

SD/1/25-26

The Assistant Certification Officer's Sift Decision under Section 108A of the
Trade Union and Labour Relations (Consolidation) Act 1992

Rachubinski

and

GMB

Date of Decision

1 December 2025

Contents

Decision	3
Background.....	3
The relevant statutory provisions	5
The relevant rules of the Union	9
The Applicant's submissions.....	14
The jurisdiction of the Certification Officer	15
Conclusions	16

Decision

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

I find that Mr Rachubinski’s application is not one which the Certification Officer has the jurisdiction to determine. Therefore, the application cannot be accepted for determination by the Certification Officer and is dismissed.

Background

2. Mr Rachubinski is a member of the GMB (“the Union”). He first submitted an application for a declaration that there has been a breach of the rules of the GMB on 14 October 2025.
3. In the course of correspondence with the Certification Office, Mr Rachubinski summarised his complaint as:

My complaint concerns the GMB Union’s failure to follow its own internal rules and procedures, specifically:

- Rule 6, which requires the proper registration and handling of member complaints; and
- Rule 26, which governs the process for granting or refusing legal assistance to members.

In my case, GMB did not register my complaints, did not carry out a formal internal review, and repeatedly referred the matter between various officers without reaching any proper decision. These failures represent procedural irregularities in the operation of GMB’s

internal decision-making system and therefore fall directly within the scope of point 5 of the Certification Officer's guidance.

4. On 17 October 2025, Mr Rachubinski was written to by the Certification Office informing him that a preliminary view that his complaint did not fall within the jurisdiction of the Certification Officer (CO) had been reached.
5. The letter explained to Mr Rachubinski that the CO had delegated to me, as the Assistant Certification Officer (ACO), responsibility for determining questions of jurisdiction arising at the stage of initial consideration of applications. In light of the preliminary view that his complaint did not fall within the CO's jurisdiction, Mr Rachubinski was informed that he had two options:
 - i. **Option 1** was to withdraw his complaint, in which case no formal decision would be made or issued and the matter would be closed;
 - ii. **Option 2** was to request that a formal decision be made following the preliminary view. Mr Rachubinski was told that if he chose this option, I would formally consider whether the complaint fell within the CO's jurisdiction and issue a written decision. That decision would be sent to Mr Rachubinski, and the Union, and would be published on the CO's website.
6. Mr Rachubinski was also told that should he select option 2, he would then have 2 weeks to provide any supplementary evidence or argument on which he wished me to rely in determining the issue of jurisdiction.
7. On 4 November 2025, Mr Rachubinski wrote to the Certification Office confirming his preference for a formal decision regarding the issue of jurisdiction.
8. Following this, on 13 November 2025, Mr Rachubinski submitted 25 documents, including a formal submission and various pieces of supporting

evidence. While I have not found it necessary to refer to any of the pieces of supporting evidence in this decision, I have carefully considered all the documentation which has been submitted.

9. For the avoidance of any doubt, there has been no correspondence with the Union in respect of Mr Rachubinski's application.

The relevant statutory provisions

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

The Trade Union and Labour Relations (Consolidated)
Act 1992:

Right to apply to Certification Officer – s108A

(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.

(3) The applicant must be a member of the union or have been one at the time of the alleged breach or threatened breach.

(4) A person may not apply under subsection (1) in relation to a claim if he is entitled to apply under section 80 in relation to the claim.

(5) No application may be made regarding—

(a) the dismissal of an employee of the union;

(b) disciplinary proceedings against an employee of the union.

(6) An application must be made—

(a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or

(b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).

(7) Those days are—

(a) the day on which the procedure is concluded, and

(b) the last day of the period of one year beginning with the day on which the procedure is invoked.

(8) The reference in subsection (1) to the rules of a union includes references to the rules of any branch or section of the union.

(9) In subsection (2)(c) “industrial action” means a strike or other industrial action by persons employed under contracts of employment.

(10) For the purposes of subsection (2)(d) a committee is an executive committee if—

(a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,

(b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or

(c) it is a sub-committee of a committee falling within paragraph (a) or (b).

(11) For the purposes of subsection (2)(d) a decision-making meeting is—

(a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or

(b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.

(12) For the purposes of subsections (10) and (11), in relation to the trade union concerned—

(a) a constituent body is any body which forms part of the union, including a branch, group, section or region;

(b) a major constituent body is such a body which has more than 1,000 members.

