

D/2/26-27

**Decision of the Assistant Certification Officer on application made  
under Section 108A of the Trade Union and Labour Relations  
(Consolidation) Act 1992**

**Richard Rawlins**

Applicant

and

**The British Medical Association**

Respondent

**Date of Decision**

27 April 2026

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## Decision

1. Upon application by Mr Richard Rawlins under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) I make the following declaration:

I do not uphold Mr Rawlin’s application for a declaration that on 15 November 2023, the British Medical Association breached Articles 30, 59, 60 and 63 of the Respondent Union’s rule book.

## Background

2. Mr Rawlins (“the Applicant”) is a member of the British Medical Association (“the Respondent”).
3. The Applicant originally submitted his application for a declaration on 14 May 2024, alleging that the Respondent had breached its rules. However, action in respect of the application was paused whilst the Certification Office dealt with a pre-existing application on the same issue. The pre-existing application was closed in September 2024 and an updated application from the Applicant was received on 24 October 2024.
4. Following correspondence with the Certification Office, the Applicant confirmed his complaint as follows:

On 15<sup>th</sup> November 2023, the union breached rules 30, 59, 60 and 63.

These rules were breached in that:

- (a) The BMA has failed to comply with the Association's Article 59:

“The general control and direction of the policy and affairs of the Association shall be vested in a body of representatives styled ‘the Representative Body’ (*RB*) whose composition shall be determined in accordance with the bye-laws.”

BMA UK Council acted *ultra vires* in imposing a new system of elections of divisional representatives to ARM 2024. BMA UK Council usurped the authority of the Representative Body (RB) - which is responsible for making policies.

(b) The BMA Chief Officers and UK council usurped the autonomy given to Divisions by Article 30: "Autonomy: Subject to these articles and bye-laws each division, branch or regional council... shall, subject to the terms of the constitution, be free to govern itself in such manner as it shall think fit, and from time to time to make or repeal such rules."

(c) The chair of the UK council permitted a proposal to be put to UK Council on 15<sup>th</sup> November 2023, and for the decision to accept that proposal to be acted upon.

In an answer to Dr Hughes, the BMA contend that council can act as it has in (c) above - on account of article 72. I submit that is not so.

The Chief Officers assert that: “the council shall have power, in the interval between successive meetings of the representative body, to formulate and implement policies (not being inconsistent with any policy already laid down by the representative body) and subject to article 77(2) on any matter affecting the Association...”

But in this matter, the imposition by the UK council of a new method of electing representatives to the Representatives (without having such a policy approved by RB) is inconsistent with existing policy already laid down by the representative body – namely, that divisions have autonomy.

The UK council imposed a new system for election to membership of the Representative Body, without the authority of policy as established by the Representative Body at an ARM. It is self-evident that action by council fails to comply with article 60 sub-section (1) & 63.

5. A Case Management Meeting (“CMM”) was arranged for 29 January 2026. Prior to the CMM, the Applicant provided his own witness statement along with witness statements from Dr Jacqueline Davis (a member of the Respondent Union’s UK Council,) Dr Peter Curry (a member of the Respondent Union’s UK Council) and Dr John Hughes (Deputy Chair of the Respondent Union’s Organisation Committee). The Respondent provided a witness statement from Mr Matthew Lasham. Both parties provided skeleton arguments. Ahead of the CMM, I sent to the parties my proposed list of issues to be resolved at the hearing.
6. The CMM was held by video conference. For the Applicant, the CMM was attended by Mr Rawlins himself, Dr Davis, Dr Curry, and Dr Hughes. Attending for the Respondent were Simon Cheetham KC, Claire Wills (Senior Solicitor for the Respondent Union), Matthew Lasham (Head of Council Secretariat for the Respondent Union) and Rachel Podolak (the Respondent Union’s Chief Executive Officer).
7. At the CMM, the parties agreed the following issues to be resolved to determine the application:

Issues relating to jurisdiction:

1. Whether the alleged breach of article 30 is within the jurisdiction of the Certification Officer.
2. Whether the alleged breach of article 59 is within the jurisdiction of the Certification Officer.

Issues relating to alleged breaches:

3. Whether the term “composition” in article 59 encompasses only the structural make-up of the Representative Body (i.e., which roles or categories of members sit on it and in what numbers), or whether it also extends to the electoral method by which those representatives are chosen.
4. Whether the decision to move to an electronic electoral system required amendments to the constitutions of divisions, branches, or regional councils.
  - 4.1 If so, whether such amendments occurred.
  - 4.2 If not, whether this constitutes a breach of article 30(1).
5. Whether the Council’s decision to introduce a new system for election to the Representative Body was an action taken in breach of Article 60(1), in particular whether Article 60(1) imposes any constraint on the Council’s authority to alter the electoral system.

