

D/3-4/26-27

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

Barnes & Dench

(Applicants)

and

Transport Salaried Staffs' Association

(Respondent)

Date of Decision:

14 May 2026

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Decision

1. Upon application by Messrs Dave Barnes and Andrew Dench (“the Applicants”) 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 the Applicants’ application for the declarations sought for the reasons given in paragraph 24.

Background

2. By application under section 108A of the Trade Union and Labour Relations (Consolidation) Act 1992, submitted on 11 June 2025, the Applicants made complaints in relation to the Respondent’s 2025 President and Treasurer elections.
3. The Applicants’ application was acknowledged by my office on 30 June 2025.
4. The Respondent was notified of the Applicants’ application by my office on 3 July 2025, and the Respondent duly acknowledged their receipt on 17 July 2025.
5. The Applicants confirmed their complaints as follows:

Complaint 1

That on or around 30 April 2025 the union breached Rule 9.2 by not publishing the election results for the posts of President and Treasurer thereby not allowing the successful candidate take office from the first day of the month following the Annual Delegate Conference in the year in which they are elected.

And,

Complaint 2

That on or around 8 May 2025 the union breached Rule 10.1(m) when our emergency motion, which directly addressed the withholding of election results, was not put to the TSSA Annual Conference before its adjournment. This is a breach of the members' rights under TSSA rules, which require that motions submitted in accordance with proper procedure are debated and voted upon at Conference. The failure to consider our motion deprived our branch and others of the right to challenge an undemocratic decision.

6. A Case Management Meeting (CMM) took place remotely, by Video Conference, on 22 April 2026 and was attended by both the Applicants and Mr Stuart Brittenden KC of Counsel accompanied by his instructing solicitor (Mr Jamie Jaskolka) from Morrish Solicitors LLP, on behalf of the Respondent. Also, in attendance from the union were Ms Maryam Eslamdoust (General Secretary), Ms Catherine Poole (Executive Committee member) and Ms Cheryl O'Brien (member of the Standing Orders Committee, at the relevant time).
7. The Hearing took place on 29 April 2026, by Video Conference. The Applicants represented themselves and they submitted a skeleton argument. The Respondent was represented by Mr Stuart Brittenden KC of Counsel, instructed by Morrish Solicitors, who submitted a skeleton argument.
8. Mr Barnes submitted a witness statement and gave oral evidence. Mr Dench did not submit a witness statement and nor did he give any evidence. The Applicants also submitted witness statements from Mr Andy Bain, Mr Duncan Bates and Mr Paul Mangan, all of whom gave oral evidence.
9. The Respondent submitted witness statements from Ms Maryam Eslamdoust (General Secretary), Ms Catherine Poole (Executive Committee member) and Ms Cheryl O'Brien (member of the Standing Orders Committee, at the material time). Both the Respondent union's General Secretary (Ms Eslamdoust) and Ms O'Brien gave oral

evidence. Ms Poole did not give oral evidence, the Respondent having decided not to call her to give her evidence.

10. Before the hearing, there was a bundle of documentary evidence consisting of 370 pages.

The Relevant Statutory Provisions

11. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:

108A Right to apply to Certification Officer

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).

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;

The Relevant Rules of the Union

12. The Rules of the Union which are relevant for the purposes of this application are:

NATIONAL RULES

4 MEMBERS

4.1 Qualifications for membership

Membership of TSSA is open to

(a) Anyone working in Administrative, Clerical, Supervisory, Managerial, Professional, Technical, Research, Executive and allied grades and positions including all salaried staff of all undertakings operating directly or indirectly in the transport and travel industry (with the exception of those employed as train drivers employed by any undertaking where TSSA is not party to an existing collective agreement covering such employees).

9.2 ELECTION OF PRESIDENT, TREASURER AND EXECUTIVE COMMITTEE

(a) The members of the Executive Committee shall be elected by individual vote of the members in electoral districts formed for that purpose, and subject to the provisions of Rule 9.2(b) and this Rule.

The President and Treasurer shall hold office for a period of two years and be eligible for re-election if nominated. Their election shall be by individual vote of the members and they shall take office from the first day of the month following the Annual Delegate Conference in the year in which they are elected.

...

10 ANNUAL AND SPECIAL DELEGATE CONFERENCES

10.1 ANNUAL DELEGATE CONFERENCE

...

