

**D/23-33/26-27**

**Decision of the Certification Officer on application made under Section 108A of  
the Trade Union and Labour Relations (Consolidation) Act 1992**

**Munslow**

Applicant

and

**The Fire Brigades Union**

Respondent

**Date of Decision**

28 August 2026

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## Decision

1. Upon application by Ms Leoni Munslow under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), I make the following declarations:

I do not uphold **complaints 1-3** because I lack the jurisdiction to consider these complaints because they have been presented out of time for the purposes of sections 108A(6)(a) and (b) & 108A(7)(a) and (b), namely within the period of six months “starting with the day on which the breach or threatened breach is alleged to have taken place” and/or within the “last day of the period of one year beginning with the day on which the procedure is invoked”, respectively.

I do not uphold **complaints 4-7** because I lack the jurisdiction to consider these complaints because I have no such jurisdiction to engage in the substantive merits of the decisions made (Hamlet v GMB [1987] ICR 150).

I do not uphold **complaints 8-11** because they are concerned with the operation of the ‘All Different, All Equal Policy’ (ADAE) which (i) does not have the status of a rule (it is a policy); and (ii) it is not a breach “relating to” any of the matters falling within s. 108A(2) TULRCA 1992, including (b) “disciplinary proceedings by the union”.

## Background

2. Ms Munslow (“the Applicant”) is a member of FBU (“the Respondent”).
3. By her application under section 108A of the Trade Union and Labour Relations (Consolidation) Act 1992, submitted on 1 April 2025, the Applicant made a complaint that the Respondent breached its rules when it failed to apply its disciplinary and appeal processes correctly against two of its officers.

4. The Applicant's application was acknowledged by my office on 7 September 2025. The Respondent was notified of the Applicant's application by my office on 28 October 2025, and the Respondent's representative acknowledged receipt of the notification on 4 November 2025.
5. The Applicant confirmed her complaint as follows:

### **Complaint 1**

#### **Mr Selby's complaint against London Regional Secretary Mr Lambe**

Between 9 June 2023 and 2 October 2024 the Fire Brigades Union breached Rule G2.3(i) and implied principles of natural justice - and by doing so consequentially breached rules G1.5 (i to iv) and G2.4(iii) when it failed to convene a disciplinary meeting following the submission of Mr Selby's complaint report that concluded London Regional Secretary Mr Lambe had committed disciplinary offences of discrimination and victimisation, contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

### **Complaint 2**

#### **Mr Selby's complaint against London Executive Council Member Mr Shek**

On or soon after 9 June 2023 the Fire Brigades Union breached Rule G3.2(i) when it failed to convene a meeting of the Executive Council within 48 hours of the receipt of Mr Selby's investigation report that concluded that London Executive Council Member Mr Shek had committed disciplinary offences of discrimination and victimisation, contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

### **Complaint 3**

**Between 9 June 2023 and 2 October 2024, the Fire Brigades Union breached Rule G3.2(ii) and implied principles of natural justice**

By doing so consequentially breached rules G1.5 (i to iv) and G3.3(iii) when it failed to convene a disciplinary meeting following the submission of Mr Selby's complaint report that concluded London Executive Council Member Mr Shek had committed disciplinary offences of discrimination and victimisation, contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

### **Complaint 4**

**Rule breaches Executive Council**

On 2 October 2024 the Executive Council of the Fire Brigades Union breached rules Rule G2.3(i) and implied principles of natural justice - and by doing so consequentially breached rules G1.5 (i to iv) and G2.4(iii) when it made a decision to discontinue a complaint that Mr Lambe had committed disciplinary offences of discrimination and victimisation (detailed in Mr Selby's report), contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

### **Complaint 5**

**On 2 October 2024 the Executive Council of the Fire Brigades Union breached rules G3.2(ii) and implied principles of natural justice**

By doing so consequentially breached rules G1.5 (i to iv) and G3.3(iii) when it made a decision to discontinue a complaint that Mr Shek had committed disciplinary offences of discrimination and victimisation (detailed in Mr Selby's report), contrary to rules

G1.1(iv), G1.1(vi) and G1.1(vii).