6. Whether the Council's decision to introduce a new system for election to the Representative Body was an action taken in breach of Article 63, in particular whether Article 63 restricts authority for such decisions to the Representative Body itself.

8. Following the CMM, I issued directions based on certain matters agreed. In accordance with my directions, the Respondent provided clarification about additional documents that were referenced in Mr Lasham's witness statement. The Respondent also provided a submission addressing whether the term "composition" in Article 59 encompassed only the structural make-up of the Representative Body, or whether it also extended to the electoral method by which those representatives are chosen (point 3 of my list of issues to be resolved as referenced in paragraph 7) and the Applicant chose to provide a written response to this also.
9. My directions following the CMM also invited the parties to provide agreed facts relevant to the complaints. The parties notified my office that they had been unable to reach agreement, and each party provided their own proposed facts. At the hearing, I notified the parties that, in the absence of a set of agreed facts, I would not be considering either party's proposed facts, but would, instead, reach my own findings of fact based upon the relevant evidence and submissions presented by the parties at the hearing. The facts are recorded below at paragraphs 16 to 40.
10. A hearing took place by Video Conference on 30 March 2026. The Applicant represented himself. The Respondent was represented by Mr Cheetham.
11. For the Applicant, Mr Rawlins himself, and Drs Davis, Curry and Hughes provided oral witness evidence.

12. Mr Lasham provided oral witness evidence for the Respondent.
13. There was in evidence a bundle of documents consisting of 505 pages.

### **The relevant statutory provisions**

14. 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 Respondent Union**

15. The rules of the Respondent Union which are relevant for the purposes of this application are as follows:

### **Articles of Association of the British Medical Association**

#### **PART 3 - LOCAL ORGANISATION**

...

#### **Autonomy**

Article 30

(1) Subject to these articles and bye-laws each division, branch or regional council, the constitutions of which shall be determined by the organisation

committee on behalf of the council, shall, subject to the terms of the constitution, be free to govern itself in such manner as it shall think fit, and from time to time to make, amend or repeal such rules.

(2) The governing rules so made, and for the time being in force shall be binding on the members, constituting the division, branch or other body in reference to which they are made. Such rules shall be submitted for approval to the organisation committee, and shall not come into operation unless and until they are approved.

## **PART 5 - REPRESENTATIVE BODY**

### **General Powers**

#### Article 59

The general control and direction of the policy and affairs of the Association shall be vested in a body of representatives styled “the representative body” whose composition shall be determined in accordance with the bye-laws.

### **Representative Meetings**

#### Article 60

60. (1) The representative body shall hold an annual meeting called the annual representative meeting which shall be convened in every year by the council, and shall be held at such time and place as shall have

been prescribed by the Association at a previous annual representative meeting, and if no such time or place shall have been so prescribed, the same shall be determined by the council. The annual session of the Association shall commence with the closing of the annual representative meeting and shall continue until the end of the next annual representative meeting. The representative body may hold other meetings called special representative meetings.

(2) The Scottish, Welsh and Northern Ireland councils shall have power to convene annual meetings of representatives of Scottish, Welsh and Northern Ireland members before each annual meeting of the UK representative body to consider matters of relevance to the profession and to the Association which have been devolved to the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly respectively. Decisions taken at such meetings shall be referred to the Scottish council, the Welsh council or the Northern Ireland council which may submit them to the annual representative meeting for consideration.

...

### **Business of Annual Representative Meeting**

63. The business of the annual representative meeting shall be:

(1) to elect:

(a) a president of the Association;

(b) honorary members but not foreign corresponding members and Commonwealth corresponding members who are elected by council;

(c) to elect by the single transferable voting system, a chair and a deputy chair of the representative body from among its membership;

(d) to receive nominations for such other officers and such members of the committees as are required by the articles and bye-laws to be elected by the representative body and to make arrangements for these officers and members to be elected by the single transferable voting system,

(2) to consider:

(a) the balance sheet and income and expenditure account, estimate and reports presented by the council and/or the board;

(b) the reports of committees instructed to report to such meeting;

(c) any motions relating to the adoption of the said reports in whole or in part; 28 (d) the reports of the branch of practice conferences,

(3) to recommend to a general meeting alterations to the articles;