Standing Orders Committee

(m) A Standing Orders Committee of five members shall be elected in each year by the Annual Delegate Conference, in the manner set out in Rule 11.4, and shall act in respect of all Delegate Conferences (other than that by which they were elected) up to and including the next Annual Conference.

Members of the Executive Committee shall not be eligible for nomination to the Standing Orders Committee during their period of office.

No delegate to a Delegate Conference shall be permitted to be a member of the Standing Orders Committee in respect of the business of that Conference.

Any casual vacancies in the Standing Orders Committee shall be filled from the candidates at the last election in order of the highest number of votes received.

No member shall serve on the Standing Orders Committee for more than a consecutive period of six years, nor shall they be eligible for re-nomination until a further period of three years has elapsed.

All reasonable expenses in connection with the Standing Orders Committee shall be borne by TSSA's Central Fund.

The Standing Orders Committee shall scrutinise all Resolutions and Amendments submitted for the Conference Agenda, and subject to any directions given from time to time by Conference shall co-ordinate them for final submission to the Conference.

The Standing Orders Committee shall give special consideration to all matters of urgency referred to them and make such recommendations, regarding the same and for the conduct of Conference business as they may consider necessary.

They may advise the suspension or modification of Rules and Regulations for the conduct of Conference. They shall examine the credentials of any Delegate which may be challenged and shall report the result to Conference.

Executive Committee's Report and Accounts

(n) The Report and Accounts shall be sent to Branches and SOGs no later than 4 weeks before the date of commencement of Conference.

Questions relating to the Report shall be submitted to Head Office in writing not later than 2 weeks before the date of commencement of Conference each year and the Executive Committee's replies (together with the questions themselves)

shall be circulated in writing to delegates on the first day of each Annual Conference.

In the event of postponement or cancellation of Conference then the original date of commencement of Conference shall apply. The Report and Accounts shall be sent to Branches and SOGs, and the Executive Committee's replies to questions (together with the questions themselves) shall be circulated to all Branches and SOGs within 7 days of the original date for commencement of Conference.

Adjournment of Conference

(o) A Conference may adjourn to such date, time, and place as it may decide.

CONFERENCE REGULATIONS AND PROCEDURES

(8) Emergency Motions

Branches may submit motions on matters that arise too late to have been the subject of a legitimate motion or amendment in the Agenda. There are three criteria which govern the eligibility of emergency motions for acceptance.

- a) Where a matter arises in time, an emergency motion must be discussed at a properly constituted Branch meeting. If carried by that meeting it must be certified and dated by the Chair and Correspondence Secretary at that meeting.
- b) Where a matter arises after the last Branch meeting but before the delegates' departure for Conference, an emergency motion must bear the signature of two Branch Officers who should, wherever possible, be the Chair and Correspondence Secretary.
- c) Where a matter arises after the delegates' departure for Conference, an emergency motion may be submitted bearing the signatures of the Branch delegates. Delegates should bear in mind that such emergency motions should reflect the views of the Branch.

Emergency motions must be submitted to the SOC. In the case of (a) and (b) the motions must be in the hands of the SOC by midday on the Sunday of Conference at the latest. In the case of (c) the motions must be submitted as soon as possible.

SOC has stated that emergency motion should be submitted by midday on Wednesday 14th May in order to be debated at Conference. Motions received later will be considered by SOC but will only be debated in exceptional circumstances, Motions not debated will be remitted to the EC.

Findings of Fact

13. In early 2025 the Respondent union – the TSSA - opened an election for the positions of President and Treasurer.
14. On 16 April 2025, prior to the close of voting, a member of the Respondent union submitted a complaint about a video posted by or on behalf of two candidates in the President and Treasurer elections.
15. On 30 April 2025, it came to light that one of the candidates (Mr Bates) for the election of President was potentially not eligible to stand under Rule 4.1(a) of the Respondent union's Rulebook.
16. Consequently, given the complaint received and concerns regarding the eligibility of a candidate in the elections, on 1 May 2025 an emergency meeting of the Respondent union's Executive Committee (EC) was held at which the EC decided to instruct independent legal counsel (Aileen McColgan KC) to conduct an investigation into the complaint.
17. Subsequently, on 6 May 2025 another member of the Respondent union submitted a complaint that two of the candidates (Bates and Mangan) in the President and Treasurer elections had acted in breach of the Candidates' Code in relation to various campaign activity during the election, including videos being posted

