

**SD/2/26-27**

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

**Lytham**

Applicant

and

**Union of Shop Distributive and Allied  
Workers**

Respondent

**Date of Decision**

**21 April 2026**

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## Decision

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

I find that William Lytham’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. William Lytham is a member of Union of Shop Distributive and Allied Workers (“the Union” or “Respondent”). They first submitted an application for a declaration that there has been a breach of the rules of the Respondent on 11 February 2026.
3. On the application form to the Certification Office, the Applicant summarised the complaint as:

The union breached Rule 1 (duty to act fairly) and Rule 5 (misapplication of conflict rule) through a coordinated, three-stage failure.

Stage 1 – Coercion: On 12 September 2025, Area Organiser Angie Dewing pressured me into a mandatory internal investigation, insisting I “had to” disclose names of reps I believed were colluding with Tesco management. A signed witness statement confirms this coercion. I complied under duress, expressing fear for my safety.

Stage 2 – Punitive Refusal: Within hours, before I submitted my full evidence, Senior Legal Advisor Daniel Cook refused assistance, citing the "conflict" created by the very information Ms. Dewing solicited. Phone records prove the immediate coordination.

Stage 3 – Sham Appeal: Deputy Head of Legal Services Steve Mitchell took over a month to respond, only after threats of escalation. His decision merely rubber-stamped the initial refusal, repeatedly referencing Daniel Cook and admitting he lacked full evidence, yet still judging my case's merits. He never conducted a fresh, impartial review.

This three-stage process – coercion, punitive refusal, and rubber-stamp appeal – was fundamentally unfair. It constitutes whistleblower retaliation for reporting internal misconduct, breaching Rule 1. The misuse of Rule 5 to punish my cooperation was a clear misapplication of the rule.

4. The Applicant was offered a discussion by telephone with a member of the Certification Officer's team to discuss the jurisdiction of the Certification Officer (CO). A telephone call subsequently took place on 23 March 2026. During the telephone call, the process of a jurisdictional sift was explained, and the Applicant indicated that he may wish to pursue this option.
5. On 24 March 2026, the Certification Office wrote to the Applicant to inform them that a preliminary view had been reached that the application did not fall within the jurisdiction of the CO.

6. The letter explained to the Applicant that the CO had delegated to me, as the Assistant Certification Officer (ACO), responsibility for determining questions of jurisdiction arising at the stage of initial consideration of applications. In light of the preliminary view that the application did not fall within the CO's jurisdiction, the Applicant was informed that they had two options:
  - 6.1. **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,
  - 6.2. **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.
7. 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.
8. On the same date, 24 March 2026, the Applicant confirmed their preference as option 2 and submitted a final submission addressing the CO's jurisdiction. The Applicant also submitted supporting evidence in the form of word documents, PDF documents, and image files. Although I have not found it necessary to refer to the supporting evidence in this jurisdictional sift decision, I have carefully considered everything the Applicant submitted.
9. For the avoidance of any doubt, because the application has not been accepted for determination by the CO for want of jurisdiction, there has been no correspondence with the Respondent 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:

### **Rule Usdaw Rules of Legal assistance**

1. Usdaw has complete discretion on whether to grant or to continue legal assistance to its members or their families. We will exercise that discretion fairly and consistently in accordance with these rules.

5. Legal assistance may be refused or withdrawn in any of the following circumstances (the list is not exhaustive):

- If you cease to be a member.
- If you are in arrears of membership contributions.
- If you are in breach of the Union's rules.

- If your claim brings you into conflict with the Union; its policies; its ethos; or officers.
- If you have instructed or taken legal advice outside the Union.
- If you instruct or take advice from any other legal representative.
- If you have been dealing with a claim yourself or through another representative and you ask us to take over conduct of it.
- If you reject the reasonable advice of the Union appointed representative as to the conduct and/or settlement of your claim.
- If you fail to provide reasonable instructions or fail to provide instructions at all.
- If you appear to have no cause of action and/or your claim does not enjoy reasonable prospects of success and/or it is an abuse of process.
- If you behave in a manner which has or is likely to destroy trust and confidence between you and your representative.
- If you require the Union or its solicitors to act improperly.
- If you deliberately mislead the Union or its solicitors or provide false information or if all or any part of the claim is fundamentally dishonest.

- If the necessity for legal advice has been caused by drunkenness, drug use, wilful neglect of duty or other misconduct or by any criminal act on your part.
- If you fail to co-operate.
- If you insist upon dealing with the claim in a way that is significantly disproportionate to the amount or issues involved.
- If a claim made against the Union, its employees, Executive Council, officers and representatives

## **The Applicant's submissions**

12. The application concerns an alleged breach of the rules of the Respondent Union in respect of the handling of the Applicant's request for legal assistance in relation to Employment Tribunal proceedings against their former employer. The Applicant alleges three related but distinct failures.
  - 12.1. That an Area Organiser pressured the Applicant on 12 September 2025 to disclose the names of union representatives whom the Applicant believed were colluding with management.
  - 12.2. That legal assistance was refused within hours, before the Applicant had provided full evidence, on the basis of an asserted conflict of interest.
  - 12.3. That an appeal was later rejected without a fresh and impartial review.
13. The rules relied upon are Rule 1 and Rule 5 of the Respondent Union's "Rules of Legal Assistance".

