

SD/10/26-27

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

Donna Ferguson

Applicant

and

UNISON: the public service union

Respondent

Date of Decision

21 July 2026

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Decision

1. Donna Ferguson (“the Applicant”) applied to the Certification Officer (“the CO”) on 9 June 2026, under section 108A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), for a declaration that UNISON: the public service union (“the Respondent union”) 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. For the purposes of this application, the Applicant was represented by Mr Donnie Smith, Director of Meridian Consulting Partners Ltd.
4. In the initial correspondence to the Certification Office, the Applicant summarised the complaint as:

The complaint concerns UNISON's serious and repeated failure to handle Ms Ferguson's case , a £600,000+ Employment Tribunal claim involving Constructive Unfair Dismissal and disability discrimination in accordance with its own Rulebook and statutory obligations. In summary, UNISON:

issued a fatally flawed "no merits" assessment containing multiple verifiable factual errors; repeatedly refused to accommodate a Section 20 Equality Act 2010 reasonable adjustment for a member with a certified psychiatric injury; failed to determine a formal Condition 15 appeal, now over two months outstanding; unilaterally closed the file while that appeal remained undetermined; and failed to acknowledge or progress a formal complaint despite repeated escalation.

5. On 24 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 Certification Officer (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.
7. Given the preliminary view that the application did not fall within the CO's jurisdiction, the Applicant was told that they had two options:
 - 7.1. **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,
 - 7.2. **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.

8. 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.
9. On 24 June 2026, the Applicant wrote to the Certification Office confirming their preference for a formal decision regarding the issue of jurisdiction.
10. On 3 July 2026, I began my consideration of the application for the purpose of determining whether it fell within the CO's jurisdiction. The application referred to alleged breaches of "Rule I", "Legal Assistance Scheme", and "Condition 15". However, Rule I of the Respondent's rulebook appeared to concern disciplinary action, while the rule dealing with legal assistance was Rule K. I was also unable to identify any provision called "Condition 15" in the rulebook.
11. In those particular circumstances, I could not identify with sufficient certainty the rules or provisions on which the Applicant intended to rely. I therefore wrote to the Applicant seeking limited clarification. I asked the Applicant to identify the specific rule alleged to have been breached; to provide any document containing "Condition 15"; and to explain whether it was said that any such document formed part of the rules of the Respondent and, if so, on what basis.
12. I sought that clarification only to establish the application which the Applicant intended me to consider. It did not amount to a finding that the application fell within the CO's jurisdiction, nor did it provide the Applicant with an opportunity to make a new application or advance a materially different complaint. Whether clarification is needed in any case will depend on the wording of the application and the material provided with it.

13. In response, the Applicant confirmed that the reference to Rule I was an error and that the application relied instead on Rule K, concerning legal assistance. The Applicant withdrew the reference to Rule I and provided a document titled 'Conditions of Service for Representation of Members', which contained the provision described as "Condition 15". The Applicant also provided submissions on whether that document formed part of the rules of the Respondent.
14. I have considered the application as clarified, together with the other material provided, solely for the purpose of deciding whether it falls within the jurisdiction of the CO under section 108A of the 1992 Act.
15. While I have carefully considered all the material provided, it is not necessary, for the purpose of this jurisdictional sift decision, to refer to every document or to set out every allegation made by the Applicant. 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.
16. 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.
17. 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

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.

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

19. The Applicant relies upon the following Rule contained in the Respondent union's rulebook, as well as a provision contained in the Respondent union's Conditions of Service for Representation of Members:

Rule K Legal Assistance

1.1 The National Executive Council shall have the power in its absolute discretion to grant legal assistance to members who qualify under Rule K.2 below in respect of:

i) injuries or any other matter requiring legal assistance arising out of or in the course of their employment, or in proceeding to or from their place of employment, or whilst on Union duties or injuries arising out of a non work related matter.

ii) in exceptional circumstances any other matter.

1.2 The National Executive Council shall also have the power in its absolute discretion to grant legal assistance to family members of members who qualify under Rule K.2 in respect of:

i) injuries suffered by the family member arising out of a non work related matter.

ii) In exceptional circumstance any other matter.

1.3 Legal assistance may include advice and/or representation. Where legal assistance is provided by a solicitor and/or counsel instructed by the Union the National Executive Council shall indemnify the member (or member's family if appropriate) in respect of any liabilities incurred on the National Executive Council's authority up to the date of withdrawal of support.

