

SD/3/25-26

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

Deacon

Applicant

and

Unite the Union

Respondent

Date of Decision

2 February 2026

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Decision

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

I find that the 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. Tom Deacon was a member of Unite the Union (“the Union”). He first submitted an application for a declaration that there has been a breach of the rules of the Union on 1 December 2025.
3. In the course of correspondence with the Certification Office, the Applicant summarised his application as follows:

Complaint

1. Conduct of Unite representatives during my membership (December 2018), including signing a Non-Disclosure Agreement (NDA) during the insolvency of Monarch Aircraft Engineering Ltd, which prevented statutory consultation and inhibited representation.

2. Unite's refusal in November 2025 to operate its Rule 27 complaints process, on the basis that I am no longer a member, despite the conduct complained of occurring entirely during my membership.

This refusal appears to be inconsistent with Rules 2, 5, 18, 27 and 34 of the 2024 Rule Book, and amounts to a failure to administer the union's internal complaints process in accordance with the union's own constitution.

4. On 24 December 2025, the Certification Office wrote to the Applicant conveying a preliminary view that the application did not appear to fall within the jurisdiction of the Certification Officer (CO).
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 application did not fall within the CO's jurisdiction, the Applicant was informed that he had two options:
 - i. **Option 1** was to withdraw his application, in which case no formal decision would be made or issued and the matter would be closed;
 - OR₁
 - ii. **Option 2** was to request that a formal decision be made following the preliminary view. The Applicant was told that if he chose this option, I would formally consider whether the application 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 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 the same day (24 December 2025), the Applicant wrote to the Certification Office confirming his preference for a formal decision regarding the issue of jurisdiction.
8. Following this, and also on 24 December 2025, the Applicant submitted a written submission which I have relied upon for the purposes of this jurisdictional sift decision.
9. For the avoidance of any doubt, there has been no correspondence between the Certification Office and the Union in respect of Mr Deacon'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.

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(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 2. OBJECTS

2.1 The objects of the Union shall be:

2.1.1 To organise, recruit and represent workers, and strengthen workplace organisation, to encourage membership involvement and participation to achieve real union power for its members.

2.1.2 To defend and improve its members' wages and working conditions including the pursuit of equal pay for work of equal value and extend collective bargaining. This being the best and most effective means of distributing wealth, improving the wages and conditions of workers, and giving workers collective power in the workplace. To help our members win in the workplace, using the union's resources to assist in that process, and to support our members in struggle including through strike action.

2.1.3 To defend and improve the social and economic well-being of members and their families, both directly and via commensurate policies in relation to society both domestically and abroad.

2.1.4 To have a strong political voice, fighting on behalf of working peoples' interests, and to influence the political agenda locally, regionally, nationally and internationally, so as to promote a socialist vision for

- a more equal society in which wealth is distributed from the rich to the poor, including by means of progressive taxation and other regulatory measures to restrict excessive wealth

- a collective society in which public services are directly provided on the basis of public need and not private greed, and a fair system of welfare and benefits to support those in need
- public ownership of important areas of economic activity and services, including health, education, water, post, rail and local passenger transport.

2.1.5 To further political objectives including by affiliation to the Labour Party.

2.1.6 To promote equality and fairness for all, including actively opposing prejudice and discrimination on grounds of gender, race, ethnic origin, religion, class, marital status, sexual orientation, gender identity, age, disability, migrant worker status or caring responsibilities.

2.1.7 To affiliate to the TUC, ICTU, Welsh and Scottish TUCs and other appropriate trade union cooperation/coordination bodies domestically and internationally.

2.1.8 To promote constructive cooperation between trade unions internationally to further the interests of members of the Union and those in other unions in dealing with the direct and indirect impact of globalisation.

2.1.9 To promote education and training; both vocational and industrial and otherwise as conducive to these objects.

2.1.10 To provide such financial and other benefits and legal assistance to members as may be specified in these rules.

2.1.11 To do all such other things as may in the opinion of the Executive Council be incidental or conducive to the attainment of these objects.

2.1.12 To communicate information to members about union activities, campaigns, services and/or benefits, so as to encourage participation and further these objects.

2.1.13 The Union's procurement policy shall be based, wherever possible, on sourcing assets and services from organised labour within the UK or internationally, if unavailable in the UK. The union will maintain a list of union recognised sources of asset and service providers. Periodically, the union will consult with the relevant industrial sectors to ensure the list remains comprehensive and accurate.

2.1.14 The union will conduct its procurement process in line with the Ethical Trading Initiative (ETI) Base Code. The ETI Base Code is based on internationally recognised standards of the International Labour Organisation, the UN agency responsible for labour standards, which the UK and Ireland has signed up to.

RULE 5. OBLIGATIONS OF MEMBERS

5.1 A member of the Union must comply with these rules and with any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of a lay office or as an employee of the Union.

5.2 A member must not knowingly, recklessly or in bad faith provide the Union with false or misleading information or malicious false complaints relating to a member including those holding lay office as accountable representatives of workers or employees of the Union or any aspect of the Union's activities.

