

CO/6/26-27

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

Devine

Applicant

and

Unite the Union

Respondent

Date of Decision

15 June 2026

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Decision

1. Mr Robert Devine (“the Applicant”) applied to the Certification Officer on 3 October 2025, 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. The Respondent has conceded the breach which is the subject of the application.
3. In light of the Respondent’s concession, and having considered the material before me, I make the following declaration:

**On or around 10 July 2025, Unite the Union
breached Rules 27.2, 27.3.2 and 27.4 of its rules,
together with the implied principles of natural
justice, when it re-suspended the Applicant from
holding office following the conclusion of a
completed Rule 27 disciplinary process.**

4. Where the Certification Officer makes a declaration, section 108B(3) of the 1992 Act requires him also, unless he considers that it would be inappropriate, to make an enforcement order. I have therefore considered whether an enforcement order should be made.
5. For the reasons set out in paragraphs 37-46 of this decision, I consider that it is appropriate to make an enforcement order. The order I make is that:
 - 5.1. within 28 days of the date of this decision, the Respondent shall write to the Applicant:
 - i. stating that the suspension imposed on or around 10 July 2025 is no longer maintained by the Union and has no continuing effect; and,

- ii. stating that the Respondent shall not rely on the suspension imposed on or around 10 July 2025 as a valid suspension in any future disciplinary or internal Union process.
6. For the avoidance of doubt, this order does not determine the validity of, or otherwise affect, the separate suspension imposed on 3 October 2025 or the associated Rule 27 process.

Background

7. Mr Devine is a member of the Respondent Union.
8. His application for a declaration was acknowledged by the Certification Office on 9 October 2025.
9. The Respondent was notified of the Applicant's application on 18 November 2025, and the Respondent duly acknowledged its receipt on 19 November 2025.
10. The Certification Officer delegated to me, as Assistant Certification Officer, responsibility for determining the application.
11. The Applicant confirmed his complaint as follows:

That on or around 10 July 2025, the union breached Rules 27.2, 27.3.2 and 27.4, together with the implied principles of natural justice, when it re-suspended Mr Robert Devine from holding office following the conclusion of a completed Rule 27 disciplinary process. The earlier Rule 27 proceedings concluded on 8 May 2025, at which point a disciplinary sanction

was imposed and treated as time served. The Union extended Mr Devine's suspension on the basis that the Director of Equalities "wishes to review the matter". In re-suspending him, the Union failed to follow its own disciplinary process as laid down by the union rules, in that he has not been given notice of any new charge or an opportunity to present his case before the re-suspension. To date, that purported review has not been concluded, no outcome has been communicated to Mr Devine, and the suspension imposed on 10 July 2025 remains in effect.

12. On 9 April 2026, the Respondent confirmed that it conceded the breach and consented to the making of a declaration by the Certification Officer.
13. In light of the Respondent's concession, the substantive issue remaining is not whether there has been a breach of the Respondent's rules, but whether an enforcement order should be made and, if so, in what terms.
14. On 15 April 2026, the parties were informed by the Certification Office that, in light of the Respondent's concession, I was considering determining the matter on the papers. The letter sent to the parties explained that, should they agree with that approach, they would be invited to submit written submissions addressing enforcement.
15. Both parties confirmed that they were content for the matter to be determined on the papers, without a hearing.
16. On 7 May 2026, the parties were invited to make written submissions on enforcement.
17. The Applicant provided written submissions which he had prepared himself. The Respondent provided written submissions prepared by Madeleine Stanley of counsel. Those submissions were exchanged between the

parties. In order to ensure that the Applicant had an opportunity to respond to any new points raised by the Respondent's submissions, he was invited to provide final submissions in response. The Applicant took that opportunity.

The relevant statutory provisions

18. The statutory provisions which are relevant for the purposes of this application are as follows:

The Trade Union and Labour Relations
(Consolidation) 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.

108B Declarations and orders

(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

(2) If he accepts an application under section 108A the Certification Officer—

(a) shall make such enquiries as he thinks fit,

(b) shall give the applicant and the union an opportunity to be heard,

(c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(d) may make or refuse the declaration asked for, and

(e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

(a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;

(b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

(4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement.

(5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(6) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

(7) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(8) An enforcement order made by the Certification Officer under this section may be enforced (by the Certification Officer, the applicant or a person mentioned in subsection (7)) in the same way as an order of the court.

(9) An order under section 108A(2)(e) may provide that, in relation to an application under section 108A with regard to a prescribed matter, the preceding provisions of this section shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under section 108A(2)(e) as is prescribed under this subsection.

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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

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

RULE 27. MEMBERSHIP DISCIPLINE

27.2 Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice.

27.3.2 Allegations of serious breaches of clauses 27.1.1 to 27.1.7 which are considered to be vexatious, malicious or defamatory may be considered a breach of Rule and liable to be referred to this disciplinary procedure.

