

SD/6/26-27

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

Thomas Kamm

Applicant

And

Unite the Union

Respondent

Date of Decision

7 July 2026

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Decision

1. Thomas Kamm (“the Applicant”) applied to the Certification Officer (“the CO”) on 3 June 2026, under section 108A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), for a declaration that Unite the Union (“the Respondent”) had breached its rules.
2. Having considered the application:

I find that the application is not one which the Certification Officer has the jurisdiction to determine.

It cannot therefore be accepted for determination by the Certification Officer and is dismissed.

Background

3. The Applicant is a member of the Respondent union.
4. In submitting the application, the Applicant asked the Certification Office to accept the complaint by email as a reasonable adjustment, rather than requiring completion of the standard application form. The Applicant also asked that all correspondence be conducted by email. The application was accepted and considered in that form, and the Certification Office corresponded with the Applicant by email.
5. The Applicant also requested urgent handling of the application, referring to disability, personal vulnerability, and limitation issues affecting the personal injury claims which form part of the background to the complaint. I have noted that request. This decision is confined to the threshold question of whether the application falls within the jurisdiction conferred on the CO by section 108A of the 1992 Act.

6. In the initial correspondence to the Certification Office, the Applicant summarised the complaint as:

This complaint concerns a severe breach of the union's own internal rules, a total failure of internal governance, and an arbitrary termination of a contractually and constitutionally defined member benefit without due process.

On 1 June 2026, the union's Director of Legal & Membership Services, Stephen J. Pinder, issued a final decision completely withdrawing union-funded legal assistance for my two active personal injury claims. This severe administrative sanction was applied based on a sweeping, entirely unevicenced assertion that I was "unwilling to co-operate" with the union's panel law firm, OH Parsons LLP.

When I formally requested specific particulars, dates, or explicit acts of alleged non-cooperation under an urgent request for a Statement of Reasons, the Director of Legal Services explicitly refused to provide any. In his response dated 2 June 2026, he dismissed a standard administrative request for clarity by stating that my inquiries "appear to make no sense," and openly asserted that he manages the service entirely alone under his own authority, insulated from any point-by-point committee oversight, review, or governance mechanism.

7. On 12 June 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.
8. 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.
9. Given the preliminary view that the application did not fall within the CO's jurisdiction, the Applicant was told that they had two options:
 - 9.1. **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,
 - 9.2. **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.
10. 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.
11. Also on 12 June 2026, the Applicant wrote to the Certification Office confirming their preference for a formal decision regarding the issue of jurisdiction.
12. The Applicant provided several pieces of supporting evidence, along with his written submissions. I have considered the material provided solely for

the purpose of deciding whether the application falls within the jurisdiction of the CO under section 108A of the 1992 Act.

13. While I have carefully considered all the material provided, it is not necessary, for the purpose of this jurisdictional sift decision, to refer to each document individually. The question for me is whether the Applicant has identified a rule of the Respondent which, on its proper construction, relates to one of the matters listed in section 108A(2), and whether the alleged breach engages the rule in that qualifying aspect.
14. For the avoidance of any doubt, I have reached findings only so far as required to determine the question of jurisdiction. Since I have found that the rules relied upon do not bring the application within the jurisdiction of the CO, I have reached no findings on whether any rules were in fact breached.
15. The application has not been accepted for determination by the CO for want of jurisdiction, therefore, there has been no correspondence with the Respondent union in respect of the application.

The relevant statutory provisions

16. 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

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

Rule 4.6

The Union will provide legal assistance, as follows:

4.6.1 A member who is entitled to benefit who suffers injury or disease arising out of or in connection with his/her employment (or the dependants of such a member who has died) shall be entitled to such legal advice and representation, and on such terms, as the Executive Council may consider appropriate.

[...]

4.6.6 A member who is given advice and/or representation under this rule shall provide all relevant information and co-operate fully with the compilation of evidence for any legal proceedings and shall comply with any other obligations and/or conditions set out in any arrangements for the provision of legal assistance. If a member fails to do so or provides false or misleading information or fails to act upon the advice of those appointed to represent him/her, the Executive Council may at its absolute discretion annul all legal assistance or withdraw any further legal assistance to that member.

