

SD/7/25-26

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

Molina

Applicant

and

Advance Union

Respondent

Date of Decision

2 March 2026

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Decision

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

I find that Wilma Beatriz Carvajal Molina’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. Wilma Beatriz Carvajal Molina is a member of Advance Union (“the union” or “Respondent”). She first submitted an application for a declaration that there has been a breach of the rules of the union on 1 January 2026.
3. On her application form to the Certification Office, the Applicant summarised her complaint as:

Advance Union breached Rules 25.1, 13.1 and 10.4 by failing to conduct its executive decision-making and complaints governance in accordance with its Rulebook and published procedure.

Rule 25.1: Rule 25.1 requires that complaints alleging breach of union rules be referred to the General Secretary (GS) and handled under the Union’s Complaints Procedure. In correspondence, the GS treated my governance clarification requests as a

matter to be investigated “in accordance with our rules”, thereby initiating formal complaint/investigation proceedings, yet the process was not administered transparently or consistently.

Rule 13.1 / delegation: Advance state the GS made an executive decision to delegate management of complaint correspondence to the Deputy General Secretary. However, Advance admit that “a formal, contemporaneous notification of this specific delegation was not issued... This constitutes an administrative omission.” This demonstrates defective governance transparency and procedural irregularity affecting the conduct of executive proceedings and the integrity of the complaints process.

Rule 10.4: This rule requires advice/assistance to be managed “allowing for the timescales of the Employment Tribunal” and requires that legal representation decisions are merit-based and reviewed by the GS. Senior officers admitted that Rule 10.4 was previously misapplied and that protecting tribunal timescales is “paramount”. Further, Advance accept that key review steps relied on undocumented/verbal communication and cannot be evidenced, preventing transparency or auditability of the GS decision-making required by Rule 10.4.

This complaint concerns governance rule compliance and executive proceedings, not dissatisfaction with representation.

4. On 10 February 2026, the Applicant was written to by the Certification Office informing her that a preliminary view that her complaint 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 her complaint did not fall within the CO's jurisdiction, the Applicant was informed that she had two options:
 - 5.1. **Option 1** was to withdraw her complaint, in which case no formal decision would be made or issued and the matter would be closed;

OR,
 - 5.2. **Option 2** was to request that a formal decision be made following the preliminary view. The Applicant was told that if she 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 she select option 2, she would then have 2 weeks to provide any supplementary evidence or argument on which she wished me to rely in determining the issue of jurisdiction.
7. On 12 February 2026, the Applicant wrote to the Certification Office confirming her preference for a formal decision regarding the issue of jurisdiction.
8. On the same date, the Applicant submitted a written submission, accompanied by 7 pieces of supporting evidence. While I have not found it necessary to refer to any of the 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.

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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:

- 10. Members requiring assistance**

- 10.4 All advice and assistance in relation to Court proceedings will be on the basis that the internal process has been fully exhausted, allowing for the timescales of the Employment Tribunal. Legal representation will be assigned according to a merit-based assessment and reviewed by the General Secretary. The

qualification period would be 12 months membership before the process initiated.

13. General Secretary

13.1 The General Secretary will be the Chief Operating Officer and shall be responsible to the National Executive Committee and Conference. A General Secretary's duties shall include, but not be limited to, the overall finances of the union, advising on implementing policy and other decisions of the National Executive Committee, ensuring decisions of all meetings are properly recorded, acting as the principal spokesperson and negotiating officer for Advance Union and to be solely responsible for the control of all Advance union offices and staff. A General Secretary shall have the power to delegate all such duties at their own discretion. The General Secretary shall ensure that proper records of financial accounts are kept, setting out all sums of money received and expended by the Union and the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods and services by the Union, the assets and liabilities of the union, and all such other matters as, according to good

accountancy practice, should be set out in the books of accounts.

25. Complaints into breaches of these Rules

25.1 Any member may complain if they believe that these rules have been breached. In the first instance, complaints should be referred to the General Secretary who will follow Advance Union's Complaints Procedure.