1.4 The National Executive Council shall have the power in its absolute discretion to provide legal assistance to the financial dependants or next of kin of a deceased member whether or not they are members of the Union in respect of any matter arising out of the deceased member's employment or any matter in respect of which legal assistance could have been granted to the member under this Rule. 1.5 In all cases the conditions of Rules K.3 to 7 inclusive below should be satisfied however the National Executive Council can grant legal assistance notwithstanding that some or all of these conditions are not met. 1.6 In all cases the National Executive Council has absolute discretion

as to whether or not to grant, continue or withdraw legal assistance. The National Executive Council shall have the power to delegate, continue or withdraw legal assistance to the relevant committee under Rule D.2.9 or to a lay or full time officer of the Union.

Qualifications

2 The following shall apply: i) The member must have been in membership of the union for at least 4 weeks prior to the incident or occurrence that leads to them seeking legal assistance from the Union. ii) The member must not be in arrears of contribution. iii) The National Executive Council or the relevant committee, lay or full-time officer to whom the power to grant legal assistance has been delegated may in its absolute discretion grant legal assistance notwithstanding that sub clauses 2(i) and 2(ii) above or either of them are not satisfied.

Conditions

3 The member seeking legal assistance shall seek assistance in a manner prescribed by the National Executive Council.

4 The member is not entitled to assume that their application for legal assistance is effective until this is determined in writing by the Union.

5 The member must continue to pay contributions in accordance with Schedule A whilst their case is proceeding unless they have obtained dispensation

from the National Executive Council or relevant committee acting on its behalf.

6 Every grant of assistance shall be on the understanding that the National Executive Council in its discretion may withdraw legal assistance if the member does not follow the advice of the Union or its appointed solicitors, fails to pay contributions at the correct rate as set out in Schedule A, or if in its view the continuance of legal assistance is unreasonable. The National Executive Council may, in determining whether or not to continue legal assistance, take into account the policy of the Union.

7 The Union shall not be accountable for any costs, charges or other payments in connection with legal assistance either incurred or made on behalf of members (or member's family if appropriate) without the consent of the National Executive Council.

Conditions of Service for Representation of Members

15 In the event of UNISON support being withdrawn you have the right to appeal to your branch secretary in the first instance unless notified otherwise.

The Applicant's submissions

20. The application concerns an alleged breach of the rules of the Respondent union in respect of the withdrawal of legal assistance and the subsequent handling of an appeal against that withdrawal. The Applicant submits that

the Respondent union withdrew legal assistance on 7 April 2026 and that the Applicant thereafter exercised a right of appeal against that decision.

21. The Applicant alleges that the appeal was not acknowledged, referred, or determined, and that the matter was instead treated as closed whilst the appeal remained outstanding. The Applicant relies upon Rule K of the Respondent union's Rulebook and upon Condition 15 of the Conditions of Service for Representation of Members. The Applicant submits that Condition 15 forms part of the rules of the Respondent union and that the failure to operate the appeal process engages the Certification Officer's jurisdiction in respect of the constitution or proceedings of a decision-making meeting.
22. In respect of Rule K, the Applicant submits that the rule was breached because it governs the grant, continuation and withdrawal of legal assistance and forms the constitutional framework within which legal assistance decisions are made. The Applicant contends that legal assistance was withdrawn and that the Respondent union thereafter failed to operate the appeal process which, on the Applicant's case, forms part of that framework. The Applicant relies in particular upon Rule K.3, which provides that members seeking legal assistance shall do so in a manner prescribed by the National Executive Council.
23. In respect of jurisdiction, the Applicant submits that the failure to operate the appeal process engages section 108A(2)(d). The Applicant contends that an appeal against the withdrawal of legal assistance should have been considered through a decision-making process involving a person or body capable of determining whether support should be restored. The Applicant submits that the complaint concerns the Respondent union's failure to operate that process, rather than any complaint regarding the quality of advice or representation provided.