Rule 14 Executive Council

14.9 The Government, management and control of the Union shall be vested in the Executive Council collectively, which may do such things consistent with the rules and objects of the Union as it may consider expedient to promote the interests of the Union or any of its members. In particular and without limiting the general powers conferred on it by these rules the Executive Council shall have the power to:

14.9.1 Ensure that properly prepared management accounts and annual statements of account relating to all financial affairs of the Union are presented at its regular meetings, and it may call for the production of any book, vouchers, or documents.

14.9.2 Direct that special audits or examinations of the books or finances of any part of the Union shall be made by special auditors appointed by the Executive Council.

14.9.3 Appoint and remove the Union's auditor and assurer in relation to membership records for which purpose the members of the Executive Council shall act as the delegates of the members by whom they were elected.

14.9.4 Appoint all officers who are employed as such by the Union (who shall have been paying members of this Union or, if employed by Unite, paying members of another trade union recognised by the union for bargaining purposes, for at least two years immediately preceding the date of application) other than the General Secretary. The promotion of individual officers

(up to but excluding the level of General Secretary) and the allocation/reallocation of officer roles shall be subject to the approval of the Executive Council in each case.

14.9.5 Determine one or more constitutional committees of lay members to which each officer employed by the Union shall report and be accountable and ensure that the list of these allocations is available to members.

14.9.6 Consider all appeals and resolutions addressed to it, subject to where it deems appropriate the Council shall have the power to refer such appeals and references to Regional or National Industrial Committees.

14.9.7 Require reports to be submitted to it of all disputes, and shall take such action with regard thereto as it shall deem fit.

14.9.8 Raise or borrow money and secure the payment of money or the carrying out of any other obligation of the Union on any of the properties or securities of the Union in such manner as it shall think fit.

14.9.9 Decide questions of policy which may arise between Policy Conferences and which have not been decided by a previous decision of such a conference. Any substantive policy decisions made by the Executive Council to be ratified by the next scheduled Policy Conference.

14.9.10 Send delegates or deputations to represent the Union, and to delegate power to any person to act on behalf of the Union for any purpose.

14.9.11 Sanction payment of benefit in respect of any strike and in respect of any lockout.

14.9.12 Expend moneys on any of the purposes authorised by these rules, or on any other purpose which, in their opinion, is expedient in the interests of the Union or its members, including, at its discretion, the provision of legal services to members (and where it additionally and severally sees fit, to members' families), and the taking and defending of legal action by the Union.

14.9.13 Suspend, or impose any other penalty on any Branch, Region or other administrative section of the Union for such reasons and on such terms as they deem expedient and their decisions, save as herein provided, shall be final and conclusive for all purposes provided that every Branch, Region or other administrative section shall have the right within 14 days, of the date of notification of the decision of the Executive Council to give notice of appeal, and until the hearing of such appeal the decision of the Council shall be binding.

14.9.14 Delegate to any committee constituted under these rules such of their powers as are necessary or expedient and consistent with the powers and duties of such committee as in these rules provided, and may

modify or revoke such powers and duties from time to time.

14.9.15 Provide training for lay representatives, activists and its employees.

14.9.16 Decide its own Standing Orders and procedures in all matters not expressly provided for in these rules.

14.9.17 Make standing orders, consistent with these rules, governing the proceedings of Regional Committees, Industrial Committees and any other body provided for by these rules, as it sees fit.

14.9.18 Decide any question relating to the meaning and the interpretation of these rules or any matter not expressly provided for by these rules which decision shall be binding on all members of the Union.