The Applicant's submissions

12. The application concerns an alleged breach of the rules of Advance Union in connection with, (i) the initiation and conduct of a complaints process; (ii) the delegation of executive authority; and (iii) the application of safeguards governing legal assistance decisions. The Applicant alleges breaches of Rules 10.4, 13.1 and 25.1 and argues that her application is within the jurisdiction of the Certification Officer in accordance with section 108A(2)(d), the constitution or proceedings of any executive committee or of any decision-making meeting.

13. Rule 10.4

13.1. In her submission, the applicant wrote that, as regards Rule 10.4, senior officers accepted that the rule had been misapplied, that the protection of tribunal limitation periods is "paramount", and that certain review steps were undocumented, because of a reliance on verbal communications.

13.2. In respect of jurisdiction, the applicant argues that her complaint about an alleged breach of Rule 10.4 is within the CO's jurisdiction because the rule itself imposes mandatory procedural safeguards, meaning that the rule relates to the proceedings of executive decision-making for the purposes of s.108A(2)(d).

14. Rule 13.1

14.1. The Applicant told me that, as regards Rule 13.1, complaint-handling functions were delegated by the General Secretary to the Deputy General Secretary without contemporaneous formal notification to her. The Applicant told me that the Union later described this as an "administrative omission."

14.2. In respect of jurisdiction, the Applicant argues that her complaint about an alleged breach of Rule 13.1 is within the CO's jurisdiction because the rule governs the exercise and communication of delegated authority by the General Secretary, which, she says has a direct bearing on transparency, accountability and the validity of executive proceedings. From this, she argues that the rule relates to the proceedings of executive decision-making for the purposes of the CO's jurisdiction.

15. Rule 25.1

15.1. The Applicant told me that, as regards Rule 25.1, the General Secretary indicated that matters she had raised would be investigated "in accordance with our rules". The Applicant says that this amounts to a commencement of a formal process under the Rulebook. The Applicant says the conduct of that process lacked transparency and consistency.

15.2. In respect of jurisdiction, the Applicant argues that her complaint about an alleged breach of Rule 25.1 is within the CO's jurisdiction because the rule requires complaints alleging breach of union rules to be referred to, and handled by, the General Secretary under the Union's complaints

procedure, so that the rule relates to the proceedings of executive decision-making for the purposes of s.108A(2)(d).

16. The Applicant emphasised that her application is about compliance with safeguards, not the merits of a decision relating to representation. She told me that she had exhausted the Union's internal procedures, receiving a final response from the Union on 15 December 2025 which did not uphold her complaint but acknowledged procedural irregularities.

The jurisdiction of the Certification Officer

17. The CO's jurisdiction to determine applications for a declaration that a union has breached its rules is narrow. It is not a general supervisory jurisdiction over union rule books.
18. Section 108A(1) of the 1992 Act provides that a member of a trade union may apply to the CO for a declaration that there has been a breach or threatened breach of the rules of the union relating to:
 - (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.

19. On its natural reading, the phrase “relating to”, in the context of section 108A qualifies the rule, not the underlying events or their consequences. The question is whether the relationship between the rule and one or more of the listed matters is sufficiently clear and direct for the CO to find that it “relates”.
20. Therefore, when addressing jurisdiction, the CO begins by reading the relevant rule objectively to determine whether, on its face, it relates to one of the listed matters.
21. The facts and circumstances alleged within the application must also be considered by the Certification Officer, so that he can determine whether, taken at their highest, they are capable of engaging the part of the rule which relates to a listed matter.
22. If the alleged facts and circumstances are not capable of engaging the part of the rule which relates to a listed matter, then the application will be outside of the CO’s jurisdiction.
23. Where the rule’s relationship to a listed matter is not immediately clear on its face, the first question is whether, in its proper operation, the rule has an inherent aspect that connects it with a listed matter. For this limited purpose, the CO may consider the alleged facts and circumstances only insofar as they illuminate the rule’s scope and operation. The facts and circumstances cannot alter the rule’s meaning or create a relationship the rule does not inherently bear.
24. Where no such relating aspect is identified, the application will be outside of the CO’s jurisdiction.
25. Where the CO finds that rule does relate to a listed matter, the CO will consider whether the facts and circumstances alleged in the application, taken at their highest, are capable of engaging the part of the rule which relates to a listed matter, as referred to in paragraph 21.

