

SD/3/25-26

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

Hussain

and

PCS

Date of Decision

Date **19 1 26**

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## **Decision**

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

I find that Sheak Hussain’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. The Applicant is a member of Public and Commercial Services Union (“the union”) who first submitted an application for a declaration that there has been a breach of the rules of the union on 3 November 2025.
3. In the course of correspondence with the Certification Office, the Applicant summarised their complaint as:

PCS has not issued a written routing decision or instituted the Rule 10 process after I invoked it on 25 June 2025. Instead, it appointed a conflicted investigator, attempted to divert the matter to another route, and then acknowledged a threshold assessment without deciding it. This is a continuing breach of the union’s binding Rules and regulations.

4. On 6 November 2026, the Applicant was written to by the Certification Office informing them that a preliminary view that the application did not fall within the jurisdiction of the Certification Officer (CO) had been reached.
5. The letter explained to the Applicant 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, the Applicant was informed that they had two options:

- i. **Option 1** was to withdraw the application, 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. The Applicant was told that if they 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 the Applicant, and the Union, and would be published on the CO's website.
6. The Applicant was also told that should they select option 2, they would then have 2 weeks to provide any supplementary evidence or argument on which they wished me to rely in determining the issue of jurisdiction.
  7. On 11 November 2026, the Applicant wrote to the Certification Office confirming their preference for a formal decision regarding the issue of jurisdiction.
  8. Following this, on 9 January 2026, the Applicant made a formal submission accompanied by a bundle consisting of 172 pages. 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 the 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:

### **Complaints procedure**

The complaints procedure has 3 stages and is for PCS members only;

1. Stage 1 – Informal / problem solving. Complaints at Stage 1 should be sent by email or writing to your Branch Chair. If the Branch Chair is the subject of the complaint, please email / write to your Group President.

2. Stage 2 – Formal complaint (against a PCS lay official or another member). Please complete the attached form and email it to the PCS Deputy President, see address above. PCS will aim to resolve the complaint within a month of receiving the form. If the complainant remains dissatisfied, they can request a review by the National President.

3. Stage 3 – Decision Review. A request for a review of the Stage 2 decision should be emailed to the National President ([complaintspres@pcs.org.uk](mailto:complaintspres@pcs.org.uk)). PCS will aim

to respond to the review within a month of receiving the request.

Complaints against PCS employees – these are dealt with separately to the above complaints procedure by the General Secretary (complaintsgensec@pcs.org.uk). The General Secretary will aim to write to the member within a month of the complaint being received.

Supplementary Rule 10 complaints against another member – these are dealt with by the General Secretary who shall, after considering if the matter is seriously prejudicial to the union's interests, will refer it to the NEC. This procedure is used rarely and deals with a serious breach of union rules, misappropriation of union funds, bullying and harassment and a serious breach of the union's equal opportunities policies.

### **Rulebook**

10.2 Any complaint against a member under this Rule shall be made in writing to the General Secretary who shall, having considered if it relates to a matter seriously prejudicial to the union's interests, refer it to the NEC. The NEC shall require such enquiries to be made as it considers necessary to establish whether or not a disciplinary offence appears to have been committed. If it considers that there is such a case it may instruct the General Secretary to convene a Disciplinary Committee meeting.

## **The Applicant's submissions**

12. The Applicant argues that his complaint to the union, submitted in June 2025, was not processed in accordance with the union's rules. They state that the task of making a "threshold" or "routing" decision about whether a complaint should be properly dealt with in accordance with the substantive complaints procedure or with the process set out in Rule 10 of the rulebook rests with the NEC or its designated body.
13. Further, the Applicant argues that the General Secretary's refusal on 4 November 2025 to place the complaint before the NEC, on the basis that Employment Tribunal proceedings had been issued, is outside of her powers and therefore alleges that a rule relating to the constitution or proceedings of any executive committee or of any decision-making meeting has been breached.
14. The Applicant sought to clarify that the application to the CO concerns only compliance with the union's internal governance and does not seek any findings on the substance of the complaint to the union.

## **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 the 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 the Applicant 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.

26. The application refers to both a reference to Rule 10 within the union’s Complaints Procedure, as well as Rule 10 itself. To assist in the clarity of this decision, I have dealt with each separately.

**27. The Complaints Procedure:**

28. The Complaints Procedure states:

Supplementary Rule 10 complaints against another member – these are dealt with by the General Secretary who shall, after considering if the matter is seriously prejudicial to the union's interests, will refer it to the NEC. This procedure is used rarely and deals with a serious breach of union rules, misappropriation of union funds, bullying and harassment and a serious breach of the union's equal opportunities policies.

29. The paragraph governs the manner in which complaints by members, about other members, are assessed and filtered by the General Secretary. It does not relate to the constitution of any executive committee or decision-making meeting, nor does it relate to the proceedings of any executive committee or decision-making meeting. It operates at a preliminary stage, determining whether proceedings are to be commenced. The paragraph states that such assessments are to be made by the General Secretary.

30. Therefore, an application for a declaration that the union breached this rule is not within the jurisdiction of the Certification Officer.

31. It is important to note that I have not reached a definitive conclusion as to whether, or in what circumstances, the provisions contained in the union's Complaints Procedure might be capable of falling within the Certification Officer's jurisdiction. It is not necessary for me to do so for the purposes of this jurisdictional sift decision, because even if the Complaints Procedure were capable in principle of falling within jurisdiction, for the reasons set out in the previous two paragraphs, the specific provision relied upon does not relate to the constitution or proceedings of an executive committee within the meaning of the 1992 Act.

**32. The rule book:**

33. Rule 10.2 of the rule book begins:

Any complaint against a member under this Rule shall be made in writing to the General Secretary who shall, having considered if it relates to a matter seriously prejudicial to the union's interests, refer it to the NEC.

34. On its proper construction, Rule 10.2 governs the initiation of complaints by members, about other members. It requires such complaints to be made in writing and submitted to the General Secretary. The rule then requires the General Secretary to determine if the complaint relates to a matter "seriously prejudicial to the union's interests", and if they find it does, directs them to refer the complaint to the NEC.

35. The rule is not related to the constitution or proceedings of the NEC, and is silent regarding any steps that body should take if a referral is made. Accordingly, an application for a declaration that the union has breached this rule, is not within the jurisdiction of the Certification Officer.

36. For the avoidance of doubt, I have made no determination as to the substance of Mr Hussain's complaint.

A handwritten signature in black ink that reads "Michael Kidd". The signature is written in a cursive, slightly slanted style.

**MICHAEL KIDD**  
**The Assistant Certification Officer**

**19 January 2026**