(4) to consider any resolution relating to the promotion of the medical or allied sciences or to the maintenance of the honour or interests of the Association or the promotion of the achievement of high quality health

care which shall have been approved and submitted to the representative body by the council, the national councils or the joint agenda committee from a body or group of members entitled to elect or appoint a representative or representatives to the representative body or the Scottish, Welsh or Northern Ireland councils or any of the conferences prescribed by the bye-laws;

(5) to make alterations to the bye-laws. Provided always that if any resolution relating to subsections (1) to (5) above:

(a) proposes the addition of a new bye-law or the amendment or repeal of an existing bye-law; or

(b) proposes material alteration of or addition to the policy of the Association; or

(c) involves exceptional expenditure, it shall only be considered if it has been published in the agenda for the annual representative meeting and such notice has appeared in such manner as prescribed by the chief executive, in consultation with the chief officers, that the agenda has been published on the BMA's website at least three weeks before the date of the meeting unless the representative body shall otherwise decide.

## **Finding of fact**

16. Having considered the written and oral evidence alongside the documentary evidence contained in the bundle of documents, I make the following findings of fact.
17. Within the United Kingdom, Channel Islands and Isle of Man, the members of the BMA are formed into separate local bodies known as divisions.
18. Formation, alteration, and dissolution of divisions is determined by the Respondent's Organisation Committee on behalf of the Respondent's UK Council.
19. Article 30 of the Respondent Union's rules states:

Subject to these articles and bye-laws each division, branch or regional council, the constitutions of which shall be determined by the organisation committee on behalf of the council, shall, subject to the terms of the constitution, be free to govern itself in such manner as it shall think fit, and from time to time to make, amend or repeal such rules.
20. The Applicant told me that, historically, a division could make proposals about a locally appropriate electoral procedure. By way of example, he told me that during the Covid-19 pandemic, he had been supportive of a move within his own division to adopt electronic voting with a view to minimising the need to attend physical meetings. Further, the Applicant told me that once a division had reached internal agreement on an appropriate electoral procedure, the Organisation Committee, on behalf of the UK Council, could either approve the process or not. I accept the Applicant's evidence that this practice occurred.

21. General control and direction of the policy and affairs of the Respondent Union is vested in a body known as the Representative Body, which consists of 560 representatives. The rules state that the Representative Body shall hold an annual meeting called the Annual Representative Meeting.
22. Bye-law 31 of the rules states that each division shall elect at least one representative to the Representative Body.
23. Mr Lasham, giving evidence for the Respondent, told me that 280 seats are allocated to the divisions, and that the allocation of seats applies to all divisions, whether classed as active, dormant, or inactive. Mr Lasham also told me that once each division has been allocated its initial seat, the remaining seats are allocated across divisions using a weighting formula based on membership size within each division, and that the allocation is approved by the Organisation Committee, on behalf of the Council. I accept Mr Lasham's evidence on these points.
24. Dr Davis, giving evidence for the Applicant, told me that, historically, where one or more seats were allocated to a dormant or inactive division, those seats would be reallocated to a Regional Council, which would otherwise not have any automatic entitlement to representation on the Representative Body. I accept Dr Davis's evidence that this practice occurred.
25. At the Annual Representative Meeting in 2022, a motion was carried which read:

To mandate the Organisation Committee to develop a proposal for removing a reliance on divisions from the articles and byelaws of the Association whilst ensuring local support and organisation of members continues. This proposal must be brought to ARM 2023 for consideration.

26. No proposal was brought to the Annual Representative Meeting in 2023.

### **The Organisation Committee meeting, October 2023**

27. A meeting of the Organisation Committee took place in October 2023. There was some dispute over the discussion and agreed outcomes from the meeting.

28. The minutes provided to me by the Respondent for the purposes of determining the application state:

[...] It was proposed, subject to legal advice, that ARM division representatives could be opened out to all members through an open election in each division area. This could potentially address the lack of diversity in representation at ARM, could result in wider participation and increase in new attendees at the ARM.

The unintended consequences of having an all-member election for ARM were discussed and included the significant implications for regional councils that do not have their own designated seats resulting in very few seats being reallocated to them. Following a wide-ranging discussion where a number of views were expressed, there was a consensus that the proposal should be recommended to Council, subject to relevant legal advice. The secretariat sought clarification at the end of the discussion that the proposal to hold elections online across all divisions would be recommended to Council, subject to legal advice, which was confirmed by the chair.

It was requested that timings be carefully considered to allow regional councils to plan for any changes to the process.

[...]

RESOLVED: That open elections for division ARM representatives should be held online, following appropriate legal advice.

