

SD/4/26-27

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

Sam Makinde

Applicant

and

National Education Union

Respondent

Date of Decision

29 May 2026

Contents

Decision	3
Background	3
The relevant statutory provisions.....	6
The relevant rules of the Union.....	10
The Applicant’s submissions	13
The jurisdiction of the Certification Officer	16
Conclusions.....	18

Decision

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

I find that Sam Makinde’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. Sam Makinde is a member of National Education Union (“the Union” or “Respondent”). They first submitted an application for a declaration that there has been a breach of the rules of the union on 13 March 2026.
3. In the initial correspondence to the Certification Office, the Applicant summarised the complaint as:

The complainant submits that the union acted in a manner inconsistent with its rules and with the democratic rights of its members.

In particular:

1. **Unauthorised nomination requirements**

Candidates were instructed to submit wage slips or letters of appointment to confirm eligibility for nomination despite these requirements not appearing in the rulebook.

2. **Failure to follow election procedures**

The election process was initiated and continued

despite acknowledgement that incorrect instructions had been issued to members.

3. Annulment of a democratic decision

A decision reached at a quorate Hertfordshire branch meeting was subsequently overridden by union staff without transparent explanation or consultation with those present.

4. Inconsistent disciplinary procedures

Members were investigated through the National Disciplinary Committee, yet no investigation was initiated into the conduct of staff involved in the same events.

5. Failure to address member complaints

Members repeatedly requested investigation and suspension of the election process while concerns were examined. These requests were not substantively addressed.

6. Prolonged delay

Concerns raised in April–May 2025 were not meaningfully addressed until January 2026, when the matter was referred onward.

Taken together, these matters raise serious concerns regarding the union’s compliance with its constitutional rules and its obligations to members.

4. On 24 April 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 Certification Officer (CO).

5. The letter explained to the Applicant that the CO had delegated to me, as the Assistant Certification Officer (ACO), responsibility for determining questions of jurisdiction arising at the stage of initial consideration of applications.
6. Given the preliminary view that the application did not fall within the CO's jurisdiction, the Applicant was told 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 4 May 2026, the Applicant wrote to the Certification Office confirming their preference for a formal decision regarding the issue of jurisdiction.
9. On 20 May 2026, the Applicant submitted a written submission, accompanied by 19 appendices of supporting evidence. While I have not found it necessary to refer to any of the appendices specifically in this decision, I have carefully considered all the documentation which has been submitted.
10. For the avoidance of any doubt, there has been no correspondence with the Respondent Union in respect of the application.

The relevant statutory provisions

11. 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 Union

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

Rule 8.4.9

Each Representative elected or confirmed under this rule can be removed from office by a majority vote of the members in that workplace at a properly constituted meeting.

Rule 13.11.1(e)

Voting papers shall be sent to the home address of all members eligible to vote, or to such other address as the member has indicated in writing shall be the address for the purpose of the election, at least three weeks before the closing date for return of voting papers to the offices of the independent scrutineer;

Rule 13.14(h)

Voting papers shall be sent to the home address of all members eligible to vote, or to such other address as the member has indicated in writing shall be the address for the purpose of the election, at least three weeks before the closing date for return of voting papers to the independent scrutineer.

Rule 13.15i

Voting papers shall be sent to the home address of all members eligible to vote, or to such other address as the member has indicated in writing shall be the address for the purpose of the election, at least three weeks before the closing date for return of voting papers to the independent scrutineer.

Rule 13.16.1(g) Countermand

If after the latest time for delivery of nomination papers and before the latest date upon which voting papers are to be supplied to members eligible to vote a candidate who remains validly nominated dies, or becomes disqualified for election under the Rules of the Union, the President of the Union shall countermand the election in the case of the Officers and the Treasurer. In the case of the election of a member of the Executive other than Officers or Treasurer, the President shall countermand the election of the Electoral Districts or sector or section constituencies affected. All the proceedings with reference to the said election shall be commenced

afresh provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the election. On the election being countermanded, the Executive shall determine the timetable for the fresh election. The election shall then otherwise be held in accordance with the provisions of the foregoing rules. Any fresh nominations shall be received by the General Secretary in accordance with the new timetable.

Rule 15.16

The voting papers shall be returned by post to the offices of the appointed independent scrutineer in accordance with the published timetable.

Rule 23.5

When voting papers sent to the home address of a member eligible to vote (or to such other address as the member has indicated in writing shall be the address for the purpose of the election) are subsequently returned unopened they may be forwarded to the workplace last notified by that member to the union.