5.3 A motion shall not be submitted by or on behalf of the Union or any group or body within the Union to an organisation or body outside the Union if that motion is inconsistent with existing Union policy.

5.4 When acting as a representative of the Union at a meeting of an organisation or body outside the Union a member shall speak and vote in accordance with the policy of the Union and with any decision taken by the Union's representatives at that meeting which is consistent with the Union's policy.

RULE 18. WORKPLACE REPRESENTATION

18.1 At each workplace, the members employed at that workplace, shall elect from amongst themselves, at least every 3 years, 1 or more of the following representatives:

18.1.1 Shop stewards/workplace representatives

18.1.2 Safety representatives

18.1.3 Learning representatives

18.1.4 Equality representatives

18.1.5 Environment representatives

The election shall take place at a meeting held between 1st January and 31st March in each third year, and the elected candidates shall take office for three years. Such workplace representatives as listed above shall be entitled to attend the triennial Regional Industrial Sector Conference.

18.2 The election of workplace representatives shall, where practicable, have a gender and ethnic balance at least reflecting the proportion of Black and Asian ethnic minority and women members which they represent. Election to one representative role shall not preclude election to another such role within the same workplace.

18.3 The method of election shall be by such means as authorised by relevant guidance which shall be issued by the Executive Council from time to time.

18.4 On being elected for the first time in a particular role, each representative should within twelve months attend an appropriate union training course. On re-election, representatives are expected to continue to attend appropriate training courses as provided by the union to ensure they can best represent members.

18.5 The Executive Council may group workplaces together for the purposes of representation where the number of members at each workplace is so small that representation and bargaining for the individual workplaces is not, in the opinion of the Executive Council, practicable.

18.6 The constituency of a workplace representative shall be the workplace from which they were elected, or such grouping of workplaces as was defined by the Executive Council under clause 5 of this rule.

18.7 Following election of a workplace representative the appropriate Regional Officer shall be informed of the election by the elected representative without delay. The Regional Officer shall ensure that the Regional Industrial Sector Committee and the Union's membership department are informed of the date of the election and the identity, constituency and contact details of the elected workplace representative.

18.8 The Executive Council may issue guidance on the powers and procedures of the Regional Industrial Sector Committee in relation to ratification of such election. The Regional Industrial Sector Committee shall ensure compliance with such procedures.

18.9 Shop stewards/workplace representatives shall receive the fullest support and protection from the union, which includes the provision of a Shop Stewards Handbook/Health and Safety Handbook/Branch Officers Handbook. Officers should be able and willing to fully support shop stewards/workplace

representatives facing victimisation/bullying/disciplinary action. Officers should consistently support all shop stewards/workplace representatives and where appropriate be able to provide support in legal referrals to the Union's solicitors. Officers should ensure shop stewards/workplace representatives are updated within a reasonable time. An immediate inquiry shall be undertaken by the appropriate regional industrial sector or regional committee into every case of dismissal of a shop steward with a view to preventing victimisation, either open or concealed. If it is deemed necessary, a ballot for industrial action will be convened.

RULE 27. MEMBERSHIP DISCIPLINE

27.1 A member may be charged with:

27.1.1 Acting in a way contrary to the rules or any duty or obligation imposed on a member by or pursuant to these rules whether in his/her capacity as a member, a holder of lay office or a lay representative of the union or otherwise bringing the union into disrepute.

27.1.2 Being a party to any fraud on the Union or any misappropriation or misuse of its funds or property.

27.1.3 Knowingly, recklessly or in bad faith providing the Union with false or misleading information relating to a member or any other aspect of the Union's activities.

27.1.4 Inciting, espousing or practising discrimination, harassment or intolerance amongst members on

grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

27.1.5 Bringing about injury to or discredit upon the Union or any member of the Union including the undermining of the Union, branch or workplace organisation and individual workplace representatives or branch officers.

27.1.6 Obtaining membership of the Union by false statement material to their admission into the Union or any evasion in that regard.

27.1.7 Breach of Union policy on harassment, dignity and respect, which will include cyber bullying and harassment.

27.2 Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice.

27.3 A charge under this rule may be heard by a Branch, Branch Committee (where so determined by the Branch), Regional Committee or the Executive Council. The Executive Council may delegate to a sub-committee of the Executive Council. It would be usual practice that disciplinary charges would be heard at branch level in the first instance. Disciplinary charges

deemed to be of a serious nature may be initiated by the Regional committee or Executive Council.

27.3.1 Serious allegations of breach of Clauses 27.1.1. to 27.1.7 may be referred directly to the General Secretary. The General Secretary will appoint a senior employee of the Union to conduct an investigation which may lead to disciplinary charges being laid on behalf of the Executive Council.

27.3.2 Allegations of serious breaches of clauses 27.1.1 to 27.1.7 which are considered to be vexatious, malicious or defamatory may be considered a breach of Rule and liable to be referred to this disciplinary procedure.

27.4 The Executive Council or the relevant Regional Committee may suspend a member charged under this rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given written notice (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable. In cases of a serious nature, as a precautionary measure, a member under investigation prior to disciplinary charges being laid may be suspended from holding office or representing the union in any capacity.