29. Dr Hughes attended the meeting and informed me that he had challenged the accuracy of these minutes at the subsequent meeting of the Organisation Committee in February 2024 and again in April 2024. In his witness statement, Dr Hughes told me that, in respect of the resolution quoted at the end of the extract from the minutes referred to in paragraph 28, there was no vote taken on the matter, and that committee members, while generally supporting the concept in principle, raised concerns about potential adverse consequences.
30. On behalf of the Respondent, Mr Lasham told me about the process followed by the Respondent to attempt to resolve the disagreement. This included inviting Dr Hughes, and all members of the Organisation Committee, to view the recording of the meeting. Mr Lasham told me that he, along with another member of staff, and 4 voting members of the committee, viewed the recording in order to redraft the minutes. Following this, 2 further voting members of the committee agreed the redrafted minutes, while 2 voting members of the committee did not. For the avoidance of doubt, this resulted in 6 voting members of the committee agreeing the minutes, and 2 voting members of the committee not agreeing the minutes. While unanimous agreement of minutes is self-evidently the preferred outcome in such situations, I accept that there will be occasions when this is not possible, and I find that the procedure followed by the Respondent was thorough and reasonable in seeking agreement of the

minutes. Moreover, the content of the minutes is not at odds with Dr Hughes' account referred to at paragraph 29. The minutes explicitly note a wide-ranging discussion in which unintended consequences were raised. They record that the chair confirmed a consensus to proceed subject to legal advice, and they do not state that a formal vote occurred.

31. Therefore, I am satisfied that the minutes accurately record what was agreed at the October 2023 meeting of the Organisation Committee, namely that the Committee reached a consensus to recommend to UK Council, subject to legal advice, that open elections for divisional representatives to the Annual Representative Meeting should be held online.

#### **The UK Council meeting, 15 November 2023**

32. A meeting of the UK Council took place on 15 November 2023.
33. Agenda item 13 was titled "Your Local BMA". The minutes record that the UK Council heard a presentation updating it on "the local structures consultation".
34. Agenda item 16 was titled "Organisation Committee report". The report had been authored by 2 members of the Respondent Union's staff (one of whom was Mr Lasham), and the Co-Chairs of the Organisation Committee.
35. The report made three recommendations to the UK Council, the third of which read:

RECOMMENDATION C. That all division ARM representative elections (inactive, dormant and active) should take place through the BMA online nomination and election system and be open to all members in a division area.

36. The minutes of the UK Council meeting on 15 November 2023 record that a discussion took place about how a member intending to stand in an inactive or dormant division might represent the ideas of the members within that division, about the possibility of providing support to digitally excluded members to ensure accessibility and inclusivity, and that holding the elections online would bring policies in line with elections across the Respondent Union.
37. A vote took place which resulted in the UK Council agreeing the recommendation, with 32 members voting for the resolution, 6 voting against the resolution, and 2 abstaining.
38. As a result, elections to the Representative Body for the purposes of attendance at the Annual Representative Meeting 2024 were held online.
39. Mr Lasham told me that the discussion around Agenda item 13, “Your Local BMA” was a discussion subsequent to the motion agreed at the Annual Representative Meeting 2022 (referred to at paragraph 25). He also told me that the discussion and vote around Agenda item 16 was a separate matter, with no direct link to the work taking place subsequent to the motion agreed at the Annual Representative Meeting 2022.
40. In my view, there is no clear and direct link between the motion agreed by the Annual Representative Meeting in 2022 and the UK Council’s decision to conduct divisional representative elections online. The discussion under agenda item 13 (referred to above at paragraph 33) related to work arising from the 2022 motion, whereas the Organisation Committee report considered under agenda item 16 (referred to above at paragraph 34), and the subsequent Council vote on that item, were discrete matters considered and determined in their own right. I therefore accept Mr Lasham’s evidence on this point, as summarised in paragraph 39.

## **Consideration of the alleged breaches**

41. The Applicant seeks a declaration that the Respondent has breached four of its rules: Article 30, Article 59, Article 60(1), and Article 63. I will take each rule in turn, before considering the application holistically.

### **42. Submissions in respect of Article 30**

42.1. In respect of jurisdiction, the Applicant contends that his disagreement with the Respondent is not a political disagreement. He contends that it is a complaint that the UK Council of the Respondent Union altered the method by which the Representative Body is constituted, without authority under the Articles or Bye-laws. The Applicant relies on the references in section 108A(2) to both the appointment or election of a person to, or the removal of a person from, any office, and, the constitution or proceedings of any executive committee or any decision-making meeting, to argue that his complaint is “the paradigm case” for the CO’s jurisdiction.