24. The Applicant stated that legal assistance was withdrawn on 7 April 2026 and that, later that day, the Applicant exercised the right of appeal contained within Condition 15 of the Conditions of Service for Representation of Members. The Applicant submits that Condition 15 provides that, where the support of the Respondent union is withdrawn, a member has the right to appeal to the branch secretary in the first instance unless notified otherwise. The Applicant alleges that the appeal was validly invoked but was never acknowledged, referred, convened, considered or determined. The Applicant submits that, instead, the officer whose decision was being challenged subsequently treated the matter as closed without any appeal process having taken place.
25. In respect of jurisdiction, the Applicant submits that although Condition 15 does not appear in the Rulebook itself, it forms part of the rules of the Respondent union. The Applicant submits that Rule K.3 requires members seeking legal assistance to do so in a manner prescribed by the National Executive Council and that the Conditions of Service for Representation of Members constitute the manner prescribed by the National Executive Council for the purposes of Rule K.3. The Applicant submits that the National Executive Council's power under Rule K.3 has the effect of incorporating the Conditions of Service into the constitutional framework established by Rule K and that a breach of Condition 15 is therefore a breach of the rules of the union. The Applicant further submits that the appeal contemplated by Condition 15 involves a decision-maker with authority to determine whether legal assistance should be restored and that the failure to constitute or operate that process engages section 108A(2)(d) concerning the constitution or proceedings of a decision-making meeting. The Applicant also submits that, even if the Conditions of Service are not themselves incorporated into the rules, the failure to convene the appeal process nevertheless engages section 108A(2)(d).

The jurisdiction of the Certification Officer

26. Section 108A(1) of the 1992 Act provides that a member of a trade union may apply to the Certification Officer 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).
27. It follows that an application under section 108A requires the identification of a rule of the union, an allegation that the rule has been breached or threatened with breach, and a sufficient relationship between that rule and one of the matters listed in section 108A(2).
28. Therefore, before considering whether a provision relied upon by an applicant relates to a matter listed in section 108A(2), it is necessary first to determine whether that provision forms part of the rules of the union for the purposes of section 108A. The fact that an applicant characterises a provision as a rule of the union does not make it so.
29. The fact that a document has been issued by a trade union, or that it governs some aspect of the relationship between the union and its members, does not of itself establish that it forms part of the rules of the union. Whether a provision forms part of the rules of the union depends upon its status within the union's constitutional framework. Whilst it is not necessarily the case that every aspect of a union's constitutional arrangements will be found within the rulebook itself, it does not follow that every document issued pursuant to powers conferred by the rules thereby acquires the status of a rule of the union. The question remains whether, properly construed, the union's constitutional framework gives the provision relied upon that status.
30. Accordingly, where an Applicant relies upon a provision which does not appear within the union's rulebook, the Certification Officer must first

determine whether that provision forms part of the rules of the union. Only if that question is answered in the affirmative does it become necessary to consider whether the provision relates to one of the matters listed in section 108A(2).

31. Further, in the application before me, the Applicant identifies section 108A(2)(d) as providing the jurisdictional gateway to the Certification Officer's determination of the application.
32. In doing so, the Applicant relies upon an area of the Certification Officer's jurisdiction which is focussed further still. It is not a general jurisdiction in respect of all rules concerning decision-making within a trade union:
 - 32.1. Firstly, the concepts of an "executive committee" and a "decision-making meeting" are statutory concepts with defined meanings. The statutory definitions are found in section 108A(10) and (11). In broad terms, those provisions define qualifying committees as those exercising executive functions and qualifying meetings as those possessing authority to make decisions which are final within the union's constitutional structure. They are not satisfied merely because a committee, meeting or office-holder has some involvement in a decision-making process.
 - 32.2. Secondly, even where a qualifying body is identified, the rule relied upon must then relate to the constitution or proceedings of that qualifying body. The Certification Officer has considered the meaning of "constitution" and "proceedings" on many previous occasions. In this context, constitution is primarily concerned with rules governing the composition, structure and functioning of a qualifying body, including matters such as membership, quoracy and the calling of meetings. Proceedings are primarily concerned with procedural rules governing how the body conducts its business.

33. By contrast, rules which concern the substance or merits of decisions, or which govern matters such as legal assistance, representation, membership services or other operational functions of the union, do not relate to the constitution or proceedings of a qualifying body merely because a decision may ultimately be taken by a committee or officer acting under those rules.

Conclusions

34. I must decide whether this application falls within the jurisdiction conferred by section 108A of the 1992 Act. The Applicant relies on Rule K, which is found within the Respondent union's rulebook, and Condition 15, which is found within the Conditions of Service for Representation of Members.
35. Rule K is plainly a rule of the Respondent union. The position in respect of Condition 15 is less straightforward. Before considering whether Condition 15 relates to a matter listed in section 108A(2), I must therefore first determine whether it forms part of the rules of the Respondent union for the purposes of section 108A. As discussed in paragraphs 28-30 above, only if that question is answered in the affirmative does it become necessary for me to consider whether the provision relates to a listed matter and whether the allegations engage the provision in that qualifying aspect.