The Applicant's submissions

18. The application concerns an alleged breach of the rules of the Respondent union in respect of the withdrawal of legal assistance for two personal injury claims. The Applicant submits that legal assistance was withdrawn on 1 June 2026 by the Director of Legal and Membership Services on the basis of an unevidenced assertion that the Applicant had failed to co-operate with the Respondent's solicitors. The Applicant says that this decision was final; that it was unsupported by adequate reasons; and that it was not subject to any proper oversight or review. The Applicant relies on Rules 4.6.1, 4.6.6 and 14.9. The Applicant's primary position is that the complaint concerns not the quality of legal representation, or the merits of the personal injury claims, but the Respondent union's constitutional arrangements, the

exercise of delegated power, and the exclusion of the Executive Council from any effective role in the decision-making process.

19. Rule 4.6.1

19.1. In respect of Rule 4.6.1, the Applicant submits that the rule was breached because legal assistance is a rule-book benefit for members who suffer injury or disease arising out of or in connection with employment. The Applicant says that the Respondent union withdrew that benefit without an evidential basis, without a proper statement of reasons, and without any proper process for review.

19.2. In respect of jurisdiction, the Applicant submits that the withdrawal of legal assistance was not merely a service issue. The Applicant's position is that the decision was made under an improper governance structure, because a single appointed official treated the decision as final and unreviewable. The Applicant submits that this engages the constitution or proceedings of a decision-making body, because the Executive Council is the body which the rules identify as holding ultimate control over matters of this kind.

20. Rule 4.6.6

20.1. The Applicant submits that Rule 4.6.6 was breached because the Respondent relied on an allegation of non-cooperation to withdraw further legal assistance. The Applicant denies that there was any proper basis for that allegation and says that the Respondent union failed to provide particulars, dates, evidence, or a reasoned explanation of the alleged non-cooperation.

20.2. The Applicant further submits that Rule 4.6.6 falls within the CO's jurisdiction because the withdrawal of legal assistance operated as a serious sanction. The Applicant says that the Respondent union's action had a disciplinary character, or in the alternative that it engaged

the constitution or proceedings of a decision-making body because the power to annul or withdraw legal assistance rests with the Executive Council and should not have been exercised by an official acting alone and without oversight.

21. Rule 14.9

21.1. In respect of Rule 14.9, the Applicant submits that the rule was breached because the Executive Council is vested with the government, management and control of the Respondent union. The Applicant says that the Director of Legal and Membership Services acted as if the power to withdraw legal assistance could be exercised finally and without any review by, or accountability to, the Executive Council or any other constitutional body.

21.2. In respect of jurisdiction, the Applicant submits that Rule 14.9 directly concerns the constitution or proceedings of the Executive Council and other decision-making bodies. The Applicant submits that the complaint is about the lawful allocation and exercise of power under the Respondent union's rules, not about the merits of the withdrawal decision itself. The Applicant submits that the question for the CO is whether the Respondent union's decision-making structure acted within the remit and powers conferred by Rule 14.9.

The jurisdiction of the CO

22. Section 108A of the 1992 Act gives the CO a limited jurisdiction to determine applications for a declaration that there has been a breach, or threatened breach, of the rules of a trade union relating to one or more of the matters listed in section 108A(2). Those matters are:

- i. the appointment or election of a person to, or the removal of a person from, any office;

- ii. disciplinary proceedings by the union, including expulsion;
 - iii. the balloting of members on any issue other than industrial action;
 - iv. the constitution or proceedings of any executive committee or of any decision-making meeting.
23. The CO does not have a general jurisdiction to decide whether a trade union has acted fairly, reasonably, consistently with good administration, or in accordance with every part of its rule book. The jurisdiction depends on the rule said to have been breached.
24. The first question is whether the rule, on its proper construction, relates to one of the matters listed in section 108A(2). If it does not, the application is outside the CO's jurisdiction.
25. Where a rule does relate to one of the listed matters, that does not by itself mean that every complaint which relies upon that rule will be within jurisdiction. It is also necessary to consider whether the allegation, taken at its highest, engages the rule in the respect which gives it its relationship to one of the listed matters. A rule may be multi-faceted, consisting of aspects relating to a listed matter and aspects not relating to a listed matter.
26. In addition, an applicant cannot bring an otherwise non-jurisdictional complaint within section 108A by relying on a rule which has no connection with the allegation made. For example, a complaint that a union provided poor legal assistance would not become a complaint about disciplinary proceedings simply because the applicant also seeks to rely upon the disciplinary rules. The alleged breach must engage the qualifying aspect of the rule.
27. In considering whether a rule relates to disciplinary proceedings, it is necessary to distinguish between a decision which is disciplinary in character and a decision which has adverse effects for a member. A

decision is not disciplinary merely because it causes detriment, or because the member experiences it as punitive. The question is whether the rule, and the alleged use of the rule, are concerned with disciplinary proceedings or with action taken for a disciplinary purpose.