#### **14. Rules of Legal Assistance: Rule 1**

14.1. In respect of Rule 1, the Applicant alleges that the rule was breached because the Union's discretion in the granting or continuing of legal assistance was not exercised fairly and consistently in accordance with the rules. The Applicant alleges that the process involved coercion on 12 September 2025, when the Applicant says an Area Organiser insisted that the Applicant had to disclose names of representatives despite the Applicant's expressed fears for safety. This was followed on the same day with a refusal of assistance before the Applicant had sent full evidence, and was followed by an appeal decision which the Applicant contends merely rubber-stamped the original refusal and was made despite an admission that full evidence was lacking.

14.2. In respect of jurisdiction, the Applicant submits that the rule is within the CO's jurisdiction because the complaint does not concern the refusal of legal assistance itself, but the way in which the decision was made by the Respondent's Legal Services department, which the Applicant describes as a decision-making body. The Applicant relies expressly on section 108A(2)(d), contending that Rule 1 was breached in the proceedings of that body because the process was neither fair nor consistent. The Applicant does not make any other explicit jurisdictional submission in respect of any other listed matter in section 108A in relation to Rule 1, although the Applicant characterises the refusal as punitive and as retaliation against him for being a whistleblower.

#### **15. Rule of Legal Assistance: Rule 5**

15.1. In respect of Rule 5, the Applicant alleges that the rule was breached because the conflict provision was misapplied. Rule 5 states that legal assistance may be refused or withdrawn in listed circumstances,

including if a claim brings a member into conflict with the Respondent, its policies, its ethos, or officers. The Applicant alleges that there was no genuine conflict because the Applicant was pursuing an Employment Tribunal claim against Tesco, not a claim against the Respondent, and because the Applicant says an immediate offer was made to sign a written waiver confirming that the Applicant would not pursue the Respondent. The Applicant submits that the asserted conflict was manufactured from information that the Applicant was pressured to disclose and was then used to punish the Applicant by refusing assistance.

- 15.2. In respect of jurisdiction, the Applicant submits that the rule is within the CO's jurisdiction for the same reason advanced in relation to Rule 1, namely that the complaint concerns the proceedings of the Respondent's Legal Services department as a decision-making body under section 108A(2)(d). The Applicant submits that Rule 5 was misapplied in those proceedings and that the complaint is therefore about the manner in which the decision was reached rather than the refusal of legal assistance in itself. The Applicant does not make any separate developed submission that Rule 5 relates to disciplinary proceedings within section 108A(2)(b), although again the Applicant describes the refusal as punitive.

## **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 literal 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 each 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 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 between the relevant rule and a listed matter 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. I would add a further observation about the operation of these principles in respect of section 108A(2)(b):
  - 25.1. In certain applications, the substance of the allegations may be that action was taken against a member for a disciplinary purpose,

notwithstanding that the union did not explicitly invoke its disciplinary procedures, or that it purported to act under some other rule.

25.2. Where the Applicant's case is that the union purported to act under a rule which is not, on its face, concerned with discipline, particular care is required in order to reach a finding that the rule contains an inherent aspect relating to disciplinary proceedings. Union rules frequently provide for decisions which may disadvantage an individual member. For example, decisions taken in accordance with rules relating to membership eligibility, subscriptions, benefits, representation, or legal assistance may all potentially have adverse consequences for an individual member. It does not follow from that fact alone that those rules contain an inherent aspect that can be correctly characterised as relating to disciplinary proceedings. Where, having regard to the rule's proper operation, and to the alleged facts and circumstances only insofar as they illuminate the scope and operation of the rule relied upon, there is a basis for a possible finding that the rule was used as the means of imposing action that was disciplinary in substance, the CO may find that the rule relates, in that respect, to disciplinary proceedings. A bare assertion that such a rule was applied punitively, or that its consequences were felt to be disciplinary, is not sufficient.

25.3. In considering these questions, it is necessary to distinguish between the purpose of the union's action and its consequences. A measure is not disciplinary simply because it disadvantages a member or has a punitive effect from the member's perspective. The question is whether the action was taken for a disciplinary purpose, or whether it imposed a penalty of a kind that was disciplinary in nature, rather than being taken for some administrative, representational, eligibility, or other non-disciplinary purpose. Where the alleged facts and circumstances, taken at their highest, do not support a possible finding

of the union's action being taken for a disciplinary purpose, the application will remain outside of the CO's jurisdiction.