42.2. In respect of the alleged breach of Article 30 specifically, the Applicant submits that the autonomy granted to divisions by Article 30 includes control over how divisions select their representatives. Further, he contends that only the Articles and Bye-laws themselves, or a policy determined by the Representative Body could override that autonomy and impose an electoral method on divisions.

42.3. In addition, the Applicant submits that by virtue of Article 30, divisions are free to govern themselves, and free to make or amend rules. Furthermore, he submits that while the Organisation Committee shall determine the Constitution, the method of election sits outside of the Constitution.

- 42.4. For the Respondent, Mr Cheetham submits that an alleged breach of Article 30 does not fall within the jurisdiction of the CO. He submits that Article 30 is a general rule about the organisation of the Respondent Union, providing for the autonomy of local organisations.
- 42.5. Notwithstanding this position, Mr Cheetham submits that Article 30 has not been breached.
- 42.6. Mr Cheetham contends that the wording of Article 30 prescribes that the autonomy of divisions is subject to the Articles and Bye-laws, and that under the Articles and Bye-laws, the Constitutions of divisions shall be determined by the Organisation Committee, which acts on behalf of the Council.
- 42.7. Therefore, Mr Cheetham contends that, in implementing a recommendation from the Organisation Committee, the Council was acting consistently with the Articles and Bye-laws and was not infringing upon the autonomy of divisions.

**43. Conclusion on Article 30**

- 43.1. The CO's jurisdiction is not a general supervisory jurisdiction over any alleged rule breaches where the subject complained about may relate to one of the matters listed in section 108A of the 1992 Act.
- 43.2. Rather, section 108A allows a member of a union to apply for a declaration that there has been a breach of a rule of the union, where the rule in question relates to one of the listed matters. Those 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;

- 43.3. The test applied by the CO and his predecessors, is whether the rule invoked by an applicant, read objectively and on its face, relates to one of the listed matters. In certain circumstances, the rule may not, on its face, relate to one of the listed matters, but the facts and circumstances of the application may reveal an inherent aspect of the rule, such that it can be correctly characterised as relating to one or more of the listed matters. The facts themselves cannot create a relationship that the rule does not inherently bear.
- 43.4. Therefore, in order to determine the question of jurisdiction in respect of the application before me, I need to decide if Article 30 relates to either the appointment or election of a person to, or the removal of a person from, any office, or to the constitution or proceedings of any executive committee or of any decision-making meeting.
- 43.5. Article 30 provides, on its face, that each division, branch or regional council is free to govern itself, subject to a constitution which shall be determined by the Organisation Committee. Read objectively, it does not relate to the appointment or election to, or removal from, any office, and it does not relate to the constitution or proceedings of any executive committee or decision-making meeting.
- 43.6. Further, I am satisfied that the facts and circumstances of the Applicant's application do not reveal any inherent aspect of Article 30 that would allow it to be correctly characterised as 'relating to'

any of the listed matters. Accordingly, in respect of Article 30, the application is not within the jurisdiction of the CO.

- 43.7. Should I be wrong about the lack of jurisdiction, I would, in any event, not uphold the Applicant's application for a declaration that Article 30 has been breached for the following reasons.
- 43.8. Article 30 creates a distinction between two types of rule, firstly, the 'constitution', which is determined by the Organisation Committee on behalf of UK Council, and secondly, 'local rules' which fall within scope of the local organisations' freedom to govern themselves, which must be submitted to the Organisation Committee for approval before they come into force.
- 43.9. Read as a whole, Article 30 is silent on which topics must fall within 'Constitution', and which may be left to 'local rules'. On a straightforward reading of the Article, it is for the Organisation Committee, when exercising its function to determine the Constitution, to classify a subject (including electoral method) as a matter that belongs in 'Constitution' rather than in 'local rules'.
- 43.10. I accept the Applicant's evidence that, historically, divisions could develop locally appropriate electoral procedures, which would then be considered by the Organisation Committee. In my view, however, that historical practice does not demonstrate that it is a requirement of Article 30 that electoral method be permanently reserved to the second 'local rules' category. Rather, it only shows that the matter had previously been dealt with at 'local rule' level.
- 43.11. Accordingly, I do not accept that Article 30 prevented the Organisation Committee from determining that the method of electing divisional representatives to the Representative Body

should be dealt with as part of the constitution applying to all divisions.

43.12. Therefore, I find that the decision of UK Council, on the recommendation of the Organisation Committee, to impose a new method of divisional representative election to the Representative Body, did not amount to a breach of Article 30.