18. On 7 May 2025, the Respondent union informed the candidates and its independent scrutineer (CIVICA) of its intended course of action.
19. In or around June 2025, a meeting of the Respondent union's EC confirmed that the President election would be re-run and nominations reopened in the first week of July 2025.
20. The Respondent union's Annual Delegates Conference (the 2025 Belfast Conference) took place on 23 – 25 May 2025.
21. On 25 May 2025, the Respondent union's Conference exercised its powers under Rule 10.1(o) to adjourn its conference to another occasion.
22. On or around 13 August 2025, Mr Mangan, a nominee for election to Treasurer, withdrew his candidacy for personal reasons.
23. The Conference was scheduled to resume on 29 November 2025. However, it was postponed until June 2026.

Reasons

24. I now address each complaint in turn, as follows:

Complaint 1

Breach of Rule 9.2

That on or around 30 April 2025 the union breached rule 9.2 by not publishing the election results for the posts of President and Treasurer thereby not allowing the successful candidate take office from the first day of the month following the Annual Delegate Conference in the year in which they are elected.

24.1. This complaint is NOT upheld.

24.1.1. The Applicants submit that the Respondent union failed to declare the results of a completed election. They contend that no rule permits the withholding of results or nullifying an election without a transparent process. The Applicants assert that the Respondent union relied on

inconsistent justifications, including an investigation and alleged candidate ineligibility, to vindicate their actions. In particular, the Applicants assert that Duncan Bates was eligible and his exclusion on grounds of his alleged ineligibility was unsupported by a transparent determination process. Further, the Applicants submit that no proper adjudication was carried out in accordance with the Respondent union's Rulebook. Further, the Applicants contend that no investigation was concluded transparently and no findings have to-date been published. Moreover, they submit that there is no rule permitting suspension of election results pending an investigation. In addition, the Applicants assert that the re-run of the President election relied on disputed grounds and that the re-run of the Treasurer election has no clear justification and as such, both constitute a breach of Rule 9.2. In summary, the Applicants emphatically conclude that a 'democratic deficit' persists within the Respondent union as highlighted by the Respondent union's actions regarding the 2025 President and Treasurer elections.

24.1.2. The Respondent submits that the election for the office of President was subject to a fatal irregularity, namely the inclusion of a candidate who was not eligible to stand for office. Consequently, this operated to vitiate the election for that position, rendering it a nullity and no result could be validly declared in those circumstances. Moreover, in relation to the election of Treasurer, two complaints were submitted, requiring investigation in order to determine whether or not there was a case to answer and, if so, in the event of breach whether either candidate should be disqualified from the election. These irregularities came to the TSSA's attention before the results were declared and the Respondent union therefore took appropriate and proportionate action in pausing; thereafter, re-running these elections.

24.1.3. In evidence before me, the lead Applicant (Mr Barnes) accepted that if the investigation outcome had been seen and/or known, then no breach nor complaint before me would exist. Ms Eslamdoust, the

General Secretary of the Respondent union, evidenced that her EC had considered Mr Bates ineligible to stand for President and had accepted Mr Mangan's Treasurer candidacy withdrawal. On balance, given such evidence, I find that the Respondent union's EC was right to determine that the elections for both positions be re-run. Further, Ms Eslamdoust also confirmed that the EC's commissioned independent report by leading counsel (McColgan KC) had been concluded, but neither she nor the EC had seen or even read it. According to her, that no longer mattered since the EC had found Mr Bates ineligible and Mr Mangan had withdrawn. In stark contrast, in evidence before me, Mr Bates, on behalf of the Applicants, who had been deemed an 'ineligible' candidate for President by the Respondent union, sought to persuade me of his eligibility to stand as a candidate by explaining his employment status as a 'train driver trainer', notwithstanding the documentary evidence before me designating him as a 'train driver'. In addition and for completeness, Mr Mangan, a candidate for Treasurer, in his evidence before me, candidly confirmed that he had withdrawn his candidacy for Treasurer; albeit he had subsequently attempted to rescind his candidacy withdrawal. Unfortunately, his withdrawal had been accepted and steps towards a re-run election commenced, as explained in evidence by Ms Eslamdoust,

- 24.1.4. Given the evidence before me, including the concessions made by the Applicants as to the reasonableness, appropriateness and proportionality of the actions taken by the Respondent union (in particular its EC), in such circumstances, it is abundantly clear that Mr Bates' eligibility for his candidature was in question and Mr Mangan had withdrawn his candidature. Whilst Rule 9.2(a) of the TSSA Rulebook provides that the President and Treasurer 'shall hold office for a period of two years, and that "their election shall be by individual vote of the members and they shall take office from the first day of the month following the Annual Delegate Conference in the year in which they are elected", such was complied with by the Respondent union.