28. This requires a distinction between the purpose of the Respondent union's action and its consequences. A decision may foreseeably disadvantage a member. It may also operate by reference to something the member has done or failed to do. Those features do not, without more, make the decision disciplinary. The question is whether the Respondent was imposing discipline, or whether it was acting for some other purpose, such as administering a benefit or service.
29. That distinction is particularly important where the rule relied upon concerns a benefit or service provided to members. Rules of that kind may allow a union to grant, refuse, withdraw, or limit access to the benefit or service. Such decisions may have serious consequences for a member. However, unless the rule is disciplinary in nature, or the material supports a possible finding that the rule was used as the means of imposing disciplinary action, the complaint does not become one about disciplinary proceedings simply because the member has suffered detriment.
30. It is therefore not enough for an applicant to describe action as a sanction, penalty, or punishment. The CO must consider the rule relied upon, the alleged basis on which a union acted, and whether the material, taken at its highest, could properly support a possible finding that a union was using the rule for a disciplinary purpose rather than for the purpose which the rule itself describes.
31. In considering section 108A(2)(d), the jurisdictional question is also narrow. It is not enough that a rule mentions an executive committee or decision-making body. Nor is it enough that the complaint concerns a decision which the Applicant says should have been taken by, reviewed by, or reported to

such a body. The rule must relate to the constitution or proceedings of the relevant body.

32. For these purposes, the constitution of a body concerns matters such as its composition, structure, membership, and the rules which govern when and how it may be convened or act as a body. The proceedings of a body concern the procedure by which it conducts its business, such as notice, agenda, quorum, voting arrangements, standing orders, or other procedural requirements governing the conduct of meetings or decisions.
33. A complaint about the merits, fairness, reasons, or outcome of a decision is not, without more, a complaint about the constitution or proceedings of an executive committee or decision-making meeting. A complaint may fall within section 108A(2)(d) where the rule relied upon allocates a matter to a particular qualifying body, withholds it from that body, imposes a mandatory procedure for that body, or limits the options open to it. However, the complaint must engage the rule in that qualifying aspect. The facts of the complaint cannot create a jurisdictional link which the rule itself does not contain.

Conclusions

34. I must decide whether this application falls within the jurisdiction conferred by section 108A of the 1992 Act. This application relies on 3 distinct rules. I will therefore assess jurisdiction under section 108A in relation to each of the rules, identified in this application, as follows:

35. **Rule 4.6.1**

35.1. In respect of Rule 4.6.1, the rule provides that a member who is entitled to benefit and who suffers injury or disease arising out of or in connection with employment shall be entitled to such legal advice and representation, and on such terms, as the Executive Council may consider appropriate. The rule concerns the provision of legal advice

and representation as a member benefit. It does not, on its proper construction, regulate the constitution or proceedings of the Executive Council. Nor does it impose a procedural requirement governing how the Executive Council must meet, deliberate, vote, or conduct its business.

35.2. Taken at its highest, the Applicant's complaint is that the Respondent union wrongly withdrew legal assistance, failed to give adequate reasons, and allowed an official to make or communicate a final decision. Those matters concern the administration of legal assistance and the withdrawal of a member benefit. They do not engage a rule relating to the appointment or election of office holders, disciplinary proceedings, ballots, or the constitution or proceedings of an executive committee or decision-making meeting. The fact that the rule gives the Executive Council a role in deciding the terms on which legal assistance may be provided does not make every complaint about legal assistance a complaint about the constitution or proceedings of that body.