#### **44. Submissions in respect of Article 59**

##### **44.1. The Applicant's submissions**

44.2. In respect of jurisdiction, the Applicant made the same argument as outlined in paragraph 42.1.

44.3. Although the Applicant's application alleges a single breach of Article 59, he submits that the breach is made out in three distinct respects. Further, the Applicant contends that each of those three distinct respects provides a separate route by which Article 59 was breached.

##### **44.4. Respect 1, policy or procedure**

44.5. Firstly, the Applicant submits that the method of election of divisional representatives to the Representative Body is not a matter of administration, but a matter of policy. Furthermore, he submits that it goes directly to the legitimacy and authority of the Representative Body, and that, therefore, any decision to change that policy is vested in the Representative Body itself under Article 59. Therefore, the decision by the UK Council to introduce a new method of divisional representative election deprived the Representative Body of its authority to determine such a shift in policy, in breach of Article 59.

- 44.6. **Respect 2, the motion agreed by Annual Representative Meeting 2022**
- 44.7. Secondly, the Applicant submits that the motion carried by the Representative Body at the Annual Representative Meeting in 2022 (paragraph 25) expressly mandated the Organisation Committee to develop proposals for electoral reform, and to bring those proposals back to the Annual Representative Meeting in 2023 for consideration. Further, the Applicant submits that, in doing so, the Representative Body brought the matter of electoral reform within scope of the “policy and affairs” of the Respondent Union, such that UK Council had no residual power to act in its place.
- 44.8. **Respect 3, the meaning of the word “composition” in Article 59**
- 44.9. Thirdly, the Applicant submits that the word “composition” in Article 59 is not confined to a headcount or a list of categories. Rather, read with the relevant bye-laws, the Applicant submits that composition denotes an “interlocking constitutional scheme of eligibility, allocation, timing and continuity” that governs who the Representative Body consists of and how that body is created and renewed over time. Further, the Applicant submits that Bye-laws setting eligibility and allocation operate together with Bye-laws setting the timing of elections, so that the electoral method is an element of “composition” itself. Put simply, the Applicant submits that composition is achieved through the combined effect of provisions on who, how many, when, and by what process representatives are selected.
- 44.10. **The Respondent’s submissions**
- 44.11. For the Respondent, Mr Cheetham submits that an alleged breach of Article 59 is not within the jurisdiction of the CO. Moreover, he

submits that Article 59 is an explanation of where power is vested, and that it does not relate to any of the matters listed in section 108A.

44.12. In response to the Applicant's submissions, Mr Cheetham addresses each of the three distinct respects as follows:

44.13. **Reply to respect 1, policy or procedure**

44.14. Mr Cheetham submits that a policy is a set of principles detailing a plan or a course of action, and that the method of electing divisional representatives is not a policy but is in fact a practical process.

44.15. **Reply to respect 2, the motion agreed by Annual Representative Meeting 2022**

Mr Cheetham submits that the UK Council's decision to conduct divisional representative elections to the Representative Body online was entirely unrelated to the motion agreed at the Annual Representative Meeting 2022. Further, he submits that the words of the motion do not expressly refer to the method of election to divisions, and that, in fact, the UK Council discussion of more relevance to the Annual Representative Meeting 2022 motion was the discussion that took place under the heading 'Your Local BMA' (as referred to at paragraph 33).

44.16. **Reply to respect 3, the meaning of the word "composition" in Article 59**

44.17. Mr Cheetham submits that, in its ordinary usage, the word 'composition' refers to the structure of a body. Further, he submits that since there is nothing in the relevant Bye-laws that seeks to define the electoral method, and nothing in the 1992 Act that would

support a broader reading, the word “composition” should not be extended beyond its ordinary usage.

**45. Conclusions on Article 59**

- 45.1. Before addressing the alleged breach of Article 59, I must first address the question of jurisdiction.
- 45.2. Article 59 has two limbs. Firstly, that the general control and direction of the policy and affairs of the Association shall be vested in the Representative Body. Secondly, that the composition of the Representative Body shall be determined in accordance with the Bye-laws. Applying the CO’s established approach to determining jurisdiction, I find that the first limb is a statement about the allocation of policy-making authority and does not, on its face, relate to either the constitution or proceedings of any executive committee or decision-making meeting, or the appointment or election of a person to, or the removal of a person from, any office. In contrast, the second limb does engage the CO’s jurisdiction because, on the face of it, it is actually a rule about the constitution of a decision-making meeting, with composition of the Representative Body expressly tied to the Bye-laws.
- 45.3. I find that the Applicant’s first and second arguments are premised on alleged breaches of the first limb of Article 59, and, consequently do not of themselves fall within the CO’s jurisdiction.
- 45.4. Should I be wrong about that, in the alternative, I would reason that in any event I would not uphold those two arguments on their merits. In respect of the Applicant’s first point, I do not regard the decision to conduct divisional elections by an online process as a shift in policy direction. Furthermore, in respect of the Applicant’s second point, the Annual Representative Meeting 2022 motion did

not expressly address the method by which divisional representatives are elected to the Representative Body, and the fact that both the motion and the later decision affected divisions does not persuade me that the motion was intended to prohibit UK Council from determining an electoral method pending any proposal returning to a future Annual Representative Meeting.