27.4 The Executive Council or the relevant Regional Committee may suspend a member charged under this rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given written notice (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable. In cases of a serious nature, as a precautionary measure, a member under investigation prior to disciplinary charges being laid may be suspended from holding office or representing the union in any capacity.

Findings of Fact

20. I make the following findings of fact:

20.1. Mr Devine was subject to disciplinary proceedings under Rule 27 of the Respondent's rules.

20.2. Those proceedings concluded on 8 May 2025. A disciplinary sanction was imposed and treated as time served.

20.3. On or around 10 July 2025, the Respondent re-suspended Mr Devine from holding office. The basis given for that re-suspension was that the Director of Equalities wished to "review the matter". Before re-suspending Mr Devine on or around 10 July 2025, the Respondent did not give him notice of any new charge, or an opportunity to state his case.

20.4. On 3 October 2025, the Respondent wrote to Mr Devine in relation to a different complaint against him. In that letter, the Respondent informed Mr Devine that he was suspended under Rule 27.4 pending investigation of the new complaint.

20.5. The suspension communicated on 3 October 2025 arose from a separate purported Rule 27 process.

Issues for determination

21. The Respondent has accepted that it breached Rules 27.2, 27.3.2 and 27.4, together with implied principles of natural justice, when it re-suspended the Applicant on or around 10 July 2025.
22. The Applicant seeks an enforcement order requiring the Union to confirm that the suspension imposed on or around 10 July 2025 is withdrawn and has no continuing effect. He also seeks an order requiring the Union to confirm that no reliance will be placed on that suspension in any future process.
23. The Applicant also seeks an order requiring the Union to ensure that any future action taken under Rule 27 is conducted in accordance with the Union's rules and the principles of natural justice.
24. The Respondent opposes the making of any enforcement order. Its position is that the suspension imposed on or around 10 July 2025 is no longer in effect, because Mr Devine was subsequently suspended on 3 October 2025 in relation to a different complaint and under a separate purported Rule 27 process. It says that there are no ongoing effects of the admitted breach and nothing which requires remedy.
25. In order to determine whether an enforcement order should be made, the issues I need to resolve are:
 - 25.1. whether the admitted breach has already been remedied, or whether there remains some continuing effect of the suspension imposed on or around 10 July 2025;
 - 25.2. whether it is necessary or appropriate to require the Respondent formally to confirm that the suspension imposed on or around 10 July 2025 is withdrawn and has no continuing effect;

25.3. whether it is necessary or appropriate to require the Respondent to confirm that it will place no reliance on that suspension in any future process;

25.4. whether there is a sufficient basis for making any order directed at preventing a breach, or threat of a breach, of the same or a similar kind in future.

The Applicant's submissions

26. The Applicant submits that an enforcement order is necessary and appropriate. He says that the Respondent's admitted breach has not been remedied. In particular, he submits that the suspension imposed on or around 10 July 2025 has never been formally withdrawn, concluded, or replaced by a decision taken in accordance with the Respondent's rules. He also says that the review relied upon by the Respondent at the time of the re-suspension has never been concluded, and that no outcome of that review has been communicated to him.
27. The Applicant submits that the later suspension imposed on 3 October 2025 does not remedy the earlier breach. His position is that, although the October 2025 suspension arose pursuant to a separate purported Rule 27 process, that does not retrospectively bring the July 2025 suspension to an end or remedy the failure to follow the Respondent's rules when that earlier suspension was imposed.
28. The Applicant says that the Respondent's failure to remedy the admitted breach has had a continuing impact on him. He refers in particular to uncertainty as to his status, reputational impact, and the inability to bring matters to a proper conclusion. He submits that it is therefore necessary for the Respondent to be required to confirm that the suspension imposed on or around 10 July 2025 is withdrawn and has no continuing effect.

29. The Applicant also seeks an order requiring the Respondent to confirm that it will place no reliance on the suspension imposed on or around 10 July 2025 in any future process. He submits that this is a specific and proportionate order directed at remedying the admitted breach. He says that, without such an order, there remains no formal corrective step in relation to the Respondent's admitted breach of its rules and principles of natural justice.
30. Finally, the Applicant submits that there is a risk of similar breaches occurring in future. He relies on the fact that the Respondent has accepted that it acted outside its rules and says that this gives rise to a concern that similar action could be taken in future without adherence to Rule 27 or principles of natural justice. He therefore seeks an order requiring the Respondent to ensure that any future action under Rule 27 is conducted in accordance with its rules and principles of natural justice.