Rule 23.4

Any notice, if sent by post, shall be deemed to have been sent at the time when the envelope containing the notice would have been delivered in the ordinary course of the postal service. It will be deemed sufficient to prove this if the envelope containing the

notice was properly addressed and put into the post as a pre-paid letter. Similarly, if such communications are distributed electronically by email, they shall be deemed to have been sent according to the dates recorded thereon.

Appendix C Model rules for Local Districts

7 Standing Orders

7.2 Questions arising at meetings shall be decided by a simple majority.

7.3 Votes shall be decided by a show of hands, unless at least 25% present request a secret ballot.

The Applicant's submissions

13. The application concerns an alleged breach of the rules of the Respondent Union in respect of the conduct of the Hertfordshire Branch election and related branch decision-making during 2025 and 2026. The Applicant complains that decisions taken at what the Applicant describes alternately as a Hertfordshire Branch AGM, and as a quorate branch meeting, were later annulled or overridden by staff of the Respondent Union without rulebook authority. The Applicant also complains about the conduct of a re-run election, including the use of nomination requirements said not to appear in the rules; the admission of a candidate to the re-run election; the alleged disregard of a secret ballot; and, the use of electronic voting rather than postal voting.
14. The Applicant alleges that 10 distinct rules have been breached, as follows:
15. **Rule 8.4.9**

15.1. In respect of Rule 8.4.9, the Applicant submits that officers elected at the first AGM were removed, or effectively removed, when the election outcome was annulled. The Applicant says that no majority vote of the relevant members was held to remove those office-holders and that the removal was imposed by staff of the Respondent Union rather than by members at a properly constituted meeting.

15.2. In respect of jurisdiction, the Applicant submits that this rule concerns removal from office and therefore falls within the CO's jurisdiction. The Applicant's submission is that the annulment of the first AGM election had the practical effect of removing elected office-holders without the member vote required by the rule.

16. Rule 13.15(i), 13.14(h), 13.15(i), 15.16, and 23.5

16.1. The Applicant submits that each of Rules 13.11.1(e), 13.14(h), 13.15(i), 15.16 and 23.5, places an obligation on the Respondent Union to ensure that voting papers are sent to members' addresses and returned by post to the appointed independent scrutineer. Further, that the rulebook did not authorise the use of electronic voting for the re-run election. The Applicant says that the re-run election was conducted electronically, despite those rules referring to voting papers being sent to members' home addresses, or to another address indicated by the member in writing. The Applicant also relies on Rule 23.5 as supporting the submission that the rulebook proceeds on the basis that voting papers are sent to members' addresses, because it deals with what may happen when such voting papers are returned unopened.

16.2. In respect of jurisdiction, the Applicant submits that these rules fall within the CO's jurisdiction because they govern the conduct of elections and ballots. The Applicant contends that the use of electronic voting, rather than voting papers sent and returned in accordance with

the rulebook, affected the integrity of the re-run election and meant that the election was not conducted in accordance with the Respondent's prescribed procedures.

17. Rule 23.4

17.1. In respect of Rule 23.4, the Applicant submits that notices and communications sent electronically were deemed to have been sent on the dates recorded on them. The Applicant says this rule confirms the relevant procedural chronology and supports the contention that notices, nomination documents, meeting invitations and annulment communications were validly sent or recorded by email.

17.2. In respect of jurisdiction, the Applicant submits that Rule 23.4 is relevant because the dates of emailed communications demonstrate the procedural sequence leading to the complaint. The Applicant does not make a specific jurisdiction submission explaining how Rule 23.4, as distinct from the underlying election and meeting rules, relates to one of the statutory matters listed in section 108A(2).

18. Appendix C of the Model rules for Local Districts - 7.2

18.1. The rulebook contains a number of provisions numbered 7.2, including provisions within 5 different sets of model rules. The Applicant relies on the version found in the Model Rules for Local Districts, which provides that questions arising at meetings shall be decided by a simple majority. The Applicant submits that a question arose at a meeting about whether the Branch Secretary role should be held by a single Secretary or jointly. The Applicant says that the proposal was duly moved and seconded, that the matter was put to members, and that the result was 11 votes to 10 in favour of a single Secretary. The Applicant contends that the decision was then rejected or overridden by staff of the Respondent Union without rulebook authority.