- 45.5. In contrast, the Applicant's third argument relates to the second aspect of Article 59, and as such, does fall within the CO's jurisdiction.
- 45.6. In order to determine this element of the Applicant's alleged breach of Article 59, I must decide whether the term "composition" in Article 59 encompasses only the structural make-up of the Representative Body, or whether it also extends to the electoral method by which divisional representatives are chosen.
- 45.7. On its face, the phrase "whose composition shall be determined in accordance with the bye laws" identifies "composition" as the matter to be determined, while the words "in accordance with the bye laws" prescribe the manner in which that determination must be made. Applying a literal reading, the next step is to look to the Bye-laws themselves.
- 45.8. In my view, the meaning of "composition" can be understood by considering the nature of the matters which the Bye-laws do address, including who the Representative Body shall consist of, the allocation of seats, and the timing of elections. These are all matters concerned with the structural make-up of the Representative Body. By contrast, the Bye-laws do not address matters such as the method by which divisional representatives are elected. Taken together, this supports the interpretation that "composition", in the context of Article 59, is concerned with the

structure of the Representative Body rather than the electoral method by which its members are chosen. Accordingly, I find that the term “composition” in Article 59 does not extend to the electoral method by which divisional representatives are chosen.

45.9. I therefore find that the decision by the UK Council, on the recommendation of the Organisation Committee, to impose a new method of election to the Representative Body on divisions, did not amount to a breach of Article 59.

**46. Submissions in respect of Article 60 and Article 63**

46.1. It was agreed by the parties that an alleged breach of Article 60 or Article 63 could fall within the jurisdiction of the CO, and therefore no submissions in respect of jurisdiction were made.

46.2. The Applicant submits that the imposition by the Respondent’s UK Council of a new electoral process without the consideration or decision of the Representative Body at an Annual Representative Meeting, breached Articles 30 and 59, thereby amounting to an ultra vires act. Further, he argues that breaches of Articles 60 and 63 are self-evident and that the body of members who met under the auspices of “the Representative Body” was not capable of being a properly constituted Representative Body. Therefore, when that body of members held a meeting called “the Annual Representative Meeting 2024”, it was not, under the Respondent’s rules, a properly constituted Annual Representative Meeting, because the Representative Body on which it depended had not been properly formed. Consequently, the Applicant submits that the validity of its proceedings is compromised. That is why, in his submission, the alleged breaches of Articles 60 and 63 are “self-evident”.

46.3. For the Respondent, Mr Cheetham submits that there was no breach of Articles 60 or 63 because the Annual Representative Meeting took place and was not prevented from occurring. Further, the Respondent sought to highlight a distinction between valid disagreement with what may or may not occur at a meeting, and the suggestion that what may or may not occur at a meeting could support an argument that the meeting did not take place, therefore breaching the relevant Articles. Mr Cheetham submits that Article 63 concerns the business of the Annual Representative Meeting and therefore, the introduction of a new system for electing representatives to the Annual Representative Meeting could not, of itself, affect the conduct of business at the Annual Representative Meeting so as to constitute a breach of that Article.

**47. Conclusions on Article 60 and Article 63**

47.1. The alleged breaches of Articles 60 and 63 are advanced by the Applicant solely on a consequential basis. The Applicant's submission is that if Articles 30 and/or 59 were breached, Articles 60 and 63 would necessarily also have been breached in consequence. The Applicant did not submit that a standalone breach of either Articles 60 or 63 occurred.

47.2. Therefore, since I have found no breach of either Article 30 or Article 59, I find that the decision by the UK Council, on the recommendation of the Organisation Committee, to impose a new method of election of divisional representative to the Representative Body, did not amount to a breach of Article 60 or Article 63.