(13) Any order under subsection (2)(e) shall be made by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(14) If a person applies to the Certification Officer under this section in relation to an alleged breach or threatened breach he may not apply to the court in relation to the breach or threatened breach; but nothing in this subsection shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.

(15) If—

(a) a person applies to the court in relation to an alleged breach or threatened breach, and

(b) the breach or threatened breach is one in relation to which he could have made an application to the Certification Officer under this section,

he may not apply to the Certification Officer under this section in relation to the breach or threatened breach.

254 The Certification Officer

(4) The Certification Officer may delegate to an assistant certification officer such functions as he thinks appropriate, and in particular may delegate to the assistant certification officer for Scotland such functions as he thinks appropriate in relation to organisations whose principal office is in Scotland.

References to the Certification Officer in enactments relating to his functions shall be construed accordingly.

The relevant rules of the Union

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

Rule 6 – complaints procedure for members

1. Subject to other provisions within this clause, any member who wants to complain should ordinarily do so in writing to their branch secretary who will take the matter to the branch who will consider the complaint as soon as reasonably practicable.

If the complaint is one of sexual harassment, the member should raise their complaint under the sexual harassment policy issued under Rule 5A and this rule shall not apply.

Any member may raise a complaint with their Regional Secretary if the complaint concerns the branch secretary or for any reason it would be inappropriate for the matter to be raised with the branch secretary and considered by a branch meeting when it will be considered by the Regional Committee.

If raised with the branch secretary then if either:

- a. the branch decides it does not have the authority to deal with the matter or provide a remedy; or
- b. the branch considers the complaint, and the member is not satisfied with the branch's decision and provides written notice of appeal to the regional committee within one month of the branch meeting.

the Regional Committee will consider the complaint as soon as reasonably practicable.

There shall be no right of appeal against any decision of the Regional Committee.

The Regional Committee may order a complaint to be struck out for scandalous vexatious or unreasonable behaviour by the complainant or for excessive delay in proceeding with the complaint. Before making such an order the complainant will be sent notice giving them an opportunity to show why the order should not be made.

At any hearing under this rule the Branch or the Regional Committee will so far as reasonably practicable allow the member a reasonable opportunity

- to hear or be provided with a record of the evidence against presented against them,
- to answer that evidence and to question, or raise questions to be asked of, any witnesses giving evidence against them;
- to present their case in person or in writing, and
- to support their case with written statements or by using witnesses.

The Central Executive Council may issue guidance governing any parts of the procedure to be followed under this rule as they may from time to time determine, to include when and how any hearing might be held remotely, and when a matter should be referred for consideration under Rule 5.

Rule 26 – legal assistance

1 The Central Executive Council will have the power to authorise any regional secretary of the union, in line with any terms and conditions it sets, to provide legal assistance through UNIONLINE for any financial member. This can include any matter connected with the member's employment, as long as the regional

secretary is satisfied that the member should take legal action.

2 Any member who wants legal assistance from us must contact UNIONLINE, the branch secretary or regional organiser as soon as possible.

3 The regional secretary will have the right to decide which UNIONLINE nominated solicitor should represent a member under this rule. Alternatively, the regional secretary can nominate a GMB officer or member to provide representation.

4 If we agree to provide legal assistance for any member, the member must keep at all times to any terms and conditions set by UNIONLINE or the UNIONLINE nominated solicitor, and in particular must do the following:

- Continue to be a member of the union and pay contributions as set out in these rules.
- Accept and follow the advice of the solicitor or representative.
- Co-operate with the solicitor or representative, and in particular:
 - reply to correspondence;
 - keep to arranged appointments;
 - give them as much relevant information as possible;
- and

- tell them if they change their address or name.

5 As long as the member receiving legal assistance keeps to the conditions set out by UNIONLINE or the UNIONLINE nominated solicitor in paragraph 4 above, they will not have to pay any legal costs that arise from their claim. In addition, the Union may loan funds to cover any tribunal fees, payable by the member, in accordance with the terms of the UNIONLINE retainer. However, if the member fails to keep to any of the conditions or deliberately gives false information to the solicitor or representative, or any doctor, engineer or other expert involved in the claim, we may withdraw the legal assistance. If this happens, the member will not be entitled to any indemnity for the legal costs run up during their claim. We will be entitled to recover from the member any costs we have already run up.

6 If a regional secretary requests, the Central Executive Council may approve a scheme for providing legal assistance through UNIONLINE in any class of matter in the region concerned. If the Central Executive Council approves a scheme under this clause, it may amend the scheme or attach any conditions it feels are necessary. If the Central Executive Council approves a scheme under this clause, it may at any time withdraw its approval or change any conditions it has attached, so long as doing so would not affect the assistance we agreed to provide before the date the approval is withdrawn.