27.4.1 A member under disciplinary investigation or charged with a disciplinary offence, including workplace representatives or branch officers suspended from holding office, may not attend:

- Meetings of his/her own branch;
- Meetings of other branches of the Union; or,
- Constitutional committee meetings of the Union

Other than as part of the disciplinary process as set out in this Rule.

27.4.2 If allegations against a member are proven to be unfounded they will be restored in good standing. If appropriate, their credentials will be restored.

27.5 The range of disciplinary sanctions shall include the following:

27.5.1 censure;

27.5.2 withdrawal of workplace credentials;

27.5.3 removal from office;

27.5.4 barring from holding office and

27.5.5 expulsion.

27.6 The full range of disciplinary sanctions shall be available to the Executive Council and Regional Committees; however, the range of disciplinary sanctions for other bodies shall be limited to the following:

27.6.1 Branch, shall have the power to censure;

27.7 Appeals

27.7.1 A member shall have the right to appeal against any disciplinary sanctions.

27.7.2 In the case of a sanction imposed by a Branch, or Branch Committee, the appeal shall be to the Regional Committee, whose decision shall be final.

27.7.3 In the case of a sanction imposed by a Regional Committee the appeal shall be to the Executive Council, whose decision shall be final.

27.7.4 In the case of disciplinary action initiated by the Executive Council the appeal shall be to an Appeals Committee elected from the Policy Conference, whose decision shall be final. Such an Appeals Committee shall be constituted on the basis of at least one delegate from each Region, under a procedure to be agreed by the Executive Council. There shall be an eligibility criterion to serve on the Appeals Committee of at least 5 years continuous membership of the Union.

27.8 An employee may not be charged under this rule in respect of any alleged act or omission in connection with the performance of his/her duties as a full time officer and/or employee of the Union. Complaints against employees shall be investigated under the Members' Complaints Procedure agreed by the Executive Council and if disciplinary action is deemed appropriate this shall be executed under the procedures negotiated with employees' representative bodies for that purpose.

RULE 34. HEALTH AND SAFETY

34.1 Each Region shall have an annual Regional Health and Safety Conference' all accredited Health and Safety representatives within the region to be invited to the Regional Conference.

34.2 Each Regional Committee to constitute a Regional Health & Safety Committee.

34.3 Two Health and Safety representatives from each region to be elected to a National Health & Safety Committee that will meet annually and provide a report to the Executive Council.

34.4 There will be one National Health and Safety Conference every three years made up from 20 accredited Health and Safety Representatives per Region.

The Applicant's submissions

12. The applicant states that the application is not about representation or the merits of any internal misconduct allegation. He alleges that in November 2025, the union refused to operate its Rule 27 complaints mechanism in respect of conduct said to have occurred during his period of membership (specifically in 2018), and that the alleged refusal to operate Rule 27 is the act complained of.
13. The applicant characterises that refusal as a constitutional governance decision about whether the Rule Book should be applied. He invites me to treat the refusal as the operative decision for jurisdiction and time limit purposes and submits that time therefore runs from November 2025. He further contends that because the refusal involved the interpretation and application of the Rule

Book, the matter falls within the Certification Officer's statutory jurisdiction over the constitution and the proceedings or decisions of decision-making bodies.

14. The applicant states that he is no longer a member of the union, and that he was not a member of the union at the time of the alleged breach.

The jurisdiction of the Certification Officer

15. The Certification Officer has no general supervisory jurisdiction over a trade union's rule book. His jurisdiction is limited to that prescribed by section 108A of the 1992 Act. It is engaged only where a person applies for a declaration that there has been a breach (or threatened breach) of a union rule relating to one of the following listed 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. General complaints about breaches of rules that do not relate to any of these specific matters remain to be enforced through the Courts.

17. Importantly, section 108A(3) imposes a threshold condition in respect of membership:

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

18. This requirement must be satisfied before any consideration can be given to the nexus between the rules allegedly breached and the listed matters in section 108A(2), or to the application of the time limits prescribed under section 108A(6) - (7).

19. The test is whether the applicant was a member when the alleged breach occurred, or (if not) if the applicant is a member at the time of the application. If neither, the application cannot proceed.

Conclusions

20. I must decide whether Mr Deacon's application is one that falls within the jurisdiction conferred by section 108A of the 1992 Act. That jurisdiction arises only where a person who satisfies the statutory membership conditions under section 108A (3) applies for a declaration that a trade union has breached, or threatened to breach, a rule within the meaning of that section.

21. The alleged breach identified by the applicant is Unite's refusal in November 2025 to operate Rule 27. On the applicant's own account, he was no longer a member at the time of the alleged breach. Read against section 108A(3), the membership condition is not met; Accordingly, the application is not one that the CO has power to determine under section 108A and it is not accepted for determination.

22. For the avoidance of doubt, because the membership requirement is not satisfied, it is unnecessary for me to consider whether any of the rules relied upon by the Applicant relate to any of the matters listed in section 108A(2), or

to address the time-limit provisions in section 108A(6) - (7); I express no view on those matters.

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

2 February 2026