether a successful application for membership on the basis of Mr Morley's role with the CAC would have resulted in continuous membership across the dates Mr Morley's complaint relates to.



Michael Kidd
Assistant Certification Officer