7 In these rules UNIONLINE refers to Trade Union Legal LLP trading as Unionline.

8 Despite anything in these rules (and, in particular rule 6), the regional secretary will make the final decision about whether we provide legal assistance.

9 We will not provide legal assistance for a claim against the union or any of our officials or employees, in their capacity as such.

The Applicant's submissions

12. In his submissions, Mr Rachubinski argues that his complaints about alleged breaches of Rule 6 and Rule 26 are within the CO's jurisdiction because they relate to the constitution or proceedings of any executive committee or any decision-making meeting. He argues that the various documents I have relied upon in making this sift decision demonstrate that his complaint is not about the substance of decisions taken by the Union, but rather about breaches of decision-making procedures.

13. Building on this, he argues that the key legal issue is whether these circumstances constitute "breaches of union rules relating to proceedings of decision-making bodies".

14. Mr Rachubinski further argues that the rules allegedly breached are procedural in nature because they describe the steps and processes that must be followed when handling complaints. In his view, this brings them within the meaning of "proceedings," as they dictate how matters should be considered by the relevant decision-making bodies rather than determining the substantive outcome.

The jurisdiction of the Certification Officer

15. 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.

16. Complaints about breaches of rules that do not relate to any of these specific matters remain to be enforced through the Courts.

17. 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.

18. The CO has consistently taken the view that it is correct that he should view his jurisdiction restrictively, and that the connection between the rule allegedly breached and the relevant matter as listed in s108A(2) must be clear and direct. The CO, or ACO, must first look at the rule itself and read it objectively, without thinking about the specific complaint. If the rule does not clearly relate to any of the matters listed in s108A(2), then the CO or ACO must consider whether the rule is so closely related to one of those matters that it should be thought of as "relating" to it.

19. In respect of section 108A(2)(d), the jurisdictional requirement has two stages.
20. **Firstly**, the rule must relate to an executive committee or decision-making meeting that meets the definitions found in section 108A subsections (10) and (11). These definitions are recorded above in the section of this decision titled “The relevant statutory provisions”.
21. **Secondly**, the rule must relate to either the constitution or proceedings of the relevant committee, as discussed in the following paragraphs.
22. In respect of **constitution**, the CO has consistently held that this primarily refers to rules about the composition and structure of those bodies, for example, membership or quoracy. It can also include rules about when and how meetings of executive bodies are called, since these affect the proper functioning of those bodies. However, constitution does not extend to all constitutional rules of the union, as this would potentially give the CO jurisdiction over the entire rule book.
23. In respect of **proceedings**, the CO has consistently held that this primarily refers to procedural rules governing how business is conducted, rather than the decisions themselves. Accordingly, jurisdiction is not extended to rules relating to “decision-making” more broadly, such as rules governing the substance or merits of decisions. While complaints about decisions taken during proceedings are not generally within jurisdiction, the CO may determine an application concerning whether a committee acted within its remit or had the power under the rules to discuss or decide a matter, provided that the application seeks a declaration about a rule relating to the proceedings of the committee that encompasses its remit or powers.

Conclusions

24. I must decide whether Mr Rachubinski’s application is one that falls within the jurisdiction conferred by section 108A of the 1992 Act. That jurisdiction arises only where a person applies for a declaration that a trade union has breached,

or threatened to breach, a rule relating to one of the matters specified in section 108A(2).

25. Having considered the rules identified by Mr Rachubinski in light of the nature of the complaint, I am satisfied that the application does not seek a declaration in respect of any such matter. Rule 6 sets out an internal complaints procedure for members, including how and to whom complaints may be raised and the steps for appeal. These provisions regulate the handling of complaints, not the constitution or proceedings of an executive committee or decision-making meeting. Similarly, Rule 26 concerns the provision of legal assistance to members and the conditions attached to that assistance. It does not govern the composition, quorum, or conduct of business within any executive body.

26. Neither rule therefore relates to the matters listed in section 108A(2). They do not relate to how an executive committee or decision-making meeting is constituted or how its proceedings are conducted. Accordingly, the application is not one that the CO has power to determine under section 108A and it is not accepted for determination.

A handwritten signature in black ink, appearing to read 'M. Kidd'.

MICHAEL KIDD

The Assistant Certification Officer

1 December 2025