**48. Overall assessment**

48.1. Although I have addressed the application before me by reference to the individual Articles relied upon, I have not treated the

application as a collection of unrelated points. Put more simply, the Applicant's submission is that the November 2023 decision to move to an electronic system for the election of divisional representatives to the Representative Body caused a constitutional defect which then invalidated later actions taken by the Respondent, so that the Representative Body and the Annual Representative Meeting 2024 were not properly constituted and any decisions taken by that meeting should therefore be considered null and void. I have considered the Applicant's application holistically, however, in accordance with the jurisdiction of the CO, it requires at least one breach of rule to be established in order to uphold or partially uphold the application.

- 48.2. I have found that the initial alleged breach of Article 30 is not within the CO's jurisdiction, and, in any event, I have found no breach, even if I were deemed to be wrong on the jurisdictional point.
- 48.3. In relation to Article 59, I have found that it is only partially within jurisdiction. I have found that the aspect of Article 59 relating to the role of the Representative Body in determining the policy and affairs of the Respondent Union is not within the CO's jurisdiction, and, in any event, I have found that this aspect of Article 59 has not been breached. I have found that the aspect of Article 59 relating to the composition of the Representative Body is within the CO's jurisdiction, but I have not upheld the alleged breach of this aspect of the Article.
- 48.4. Therefore, since the initial breaches alleged by the Applicant are not made out, his further complaints under Articles 60 and 63, which are by their nature, consequential upon the alleged initial breaches, cannot succeed.
- 48.5. In conclusion, the application is therefore not upheld.

## **Final conclusion and enforcement**

49. For the reasons set out in this decision, I have found that none of the Articles relied upon by the Applicant have been breached. The application for a declaration under section 108A of the Trade Union and Labour Relations (Consolidation) Act 1992 is therefore not upheld.
50. Since I have not upheld the application, there is no basis upon which to make an enforcement order under section 108B of the 1992 Act, and no consideration of enforcement arises.

## **Observation: Use of AI in proceedings before the Certification Officer**

51. As discussed at paragraph 8, after the issues to be resolved were agreed at the CMM, Mr Cheetham provided a further written submission and the Applicant subsequently also submitted a written response. The Applicant's further and final submission included a large number of citations, which he submitted supported a variety of propositions. On review, I found that a number of those citations did not appear to support the propositions for which they were cited. The Certification Office therefore asked the Applicant to provide copies of any authorities he wished to rely on. The Applicant replied that he no longer wished to rely on the authorities but, in any event, wanted me to be aware of their existence.
52. In light of this correspondence, at the outset of the hearing, I raised the question of whether either party had used AI tools in preparing their submissions. I was grateful for the Applicant's candour in confirming that he had used an AI tool to assist with his response to the Respondent's supplementary submission, and to identify potential legal precedent. I

explained my view that it is understandable that parties may wish to use AI tools in preparation, but that parties remain responsible for the accuracy and relevance of any material which they choose to rely upon and submit.

53. I further explained that where a party seeks to rely on propositions said to arise from legal authorities, it is important to ensure that those authorities do in fact support the propositions relied upon. For the purposes of determining this application, the Applicant confirmed that the citations were no longer relied upon, and I have not taken them into account.
54. I offer the following observations, which may be of assistance to parties in future cases. My observations are not directed to any party personally, and for the avoidance of doubt, they do not form part of my reasoning on the issues determined in this decision. They are offered because AI tools are increasingly accessible and I understand that parties may wish to use them to assist with drafting and research. They reflect my view of the capabilities and limitations of AI tools as they are generally available at the time of this decision.
55. Against that background, my observations are that when using AI tools, parties should:
  - 55.1. Disclose the fact of their use of AI to both the Certification Officer and the other party, particularly where the output is relied upon as legal analysis or as identifying relevant authorities. Transparency helps ensure that both parties can engage fairly with the material and that any misunderstandings can be identified early;
  - 55.2. Proceed on the basis that responsibility for submissions remains their own. The use of AI does not transfer responsibility for accuracy, completeness, relevance, or fair presentation away from the party and to the AI tool itself. Where an AI tool has been used to draft text, summarise evidence, or make legal propositions, the

party seeking to rely on that material should check it carefully and be prepared to explain how it is supported by the rulebook, the evidence, or legal authority;

- 55.3. Avoid relying on summaries alone where an AI tool suggests that a particular proposition arises from a legal authority. If a party wishes to rely on an authority, they should read the authority in full, confirm to their satisfaction that it does indeed support the specific proposition advanced, and be prepared to provide the authority if requested. This is important because AI tools can hallucinate cases, or attribute propositions to cases that do not support them;
- 55.4. Be mindful of the limitations of AI tools, including the potential for responses to reflect the framing of a question or prompt, rather than serving as a critical check, a phenomenon sometimes described as “automation bias” or “confirmation seeking behaviour”.

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**