18.2. In respect of jurisdiction, the Applicant submits that Rule 7.2 concerns the proceedings of a decision-making meeting. The Applicant describes the relevant meeting as a Hertfordshire Branch AGM or as a quorate branch meeting and says that his complaint is about whether a decision reached at that meeting was treated as binding in accordance with the Respondent's rules.

19. Appendix C of the Model rules for Local Districts - 7.3

19.1. Again, the rulebook contains a number of provisions numbered 7.3, within 5 different sets of model rules. The Applicant relies on the version found in the Model Rules for Local Districts, which provides that votes shall be decided by a show of hands unless at least 25% present request a secret ballot. The Applicant submits that members administered, or requested, a secret ballot in order to ensure that members could vote without pressure. The Applicant says that the ballot was a lawful and proper means of deciding the question before the meeting, and that the result of that secret ballot was subsequently disregarded by staff of the Respondent Union.

19.2. The Applicant further submits that an alleged breach of Rule 7.3 falls within the CO's jurisdiction because the rule governs the procedure by which votes are taken at meetings. The Applicant contends that the complaint therefore concerns the proceedings of a decision-making meeting and, in particular, whether the voting procedure at the Hertfordshire Branch AGM or branch meeting was respected.

The jurisdiction of the Certification Officer

20. 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 rulebooks. 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 one or more of the matters listed in section 108A(2).

21. 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.
22. It has long been established that the phrase “relating to” qualifies the rule, rather than 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. The CO therefore begins by reading the relevant rule objectively to determine whether, on its face, it relates to one of the listed matters.
23. Where a rule’s relationship to a listed matter is not immediately clear on its face, 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; they cannot extend the rule to matters to which it does not apply; and they cannot create a relationship with a listed matter which the rule does not inherently bear.
24. Where a rule does relate to a listed matter, the CO must then consider whether the allegations, taken at their highest, are capable of engaging the rule in that qualifying aspect. 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 depends on whether the alleged breach engages the aspect of the rule which gives it its relationship to the listed matter.

25. It follows that a complaint will not be within jurisdiction merely because the events complained about concern elections, meetings, voting, internal governance, or alleged unfairness. The rule relied upon must itself relate to a listed matter, and the alleged breach must engage that rule in the respect which gives rise to the CO's jurisdiction.

Conclusions

26. I must decide whether this application falls within the jurisdiction conferred by section 108A of the 1992 Act. This application relies on 10 distinct rules. I will therefore assess jurisdiction under section 108A in relation to each of the rules, identified in this application, as follows:

27. **Rule 8.4.9**

27.1. In respect of rule 8.4.9, the rule concerns the removal from office of a Representative elected or confirmed under Rule 8.4. The strongest arguable statutory gateway is section 108A(2)(a), insofar as the rule concerns appointment to, or removal from, office. However, the rule is expressly confined to Representatives elected or confirmed under rule 8.4, which concerns workplace representatives.

27.2. The Applicant's complaint concerns the annulment of a branch election and the alleged removal or displacement of branch office-holders. On the material provided, the Applicant has not identified a Representative elected or confirmed under rule 8.4 who was removed from office under, or contrary to, rule 8.4.9. The fact that the Applicant characterises the annulment of a branch election as an effective removal from office does not bring the events within scope of this rule. Taken at its highest, the alleged breach does not engage rule 8.4.9.

27.3. Accordingly, I find that the complaint in respect of rule 8.4.9 is not within the jurisdiction of the CO.

28. Rule 13.11.1(e), 13.14(h), 13.15(i), 15.16, and 23.5

28.1. In respect of rules 13.11.1(e), 13.14(h), 13.15(i), 15.16 and 23.5, the Applicant relies on those rules for the same broad proposition: that the Respondent's rules required voting papers to be sent to members' addresses, or returned by post to the appointed independent scrutineer, and that the use of electronic voting in the re-run election was not authorised by the rulebook. The strongest arguable statutory gateway is section 108A(2)(a), insofar as the Applicant characterises the complaint as concerning the conduct of an election to office. Section 108A(2)(c) may also be relevant in so far as the Applicant characterises the complaint as concerning the balloting of members.

28.2. However, the rules relied upon do not apply to the Hertfordshire Branch election about which the Applicant complains. Rules 13.11.1(e), 13.14(h) and 13.15(i) concern specific national or sectional elections: the biennial election of Officers, elections for Equality Sections Executive Members, and elections for Independent Schools, Post-16 Establishments and Support Staff Sections Executive Members. Rule 15.16 concerns the return of voting papers in elections for the General Secretary and elected Deputy General Secretary.