36. Conclusions in respect of Rule K

- 36.1. In respect of Rule K, I have considered first whether the rule, read objectively and on its own terms, relates to one of the matters listed in section 108A(2). Rule K concerns the grant, continuation and withdrawal of legal assistance. It grants the National Executive Council discretion in relation to legal assistance, permits delegation of those functions, sets out eligibility requirements and conditions, and provides

for the withdrawal of support in specified circumstances. Its subject matter is legal assistance and representation.

36.2. Rule K does not, on its face, relate to the constitution or proceedings of any executive committee or decision-making meeting. Although it refers to the National Executive Council and to the delegation of legal assistance functions to committees or officers, those references do not make Rule K a rule concerning the constitution or proceedings of those bodies. Rather, the rule concerns the substance of legal assistance decisions and the powers under which such decisions may be taken.

36.3. Taking the Applicant's case at its highest, the complaint is that the Respondent union failed to operate an appeal process following the withdrawal of legal assistance. That complaint does not engage Rule K in any respect which relates to the constitution or proceedings of a qualifying body. Nor does Rule K contain provisions regulating the procedural operation of any executive committee or decision-making meeting. The connection relied upon by the Applicant arises from events said to have occurred following the withdrawal of legal assistance rather than from the scope or operation of Rule K itself.

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

37. Conclusions in respect of Condition 15

37.1. As discussed in paragraph 35, in respect of Condition 15, I must first consider whether it forms part of the rules of the Respondent union for the purposes of section 108A. The Applicant accepts that Condition 15 is not part of the Rulebook itself. The Applicant submits that the document forms part of the rules because Rule K.3 requires members seeking legal assistance to do so in a manner prescribed by the

National Executive Council and the Conditions of Service constitute that prescribed manner. The Applicant further submits that the National Executive Council's power under Rule K.3 incorporates the Conditions of Service into the constitutional framework established by Rule K, with the consequence that a breach of Condition 15 is a breach of the rules of the union.

37.2. I do not accept that submission. Rule K.3 provides that a member seeking legal assistance shall seek assistance in a manner prescribed by the National Executive Council. On its natural reading, that provision permits the National Executive Council to prescribe arrangements governing the manner in which legal assistance is sought and administered. It does not provide that every document, condition, policy or procedure prescribed by the National Executive Council automatically becomes part of the Rulebook or acquires the status of a rule of the union. The Applicant has not identified any provision of the Rulebook which expressly incorporates the Conditions of Service into the rules of the union, nor any provision which provides that documents prescribed under Rule K.3 are to be treated as rules. Whilst the Conditions of Service may regulate aspects of the relationship between the union and members receiving legal assistance, that does not of itself establish that they form part of the rules of the union for the purposes of section 108A. I therefore find that Condition 15 is not a rule of the Respondent union within the meaning of section 108A.

37.3. Should I be wrong in reaching that conclusion, and Condition 15 could amount to being a rule of the Respondent union, I would nevertheless find that it does not relate to any matter listed in section 108A(2). The Applicant identifies section 108A(2)(d) as the appropriate statutory gateway to the Certification Officer's consideration of the application, yet Condition 15 does not, on its face, relate to the constitution or

proceedings of an executive committee or decision-making meeting. Essentially, it provides only that a member may appeal to the branch secretary in the first instance where support has been withdrawn. It does not identify an executive committee or decision-making meeting within the meaning of the Act, nor does it contain provisions concerning the composition, quorum, notice, conduct, voting arrangements or procedural operation of any such body.

37.4. Further, taking the Applicant's case at its highest, the complaint is that no appeal process occurred following the withdrawal of legal assistance. That complaint concerns the handling of an appeal relating to legal assistance. It does not engage Condition 15 in any respect which relates to the constitution or proceedings of an executive committee or decision-making meeting. The connection with section 108A(2)(d) arises only from the Applicant's characterisation of what might have occurred had the appeal been processed, rather than from the scope or operation of Condition 15 itself. The relationship required by section 108A must flow from the rule itself and must be sufficiently clear and direct. In my view, Condition 15 does not bear such a relationship.

37.5. Accordingly, I find that the complaint in respect of Rule Condition 15 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 respect. The application concerns, in

substance, the Respondent union's provision and withdrawal of legal assistance. Those matters do not fall within the CO's limited jurisdiction under section 108A.

39. In conclusion, 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.

A handwritten signature in black ink, appearing to read 'Michael Kidd'.

MICHAEL KIDD
The Assistant Certification Officer

21 July 2026