### **Complaint 6**

#### **Rule breaches – Mr Brown complaint**

Between 11 November 2024 and present the Fire Brigades Union breached Rule G2.3(i) and implied principles of natural justice - and by doing so consequentially breached rules G1.5 (i to iv) and G2.4(iii) when it failed to convene a disciplinary meeting following the re-submission by Mr Brown of complaints of disciplinary rule breaches (discrimination and victimisation) by London Regional Secretary Mr Lambe detailed in Mr Selby's complaint report of 9 June 2023.

### **Complaint 7**

#### **Between 11 November 2024 and present the Fire Brigades Union breached Rule G3.2(ii) and implied principles of natural justice**

By doing so consequentially breached rules G1.5 (i to iv) and G3.3(iii) when it failed to convene a meeting following the re-submission by Mr Brown of complaints of disciplinary rule breaches (discrimination and victimisation) by London Executive Council Member Mr Shek detailed in Mr Selby's complaint report of 9 June 2023.

### **Complaint 8**

#### **RAC – Breach of FBU rules**

On 5 December 2024 the Representation Appeals Committee breached Fire Brigade Union rules C2.1 and C3.6 and implied principles of natural justice when failed to follow FBU rules/policies when it:

- Failed to consider allegations of victimisation by Mr Lambe as required within the process;
- Considered documents / evidence which were not significant / new or compelling, as required under appeals process in the hearing of Mr Lambe;
- Considered documents that had not been distributed to the complainant, as required under appeals process in the hearing of Mr Lambe;
- Reinstated FBU / legal representation to Mr Lambe without correctly following the appeals process as required;
- Considered documents / evidence which were not significant / new or compelling, as required under appeals process in the hearing of Mr Shek;
- Considered documents that had not been distributed to the complainant, as required under appeals process in the hearing of Mr Shek;
- Reinstated FBU / legal representation to Mr Shek without correctly following the appeals process as required.

### **Complaint 9**

**On 11 February 2025 the Executive Council breached rules G1.4(iii)(g), C2.1 and C3.6 and implied principles of natural justice**

When it:

- Failed to consider allegations of victimisation by Mr Lambe as required within the process;
- Reinstated representation rights to Mr Lambe without a

properly convened RAC meeting as required under process;

- Reinstated the decision of the RAC (5 December 2024) that had been made in contravention of All Different All Equal (ADAE) policy/ procedures in relation to Mr Lambe;
- Determined that the decision of the Representation Appeals Committee should supersede the decision of the Final Appeals Committees (made on 25 July 2023 and 12 December 2023) and automatically reinstate representation on receipt of an appeal in relation to Mr Lambe;
- Reinstated representation rights to Mr Shek without a properly convened RAC meeting as required under process;
- Reinstated the decision of the RAC (5 December 2024) that had been made in contravention of All Different All Equal (ADAE) policy/ procedures in relation to Mr Shek;
- Determined that the decision Representation Appeals Committee should supersede the decision of the Final Appeals Committees (made on 25 July 2023 and 12 December 2023) and automatically reinstate representation on receipt of an appeal in relation to Mr Shek.

### **Complaint 10**

**On 17 March 2025 the Representation Appeals Committee breached Fire Brigade Union rules C2.1 and C3.6 and implied principles of natural justice**

When it:

- Failed to consider allegations of victimisation by Mr Lambe as required within the process;
- Considered documents/evidence which were not significant/new or compelling, as required under appeals process in the hearing of Mr Lambe;
- Reinstated FBU/legal representation to Mr Lambe without correctly following the appeals process as required;
- Considered documents/evidence which were not significant/new or compelling, as required under appeals process in the hearing of Mr Shek;
- Reinstated FBU/legal representation to Mr Shek without correctly following the appeals process as required.