35.3. Accordingly, I find that the complaint in respect of Rule 4.6.1 is not within the jurisdiction of the CO.

36. Rule 4.6.6

36.1. In respect of Rule 4.6.6, the rule requires a member receiving legal advice or representation to provide relevant information, co-operate with the compilation of evidence, and comply with obligations or conditions attached to the provision of legal assistance. It also provides that, if the member fails to do their part; provides false or misleading information; or fails to act on the advice of those appointed to represent the member, the Executive Council may at its absolute discretion annul or withdraw legal assistance.

36.2. The Applicant submits that the correct statutory gateways are section 108A(2)(b), on disciplinary proceedings, and section 108A(2)(d), on the constitution or proceedings of an executive committee or decision-making meeting.

36.3. I do not find that Rule 4.6.6 relates to disciplinary proceedings. The rule is concerned with the conditions on which legal assistance is provided and with the withdrawal of that assistance where those conditions are not met. Its purpose and operation are therefore concerned with access to legal assistance, not discipline. As discussed above, in paragraphs 27 to 30, the fact that withdrawal of legal assistance may have serious consequences for a member does not make the rule disciplinary in character. Nor is it enough that the Applicant describes the decision as a sanction. On the Applicant's own case, the stated basis for the decision was alleged non-co-operation with the arrangements for legal assistance. That is the subject matter addressed by Rule 4.6.6 itself. Taking the allegations at their highest, there is no pleaded factual basis from which I could properly find that the Respondent union was using Rule 4.6.6 as a means of imposing disciplinary action, rather than as a rule governing continued access to legal assistance. A detrimental effect on the Applicant is not enough to convert a rule about legal assistance into a rule about disciplinary proceedings.

36.4. Further, I do not find that Rule 4.6.6 relates to the constitution or proceedings of an executive committee or decision-making meeting. Rule 4.6.6 refers to the Executive Council and its discretion to annul or withdraw legal assistance. However, the rule does not regulate the constitution or proceedings of that body. It does not prescribe the composition of the Executive Council, how it must meet, how it must consider applications, what procedure it must follow, or how it must record or decide such matters. Taken at its highest, the Applicant's

complaint is that the withdrawal decision was wrong, unsupported by reasons, or taken by the wrong person. That complaint does not engage any aspect of Rule 4.6.6 which relates to the constitution or proceedings of an executive committee or decision-making meeting.

36.5. Accordingly, I find that the complaint in respect of Rule 4.6.6 is not within the jurisdiction of the CO.

37. Rule 14.9

37.1. In respect of Rule 14.9, the rule vests the government, management and control of the Respondent in the Executive Council collectively and sets out a series of powers held by that body. The rule includes powers concerning accounts, audits, officers, appeals, reports of disputes, policy, delegation, expenditure, legal services, standing orders, and interpretation of the rules.

37.2. I accept that aspects of Rule 14.9 may, in principle, relate to the constitution or proceedings of the Executive Council. However, on the material provided, the Applicant does not allege that the Executive Council was improperly constituted, that a meeting was called or conducted in breach of the rules, that a vote was wrongly taken, or that a required Executive Council procedure was not followed. The complaint is that an appointed official treated the withdrawal of legal assistance as final and unreviewable, and that there was no effective oversight by the Executive Council. Rule 14.9 does not, on the material identified by the Applicant, require every withdrawal of legal assistance to be determined by the Executive Council itself, nor does it set out a mandatory appeal or review process for such decisions. The Applicant's complaint therefore concerns the administration of legal assistance and the alleged absence of review, rather than the constitution or proceedings of the Executive Council or any other decision-making meeting.

37.3. Accordingly, I find that the complaint in respect of Rule 14.9 is not within the jurisdiction of the CO.

Overall conclusion

38. I find that none of the allegations, taken at their highest, identify an alleged breach of a rule which relates to a matter listed in section 108A(2), or engages any such rule in its qualifying aspect. The application concerns, in substance, the procedures surrounding the withdrawal of legal assistance.
39. 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.



MICHAEL KIDD
The Assistant Certification Officer

7 July 2026