The Respondent's submissions

31. The Respondent submits that no enforcement order should be made. It accepts that it breached its rules when it suspended the Applicant on or around 10 July 2025, yet submits that the suspension which gave rise to that admitted breach is no longer in effect. The Respondent says that the application is limited to the decision taken on or around 10 July 2025, and that any enforcement order must be directed to remedying that breach, or preventing a breach of the same or a similar kind in future.
32. The Respondent submits that there is nothing which now requires remedy. It says that, on 3 October 2025, it wrote to the Applicant in relation to a different complaint against him and informed him that he was suspended under Rule 27.4 pending investigation of that complaint.
33. The Respondent accepts that Mr Devine remains suspended as a matter of fact. However, it submits that his suspension from 3 October 2025 is not a

consequence of the decision taken on or around 10 July 2025. It follows, in the Respondent's submission, that the July 2025 suspension is no longer in effect and that there are no ongoing effects of the admitted breach. The Respondent therefore submits that it would not be appropriate for me to make an order requiring it to take steps to remedy the breach.

34. The Respondent also submits that there is no proper basis for making a forward-looking enforcement order. It submits that this was a breach which has already occurred, and that there is nothing to suggest that a breach of the same or a similar kind will occur in future. The Respondent submits that any order requiring future compliance with Rule 27 and principles of natural justice would be speculative and would amount to no more than a general order to comply with the Respondent's rules.
35. The Respondent also objects to the terms of the order proposed by the Applicant. It submits that the proposed order requiring the Respondent to ensure that any future action under Rule 27 is conducted in accordance with the rules and principles of natural justice is unacceptably vague. The Respondent notes that an enforcement order may be enforced as if it were an order of the court and submits that any order made must therefore be sufficiently clear and precise.
36. In the alternative, if an enforcement order is made, the Respondent asks that it be made clear that nothing in the order affects the suspension imposed on 3 October 2025 or the associated Rule 27 process.

Conclusions

37. Section 108B(3) of the 1992 Act provides that, where the Certification Officer makes a declaration, he shall also, unless he considers that to do so would be inappropriate, make an enforcement order. Such an order may require the Respondent to take steps to remedy the breach, or to abstain

from specified acts with a view to securing that a breach, or threat of a breach, of the same or a similar kind does not occur in future.

38. The Respondent has accepted that it breached Rules 27.2, 27.3.2 and 27.4 of its rules, together with implied principles of natural justice, when it re-suspended the Applicant from holding office on or around 10 July 2025. The question for me is therefore whether it would be inappropriate to make an enforcement order.
39. I do not accept the Respondent's submission that the imposition of a separate suspension on 3 October 2025, of itself, remedied the admitted breach arising from the suspension imposed on or around 10 July 2025. The October suspension arose from a separate complaint and a separate purported Rule 27 process. It may explain the Respondent's position as to why the Applicant remained suspended after that date, but it does not necessarily demonstrate that the earlier suspension was formally withdrawn, concluded, or otherwise brought to an end.
40. I accept that the Respondent's concession is significant. In accepting that the suspension imposed on or around 10 July 2025 breached its rules, the Respondent has accepted that the suspension was not imposed in accordance with the disciplinary process required by Rule 27. It follows that the Respondent cannot properly maintain that the July 2025 suspension was validly imposed.
41. However, I also accept the Applicant's submission that the Respondent has not expressly confirmed that the suspension imposed on or around 10 July 2025 has been withdrawn and has no continuing effect. The Applicant says that no withdrawal of that suspension has been communicated to him; nor, has any conclusion to the review relied upon at the time been communicated to him either; and, also that no formal step has been identified by which the July 2025 suspension was brought to an end in accordance with the Respondent's rules.

42. In my judgment, the absence of such express confirmation leaves a degree of uncertainty arising from the admitted breach. The admitted breach concerned the imposition of a suspension without notice of any new charge and without giving the Applicant an opportunity to present his case. In those circumstances, I consider that a limited enforcement order is appropriate to remedy the breach by requiring the Respondent to confirm that the suspension imposed on or around 10 July 2025 is no longer maintained by the Respondent and has no continuing effect.
43. I also consider it appropriate to require the Respondent to confirm that it will not rely on the suspension imposed on or around 10 July 2025 as a valid suspension in any future disciplinary or internal union process. That requirement is closely connected to the admitted breach. It does not prevent the Respondent from taking steps under its rules in relation to any separate matter, but it ensures that the defective suspension is not treated as having continuing validity.
44. I do not consider it appropriate to make the broader order sought by the Applicant requiring the Respondent to ensure that any future action under Rule 27 is conducted in accordance with the Respondent's rules and principles of natural justice. I accept the Respondent's submission that such an order would be expressed at a high level of generality. In substance, it would amount to an order requiring the Respondent to comply with its rules in future. I am not satisfied that such an order is necessary or sufficiently precise in the circumstances of this case.
45. For the avoidance of doubt, I have not determined the validity of the suspension imposed on 3 October 2025. That suspension arose from a separate complaint and a separate process said by the Respondent to be under Rule 27. Nothing in this decision should therefore be read as determining the validity of, or otherwise affecting, the separate suspension imposed on 3 October 2025 or the associated Rule 27 process.

46. I therefore make the enforcement order set out at paragraph 5, above.

A handwritten signature in black ink, appearing to read "Michael Kidd". The signature is written in a cursive, slightly stylized font.

MICHAEL KIDD
The Assistant Certification Officer