25.4. Applications of this kind may be framed in more than one way. In some cases, an Applicant may submit that the union ought to have proceeded, but did not proceed, under the rules which deal expressly with disciplinary proceedings, and that those rules were therefore breached by not being followed at all. In other cases, an Applicant may rely upon the rule under which the union in fact purported to act. It is, of course, for an Applicant to decide how best to formulate their application and which rule or rules they say have been breached. Notwithstanding this, it is important to note that however an Applicant chooses to formulate their application, the alleged breach must be capable, when taken at its highest, of engaging the rule allegedly breached in the respect which gives it its relationship to disciplinary proceedings. If the connection between the alleged breach and the qualifying aspect of the rule is absent, the application will remain outside the jurisdiction of the CO.

26. In respect of section 108A(2)(d), the jurisdictional requirement has two further stages.

27. Firstly, the rule must relate to an executive committee or decision-making meeting that meets the definitions found in section 108A subsections (10) and (11). These definitions are recorded above in the section of this decision titled "The relevant statutory provisions".

28. Secondly, the rule must relate to either the constitution or proceedings of the relevant committee, as discussed in the following paragraphs.

28.1. 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.

28.2. 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.

29. 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

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

### 31. **Rules of Legal Assistance: Rule 1**

31.1. On a literal reading, Rule 1 is a rule about the Respondent's discretion to grant or continue legal assistance, and about a commitment to exercising that discretion fairly and consistently in accordance with the rules. The Applicant contends that the Respondent's Legal Services department was a decision-making body and that the complaint concerns how the decision was made, but Rule 1 does not identify any committee or meeting, nor does it prescribe its composition, quorum, calling, voting, or procedure. On the material provided, the only clear and direct subject matter of the rule is the exercise of discretion in relation to legal assistance. The Applicant's allegations of coercion, unfairness, and an inadequate appeal may illuminate the factual context, but they cannot create a relationship between Rule 1 and section 108A(2)(d) which the rule does not inherently bear.

31.2. For completeness, and because the Applicant refers to his belief that the action taken was punitive, and a misuse of the rule intended to punish him, I have also considered whether, taken at its highest, the application might arguably engage section 108A(2)(b). Rule 1 is not, on a literal reading, a rule about disciplinary proceedings. The allegations, taken at their highest, concern the refusal of legal assistance and the handling of an appeal. They may describe adverse consequences from the Applicant's perspective, but it does not appear from either the evidence or submission that Rule 1 has an inherent aspect relating to disciplinary proceedings, nor that the Applicant has

advanced more than a straightforward allegation that the refusal was disciplinary in substance. In those circumstances, Rule 1 does not appear arguably to fall within section 108A(2)(b) or section 108A(2)(d).

31.3. Accordingly, in respect of Rule 1, the application is not within the jurisdiction of the CO.

## **32. Rules of Legal Assistance: Rule 5**

32.1. Rule 5 is a rule identifying circumstances in which legal assistance may be refused or withdrawn, including where a claim brings a member into conflict with the Union or its officers. On its natural reading, that is a rule about eligibility for, or withdrawal of, legal assistance. It does not identify an executive committee or decision-making meeting, and it does not relate to the constitution or proceedings of such a body. The Applicant's submission that the Legal Services department was a decision-making body does not alter the objective character of Rule 5. Further, the allegation that the conflict provision was misapplied, that no genuine conflict existed, or that a waiver should have been accepted, is, on the material provided, a complaint about the substance or merits of a decision to refuse legal assistance, rather than about the constitution or proceedings of a qualifying body.

32.2. Again, for completeness, and because the Applicant refers to his belief that the action taken was punitive, and a misuse of the rule intended to punish him, I have also considered whether, taken at its highest, this aspect of the application might arguably engage section 108A(2)(b). It is clear that the application of Rule 5 may plainly disadvantage a member, but that does not of itself make it a rule relating to disciplinary proceedings or to the constitution or proceedings of a qualifying body. The rule is concerned with the circumstances in which legal assistance may be refused or withdrawn.

The Applicant alleges that it was used punitively, but, taking the evidence and submission at the highest for the purposes of this jurisdictional sift, I cannot see a sustainable argument that the Respondent's actions were taken for a disciplinary purpose.

32.3. Accordingly, in respect of Rule 5, the application is not within the jurisdiction of the CO.

**33. Overall conclusion on jurisdiction**

34. In conclusion, taking the Applicant's case at its highest for the purposes of this jurisdictional sift decision, I have found that neither of the rules identified in the application relate to any of the listed matters. 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 signature is written in a cursive, slightly slanted style.

**MICHAEL KIDD**  
**The Assistant Certification Officer**

**21 April 2026**