28.3. The Applicant's complaint is not about any of those elections. It concerns a Hertfordshire Branch election and the use of electronic voting in that context. The fact that those rules refer to voting papers being sent to members' addresses, or returned by post, does not make them applicable to every election held by the Respondent Union.

28.4. Rule 23.5 is also relied upon as part of the same submission. That rule concerns what may happen when voting papers sent to a member's home address, or other indicated address, are returned unopened. The Applicant does not allege that voting papers were sent to a

member's address, returned unopened, and then dealt with contrary to Rule 23.5. Rather, the Applicant relies on Rule 23.5 as supporting the wider submission that the rulebook contemplates postal voting and not electronic voting. That does not amount to an alleged breach of Rule 23.5 itself.

28.5. Therefore, taken at its highest, the complaint does not allege a breach of Rules 13.11.1(e), 13.14(h), 13.15(i) or 15.16 in the election context to which those rules apply. Nor does it allege facts capable of engaging Rule 23.5 in its qualifying aspect. The alleged use of electronic voting in a Hertfordshire Branch election does not convert these rules into rules applicable to that election.

28.6. Accordingly, I find that the complaint in respect of Rules 13.11.1(e), 13.14(h), 13.15(i), 15.16 and 23.5 is not within the jurisdiction of the CO.

29. **Rule 23.4**

29.1. In respect of Rule 23.4, the rule concerns when notices sent by post, and communications distributed electronically by email, are deemed to have been sent. On its face, it is a general provision about service or transmission of communications. It does not relate to the appointment or election of a person to office, removal from office, disciplinary proceedings, balloting of members, or the constitution or proceedings of an executive committee or decision-making meeting.

29.2. The Applicant relies on Rule 23.4 to support the chronology and to show that emailed communications were deemed sent on the dates recorded. However, the Applicant does not allege that a notice was wrongly treated as sent or not sent in a way that itself engages a listed matter under section 108A(2). The use of Rule 23.4 as evidential

support for dates does not make the rule itself one which relates, in a sufficiently clear and direct way, to a listed matter.

29.3. Accordingly, I find that the complaint in respect of Rule 23.4 is not within the jurisdiction of the CO.

30. Appendix C of the Model rules for Local Districts - 7.2 and 7.3

30.1. In respect of rules 7.2 and 7.3, I have noted that the rulebook contains several provisions with this numbering, because it includes separate sets of model rules for different parts of the Respondent Union's structure. The versions of rules 7.2 and 7.3 relied upon by the Applicant are the provisions which state that questions arising at meetings shall be decided by a simple majority and that votes shall be decided by a show of hands unless at least 25% present request a secret ballot. Those provisions appear in the Model Rules for Local Districts. Read in context, they govern the proceedings and voting procedure of Local District meetings.

30.2. The Applicant's complaint, however, concerns what the Applicant describes as a Hertfordshire Branch AGM or a quorate branch meeting. On the Applicant's own case, the meeting whose decision was allegedly annulled or overridden was therefore a branch meeting, not a Local District meeting. The strongest arguable statutory gateway is section 108A(2)(d), because rules governing how questions are decided and how votes are taken at a qualifying meeting may, in principle, relate to the proceedings of that meeting. However, the alleged breach must engage the rules actually relied upon. Taken at its highest, the Applicant's case is not capable of engaging the Local District versions of Rules 7.2 and 7.3, because the allegations relate to the conduct and later treatment of a decision taken, and a vote held, at a branch meeting, which would be governed by a different set of model, or otherwise, branch rules.

30.3. I have considered whether this is merely a technical point about numbering. I do not consider that it is. The rulebook contains separate model rules for Local Districts and for Branches. The provisions relied upon by the Applicant are not simply provisions which are repeated elsewhere in the rulebook in identical terms but under different numbers. The particular requirements on which the Applicant relies, are the provisions found only in the Model Rules for Local Districts. The branch model rules contain separate standing orders, with different wording. The Applicant has therefore not plainly identified the correct rules by the wrong numbers.

30.4. Accordingly, I find that the complaint in respect of rules 7.2 and 7.3 is not within the jurisdiction of the CO.

31. **Overall conclusion**

31.1. In conclusion, I find that the application, taken at its highest, does not concern an alleged breach of a rule relating to a matter listed within section 108A(2) of the 1992 Act.

31.2. Consequently, I find that the application is not one which the CO has jurisdiction to determine. It cannot therefore be accepted for determination and is dismissed in its entirety.



MICHAEL KIDD
The Assistant Certification Officer

29 May 2026