Furthermore, in order to be eligible to stand as a candidate in an election, it is essential that a candidate satisfies the membership eligibility requirements as set out in Rule 4.1 and more specifically, Rule 4.1(a) clearly sets out a range of job roles where a post-holder would be eligible to apply for membership provided that they were employed in "... undertakings operating directly or indirectly in the transport and travel industry (with the exception of those employed as train drivers employed by any undertaking where TSSA is not party to an existing collective agreement covering such employees)". Whilst there was a fascinating debate in evidence before me as to 'when is a train driver not a train driver?', the inconsistency between the documentation before me stating that Mr Bates remained a train driver, according to his employer and Mr Bates' own evidence where he explained his employment status as a non-train driver. In any event, Mr Bates' employer did not recognise the Respondent union and as made very clear at our Case Management Meeting, it is not within the scope of the complaints before me, for me to determine whether Mr Bates was eligible to stand or not. Accordingly, Rule 9.1(c) operates to automatically disqualify a member from being elected to the EC if they do not comply with the membership eligibility requirements. Praying in aid of such a conclusion, Leading Counsel for the Respondent union provided me with a ream of authority (cf. Sillars v. Amalgamated Engineering Union (1951); Brown v. AUEW [1976] ICR 147; Macreadie v CPSA (1986); Veness v. NUPE [1992] ICR 193; Douglas v GPMU [1995] IRLR 426; and, AB v. CD [2001] IRLR 808, which illustrate and support the point that the validity of the election of a candidate is a core matter and where rules fail to make express provision for what is to be done in such circumstances, then rules can be implied by reason of necessity (USDAW v Tesco Stores plc [2025] ICR 107 SC; per Lord Leggatt at pp.102 – 108). Further, in fact where a nullity arises, the election should be held again, as guided by Brown v. AUEW [1976], per Walton J. at pp. 159E – 160E). Nevertheless, the Respondent union's Rulebook permits under Rule 3, its EC to "decide how to deal with any matter not provided for in

these Rules...”. Rule 9 also confers upon the EC the power and duty to “manage and supervise the affairs” of the union without limitation, including the conduct of elections. In AB v CD [2001] IRLR 808 the finality of the election cannot validate an election which was a nullity because it was not conducted in accordance with the Respondent union rules. Therein, in my view and in congruence with the array of authorities on this point before me, I concur that there is a distinction to be drawn between the period prior to the declaration of the election result and/or receipt of the scrutineer’s report and once the result has been declared. Notably, where the Respondent union is put on notice of a potential irregularity before the result is declared, it has discretion on how to act where the circumstances so justify. As in the instant application before me, the Respondent union sought to act once notified of alleged irregularities and suspended the declaration of the apparent result, pausing the election, pending an investigation into the circumstances of the election. Thereafter, the Respondent union’s EC having deemed a candidate (i.e. Bates) invalid, such necessitated a re-run of that election. Similarly, a withdrawn candidate (Mangan) has no place of standing to complain, when he acts of his own volition, for good personal reasons, to remove himself from the election. As a result, no breaches by the Respondent union occur and no ‘democratic deficit’ as complained of, exists.

24.1.5. For these reasons, complaint 1 is not upheld.

24.1.6. However, for the avoidance of any doubt, I do not accept that the report of the independent counsel (McColgan KC) has not been seen, nor read. I find it incredulous that a General Secretary of a union whose EC commissions such a report and knows that that investigation has concluded and its report submitted, that neither the General Secretary, nor its EC, has considered it. It is good trade union governance for such reports once commissioned and concluded, to be considered by the commissioning EC and thereafter, for that EC to consider what next steps ought to be taken

in respect of those who were involved and its broader membership as a whole. In short, as Mr Dench aptly put it, when questioning the Respondent union's General Secretary, 'the [union's] standard vetting procedures' had failed and not publishing an EC commissioned investigation raises suspicions and genuine concerns. Consequently, in order to avoid such suspicions and genuine concerns in future, transparency remains paramount and drawing a conclusion under matters investigated is reasonably expected by those it involved and concerned as well as its union's membership as a whole.