### **Complaint 11**

**On 29 May 2025 the Final Appeals Committee breached Fire Brigade Union rules C2.1 and C3.6 and implied principles of natural justice**

When it:

- Failed to consider allegations of victimisation by Mr Lambe as required;
- Considered documents/evidence which were not

significant/new or compelling, as required under appeals process in the hearing of Mr Lambe;

- Reinstated FBU/legal representation to Mr Lambe without correctly following the appeals process as required.
6. A Case Management Meeting (CMM) took place remotely, by Video Conference, on 14 July 2026 and was attended by the Applicant who was accompanied by Mr Jon Wharnsby, her lay representative. The Respondent was represented by Mr Stuart Brittenden KC, one of His Majesty's Counsel, instructed by Mr Iain Birrell of Thompsons Solicitors.
  7. The Hearing took place on 4 & 5 August 2026 by Video Conference. The Applicant was represented by Mr Wharnsby. The Respondent was represented by Mr Brittenden KC, instructed by Thompsons Solicitors. Both parties' representatives submitted skeleton arguments on behalf of their respective clients.
  8. The Applicant submitted a witness statement for herself and for Mr Riccardo La Torre. Both gave oral evidence at the hearing.
  9. The Respondent submitted three witness statements from Mr Ian Murray, President of FBU; Mr David Roberts; and, Mr Tony Curry, both of whom are members of the Respondent union's Executive Council. All three Union witnesses gave oral evidence at the hearing.
  10. Before the hearing, the parties supplied a bundle of documentary evidence consisting of 1,584 pages.

### **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

(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.

### **Declarations and Orders – s108B**

(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.

#### **Enforcement Order**

(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 [F2(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.

## **The relevant rules of the Respondent Union**

12. The relevant union rules are:

**Rule C2(1)** The supreme government of the Union shall be vested in the Conference which shall be held annually, and/or recall Conferences and the decision of which shall be binding on all members.

**Rule C3(6)** The Executive Council shall, subject to these rules and to the decision of Conference, have full power and authority to take such action as it deems necessary for the conduct of the Union's affairs and the realisation of the objects set out in Rule A2. The Executive Council shall have the following powers that shall not in any way limit its powers as set out above.

(i) To determine the salaries of all the full-time employees of the Union and to administer arrangements for pension, retirement and kindred benefits for these employees.

(ii) To make levies on members to keep the funds in a solvent condition.

(iii) To make grants or loans to kindred organisations and parties connected with the Trade Union movement and, in exceptional circumstances, for services rendered.

(iv) To set up where necessary committees to deal with the special problems or business or special

categories of the membership and to delegate to these committees such of its powers as it thinks fit, with the exception of the power to dismiss officials.

(v) To develop strategies for fairness at work, health and safety and Union education. To this end the Executive Council shall establish various committees, the work of which shall be reported to Conference.

(vi) To develop strategies designed to ensure health, safety and wellbeing. To this end the Executive Council will maintain a Fire Brigades Union Health and Safety Committee consisting of representatives of the Executive Council and the Regional Health and Safety Representatives. The Executive Council will also ensure that, not less than four times per year, a meeting of the Fire Brigades Union Health and Safety Committee shall take place.

**G1.1(iv)** Discriminates against, harasses or bullies another whether on the grounds of race, creed, sex, sexual orientation or otherwise;

**G1.1(vi)** Acts in any way prejudicial to the interests of the Union;

**G1.1(vii)** Is or becomes a member of, or acts or campaigns on behalf of, any racist or fascist political party or organisation;

**G1.4(iii)(g)** Any decision of the Appeals Committee shall be final;

### **G1.5 (i to iv)**

(i) Whenever the convening of a meeting is required by this rule, the procedure set out below shall be followed save in the case of when the disciplinary committee are convened upon receipt of a report from a Regional Committee under Rule G1(2)(vi)(a) for the purpose of a hearing to consider the report and recommendation. For the avoidance of doubt, the meeting may be an ordinary meeting of the committee concerned or a meeting called especially for the purpose of the disciplinary proceedings, at the discretion of the Secretary to that committee.

(ii) The Secretary shall as soon as practicable send written notice of the meeting securely by post to the defendant at his/her/their last known address not less than 21 days before the meeting. In addition, where the member's email address is available, the Secretary shall also send the notice electronically.