26. This recognises that a rule may contain provisions which, in part, relate to a listed matter, and in part, do not. In such cases, the CO's jurisdiction will depend on whether the alleged breach engages the aspect of the rule which gives it its relationship to the listed matter. Again, the CO may consider the facts and circumstances of the application for the limited purpose of understanding whether the alleged breach, taken at its highest, is capable of engaging the rule in the respect that gives rise to its relationship with a listed matter. The facts and circumstances cannot convert an unrelated aspect of a rule into one which relates to a listed matter.
27. Whether in the straightforward or exceptional case, the relationship required by section 108A must be sufficiently clear and direct and must flow from the rule itself. Where the only link with a listed matter arises from the events or consequences of an alleged breach, rather than from the scope or operation of the rule, the rule cannot be said to "relate" to a listed matter, and the application will fall outside of the CO's jurisdiction.
28. In respect of section 108A(2)(d), the jurisdictional requirement has two further stages.
29. **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".
30. **Secondly**, the rule must relate to either the constitution or proceedings of the relevant committee, as discussed in the following paragraphs.
31. 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.

32. 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. In this context, questions of remit, vires or 'competent business' concern whether a qualifying body had authority under the rules to consider and decide a category of matter, or was required to proceed by a particular procedure (for example, notice, quorum, voting method or thresholds); they do not concern whether the outcome was correct or aligned with the union's principles, aims or objects.
33. Therefore, although applications about decisions taken during proceedings are not generally within jurisdiction, the CO may determine an application where the rule relied upon (a) allocates the subject matter to a particular qualifying body or withholds it from that body, (b) imposes mandatory procedural requirements or decision criteria, or (c) limits the options available and the body chose an option outside those permitted; those are questions of authority and process, not merits. By contrast, where the rules confer discretion within the subject matter (for example, to grant or refuse representation), disagreement with which permitted option was chosen, or a contention that a different outcome would better reflect the union's aims or objects, would typically be better characterised as a complaint about the merits of the decision, which would not engage section 108A(2)(d), and would therefore not fall within the jurisdiction of the CO.

Conclusions

34. I must decide whether this application falls within the jurisdiction conferred by section 108A of the 1992 Act. The application relies on several rules. I must assess jurisdiction under section 108A in relation to each rule identified.

35. **Rule 10.4**

35.1. Rule 10.4 prescribes criteria and process for the provision of legal assistance. It does not relate to the constitution or proceedings of any executive committee or of any decision-making meeting for the purposes of section 108A(2)(d). Nor do the facts and circumstances of the application reveal any inherent aspect of the rule which, in its proper operation, connects it with those proceedings.

35.2. Accordingly, in respect of Rule 10.4, the application is not within the jurisdiction of the CO.

36. **Rule 13.1**

36.1. Rule 13.1 is a governance provision defining the office, responsibilities and discretionary power of delegation of the General Secretary. Properly construed, it does not prescribe how an executive committee or other decision-making meeting is constituted, nor how such a body must conduct its business. The allegation of non-notification of a delegation concerns administration of an officer's authority rather than the constitution or proceedings of a qualifying body. No inherent aspect of the rule has been identified that would connect Rule 13.1 with a listed matter in section 108A(2)(d).

36.2. Accordingly, in respect of Rule 13.1, the application is not within the jurisdiction of the CO.

37. **Rule 25.1**

37.1. Rule 25.1 allocates initial handling of complaints about alleged breaches of the Rules to the General Secretary under the Union's Complaints Procedure. Read objectively, it establishes an administrative route for complaints; it does not govern the constitution or proceedings of an executive committee or of a decision-making meeting. Nor do the facts and circumstances alleged within the application reveal any inherent aspect of the rule which, in its proper operation, connects it with those proceedings or any other listed matter.

37.2. Accordingly, in respect of Rule 25.1, the application is not within the jurisdiction of the CO.

38. Overall conclusion on jurisdiction

39. Taking the Applicant's case at its highest for the purposes of this jurisdictional sift decision, I have found that none of the rules identified in the application relate to the constitution or proceedings of any executive committee or decision-making meeting, or any other listed matter. Accordingly, the application is not one that the CO has power to determine under section 108A and it is not accepted for determination.



MICHAEL KIDD
The Assistant Certification Officer

2 March 2026