Complaint 2

Breach of Rule 10.1(m)

That on or around 8 May 2025 the union breached rule 10.1(m) when our emergency motion, which directly addressed the withholding of election results, was not put to the TSSA Annual Conference before its adjournment. This is a breach of the members' rights under TSSA rules, which require that motions submitted in accordance with proper procedure are debated and voted upon at Conference. The failure to consider our motion deprived our branch and others of the right to challenge an undemocratic decision.

24.2. This complaint is NOT upheld.

24.2.1. The Applicants contend that a valid emergency motion was not debated at Conference. This deprived members of the ability to challenge the Executive Committee. They submit and rely upon a pattern of conduct which they contend highlights that the Respondent union's actions demonstrate a pattern of withholding results, lack of transparency and suppression of democratic accountability.

24.2.2. The Respondent asserts that Complaint 2 is advanced on a misreading of the Rulebook. Namely, that Rule 10.1(m) does not impose a contractual obligation on the Respondent union to ensure that every emergency motion submitted must be (i) placed before Annual Delegates' Conference; or (ii) debated; or (iii) voted upon. In

short, the Respondent contends that in circumstances where Conference exercises its democratic right to adjourn to another occasion, it is axiomatic that all of the business has not been dealt with. As a consequence of the lack of time to debate all motions, on 25 May 2025, the Respondent union's conference delegates voted to reconvene their Conference at a later date.

24.2.3. The evidence before me was that the Applicants' motion (known as EM 5) is still pending before the Respondent union's forthcoming postponed conference, to be held in June 2026. Therefore, this complaint (complaint 2) is misconceived for the reasons that no breach nor threatened breach has occurred at all yet. Mr Bain, giving evidence for the Applicants, as the Chair of Conference's Standing Orders Committee, explained the process of managing the business of the Respondent union's Annual Conference and described the 2025 Conference as 'a bit of a disaster' by the disruptions and by atypically failing to transact 50—60% of its Conference business. The latter was reaffirmed by Ms O'Brien, giving evidence on behalf of the Respondent, as a member of the Standing Orders Committee and ad hoc chair for the last day of the 2025 Annual Conference in the absence of Mr Bain. In any event, both these witnesses confirmed that the Applicants 'EM 5' motion remained live and that it is a matter for its Conference in June 2026 to determine whether this motion (EM5) is heard or not.

24.2.4. In addition, and for completeness, complaint 2 is erroneously predicated on propositions which are not contained in, nor could be implied within Rule 10.1(m). Namely, Rule 10.1(m) does not, as leading Counsel for the Respondent union submits, impose a contractual obligation on the Respondent union to ensure that every emergency motion submitted must be placed before Annual Delegates' Conference nor even debated and/or voted upon. That is not how the Rule is framed. Rule 10.1(m) merely operationalises on a contingent and subordinate basis to Rule 10.1(o) which, as leading

Counsel for the Respondent opines, expressly provides that “A Conference may adjourn to such date, time, and place as it may decide”. In circumstances where, as occurred in the instant application before me, the Respondent union’s Conference exercises its democratic right to adjourn and remits its outstanding conference business to its next Annual Conference, there exists no breach of its Rules.

24.2.5. For these reasons, this complaint is not upheld.

Remedy

25. The Applicants sought declarations that Rules 9.2 and 10.1(m) were breached. Given my decision above and for its reasons, no declarations apply.

Conclusion

26. In conclusion, this application is a timely reminder that trade union rules fall to be interpreted in accordance with what a reasonable trade union member would understand the words to mean, as was long-established in Heatons Transport (St Helens) Limited v Transport General Workers Union [1973] AC 15 and reaffirmed more recently in Kelly v Musicians’ Union [2020] IRLR 809 and which on the face of it is what both the union members and common sense would have expected (McVitae v UNISON [1996] IRLR 33).

27. Moreover, in the interests of good trade union governance, it ought to be for a union with good cause to cancel a defective election, at least if the result of the election has not been declared (Brown v Amalgamated Union of Engineering Workers [1976] ICR 147).

28. For these reasons, the Applicant's complaints are not upheld and are dismissed.

S T Hardy

STEPHEN HARDY

The Certification Officer