

SD/8/25-26

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

Islam

Applicant

and

**Public and Commercial Services
Union**

Respondent

Date of Decision

10 March 2026

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Decision

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

I find that Anis Islam’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. Anis Islam is a member of Public and Commercial Services Union (“the union” or “Respondent”). They first submitted an application for a declaration that there has been a breach of the rules of the Respondent union on **19 January 2026**.
3. On their application form to the Certification Office, the Applicant summarised the complaint as:

PCS’s published complaints procedure states that a Stage 3 review by the National President should normally be completed and responded to within one month, with reasons given for any delay PCS Complaints. I submitted my Stage 3 appeal on 19 August 2025 Stage 3 Appeal letter. Despite this, PCS has failed to issue any substantive response, decision, or explanation for delay. Between September 2025 and January 2026 I sent at least six written chasers, all of which went unanswered Yahoo Mail – Fw _ [Private and C.... PCS has therefore failed to operate its own

constitutional complaints process, denied me procedural fairness, and frustrated my right as a member to have my complaint determined. This prolonged inaction has prevented me from obtaining union support in a live Employment Tribunal claim and has rendered the internal remedies illusory.

4. On **30 January 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. Considering the preliminary view that the application did not fall within the CO's jurisdiction, the Applicant was informed that they had two options:
 - 5.1. **Option 1** was to withdraw the application, 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 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 **30 January 2026**, the Applicant wrote to the Certification Office confirming their preference for a formal decision regarding the issue of jurisdiction.
8. During the initial correspondence, the Applicant submitted several 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:

PCS Complaints

Stage 3 – Decision review A request for a review of the investigating officer's decision should be made in writing to the National President complaintspres@pcs.org.uk. The complainant will receive an acknowledgement. The National President will request a report from the investigating officer and review relevant paperwork. Regard will be given to the complexities of the case but it is the union's intention to respond to the review process within one month. The member will be kept advised of the reasons for any delay.

The Applicant's submissions

12. The Applicant states that the application is not about the adequacy of the union's legal representation or any decision about the funding of proceedings at the Employment Tribunal. Instead, they state that the application is about an alleged failure by the union to comply with its own constitutional rules by not operating and concluding a Stage 3 complaints review in accordance with its published complaints procedure.

13. The Applicant states that, under the procedure, a Stage 3 review by the National President should “normally” be completed and responded to within one month, with reasons given for any delay. The Applicant says they submitted their Stage 3 appeal on 19 August 2025 and, despite sending numerous follow-up emails, between September 2025 and January 2026, the Applicant says they received no substantive response, decision, or explanation for delay.
14. The Applicant characterises the Stage 3 complaints process as a formal constitutional decision-making mechanism within the union, involving action by a senior executive officer (the National President) and requiring a procedural outcome within the timescales set by the rules (or reasons for any departure). The Applicant argues that the union’s alleged inaction amounts to a failure to exercise a required constitutional function and that the Applicant has, therefore, been deprived of procedural rights guaranteed by the union’s rules.
15. The Applicant argues that the application is within jurisdiction because the Stage 3 review concerns the operation of the union’s constitutional decision-making processes; accordingly, the Applicant says that the failure to conduct and conclude that review is a failure to comply with the union’s rules within section 108A of the 1992 Act, specifically “the constitution or proceedings of any executive committee or of any decision-making meeting.”

The jurisdiction of the Certification Officer

16. 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. 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.

17. To fall within this jurisdiction, the application must identify a rule which, on its proper construction, relates to a listed matter. The allegations contained within the application must also be considered to determine whether, taken at their highest, they engage the rule in its qualifying aspect. This is necessary in order to establish whether the application concerns a breach of a rule relating to one of the listed matters within the meaning of section 108A.
18. 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”.
19. Thus, 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.
20. 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 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.

21. Where no such relating aspect is identified, the application will be outside of the CO's jurisdiction.
22. Where the CO finds that the rule does relate to a listed matter, the CO will consider whether the allegations, taken at their highest, are capable of engaging the rule in that relating respect.
23. 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.
24. 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.
25. In respect of section 108A(2)(d), the jurisdictional requirement has two further stages.

26. **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 “relevant statutory provisions”.
27. **Secondly**, the rule must relate to either the constitution or proceedings of the relevant committee, as discussed in the following paragraphs.
28. 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.
29. 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.
30. 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

31. I must decide whether this application falls within the jurisdiction conferred by section 108A of the 1992 Act. The Applicant relies on a section of the union's complaints procedure titled "Stage 3 – Decision review":

A request for a review of the investigating officer's decision should be made in writing to the National President complaintspres@pcs.org.uk. The complainant will receive an acknowledgement. The National President will request a report from the investigating officer and review relevant paperwork. Regard will be given to the complexities of the case but it is the union's intention to respond to the review process within one month. The member will be kept advised of the reasons for any delay.

32. The first question is whether, on its proper construction, the rule relates to "the constitution or proceedings of any executive committee or of any decision-making meeting" within section 108A(2)(d), having regard to the statutory definitions of "executive committee" and "decision-making meeting" in section 108A(10) and (11).
33. The section of the union's complaints procedure relied upon by the Applicant assigns functions to an individual officer, the National President, acting alone.

The National President is responsible for receiving and acknowledging the request, for requesting a report from the investigating officer, and for reviewing relevant paperwork. There is no indication that these functions are exercised by an executive committee or a decision-making meeting, or that they form part of the proceedings of such a body. On its face, therefore, the section does not relate to the constitution or proceedings of an executive committee or decision-making meeting.

34. The Applicant's complaint is directed at alleged inaction by the National President in conducting and concluding the review and providing reasons for delay. That complaint does not become one about the proceedings of a qualifying body within section 108A(2)(d) simply because it concerns an internal complaints mechanism or may have implications for accountability. The "relating to" requirement in section 108A focuses on the rule's inherent operation, not on the wider consequences of alleged non-compliance.
35. The Applicant argues that the Stage 3 process is a "formal constitutional decision-making mechanism" and that a failure to conduct or conclude it is a failure to comply with the union's rules concerning executive decision-making. The fact that a rule may concern some level of executive decision-making does not of itself mean that it relates to the constitution or proceedings of an executive committee or decision-making meeting. The statutory language is narrower. It requires a clear and direct relationship between the rule and the constitution or proceedings of a qualifying body. I find that no relationship is established between the Stage 3 text relied upon and the constitution or proceedings of a qualifying body.
36. Therefore, taking the allegations within the application at their highest, they would, if proven, amount to a failure by an individual officer to undertake or complete certain steps set out in the union's complaints procedure. They do not disclose a breach of a rule relating to the constitution or proceedings of an executive committee or decision-making meeting.

37. 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 that reads "Michael Kidd". The letters are cursive and somewhat stylized.

MICHAEL KIDD
The Assistant Certification Officer