(iii) The notice of the meeting sent to the defendant shall be dated and shall specify:

(a) The date, time and place of the meeting;

(b) The purpose of the hearing;

(c) Details of the alleged offence sufficient to enable the defendant to appreciate the nature of the case against him/her/them;

(d) His/her/their right to attend, make verbal submissions, call witnesses and submit documentary

evidence;

(e) His/her/their right to be represented by him/her/their self or another member of his/her/their choice (subject to that nominated member's agreement);

(f) His/her/their right to make written submissions;

(g) That his/her/their reasonable travelling expenses will be met; his/her/their representative's reasonable travelling expenses will be met;

(h) That the proceedings may ultimately lead to his/her/their expulsion from membership of the Union;

(i) That the meeting may proceed in his/her/their absence unless he/she/they submits/submit written reasons showing good cause why he/she/they cannot attend;

(j) That he/she/they should acknowledge receipt and state within 10 days of the date of the notice whether he/she/they intends/intend to attend the meeting. If acknowledgement is not received within 10 days, the meeting shall proceed as set out in the written notice of the meeting;

(k) That he/she/they is/are requested to forward copies of any documents to which he/she/they will refer, to the Secretary;

(l) And shall enclose a copy of any report submitted by the investigator under Rule G1(2)(iii)(b).

(iv) If, in the opinion of the Secretary there is good

cause why he/she/they cannot attend, the hearing shall be postponed to a future meeting

**G2.3(i)** Upon receipt of a complaint under G1(2) the General Secretary shall convene a meeting (which may be an ordinary meeting) of the Executive Council in accordance with Rule G1(5) for the purpose of a hearing to consider the complaint. In addition to the matters referred to in that rule the notice of the Meeting sent to the defendant shall also inform him/her/them that the proceedings may lead to him/her/them being permanently debarred from office in the Union.

**G2.4(iii)** The Executive Council shall consider the disciplinary complaint against the defendant and shall make a resolution to either:

- (a) Dismiss the report or complaint; or
- (b) Find the report or complaint justified and penalise the defendant. The penalties available are those set out in Rule G2(4)(iv).

**G3.2(i)** Upon receipt of a complaint under G3(1) the General Secretary shall convene a meeting (which may be an ordinary meeting) of the Executive Council to take place within 48 hours of the receipt of the complaint by him/her/them for the sole purpose of giving a report of the complaint and of the reasons for any suspension to the Executive Council.

**G3.2(ii)** Thereafter the General Secretary shall convene a meeting (which may be an ordinary

meeting) of the Executive Council in accordance with Rule G1(5) which shall commence within 28 days of the conclusion of the meeting referred to at Rule G3(2)(i) for the purpose of a hearing to consider the complaint. In addition to the matters referred to in Rule G1(5) the notice of the meeting sent to the defendant shall also inform him/her/them that the proceedings may lead to him/her/them being permanently debarred from office in the Union. If the defendant is a full-time official the notice of the meeting sent to him/her/them shall also inform him/her/them that the proceedings may lead to his/her/their dismissal from the Union's employment.

**G3.3(iii)** The Executive Council shall consider the disciplinary complaint against the defendant and shall make a resolution to either

- a. Dismiss the report or complaint; or
- b. Find the report or complaint justified and penalise the defendant.

## **Findings of fact**

13. The Applicant has served as a firefighter for 14 years, originally based in Holloway, but now in Tooting. Further, she is an experienced trade union official having been a Representative of the Respondent union for over 10 years as well as having served as an Area Official for 5 years and more recently on its National Women's Committee from 2022-2026.
14. On 4 April 2022, the Applicant submitted a complaint to the Respondent concerning discrimination and victimisation against her by an Executive Council member from Region 10 (London) [Mr Shek] under Rule G3 and the

then Regional Secretary of Region 10 (London) [Mr Lambe] under Rule G2.

15. On 6 April 2022 the Respondent union's then Vice-President [Mr Selby] was appointed to undertake the investigation into the Applicant's complaint. Mr Selby commenced his investigation on 7 April 2022 and concluded his report 9 June 2023, submitting it to the then General Secretary [Mr Wrack].
16. On 16 July 2022 and 1 March 2023, respectively, the Applicant commenced Employment Tribunal (ET) proceedings against the Respondent union and its Regional Secretary of Region 10 (London) [Mr Lambe] (case number 2302367/2022) and the Executive Council member of Region 10 (London) [Mr Shek] (case number 2300974/2023). The claims before the ET were combined on 20 March 2023.
17. On 22 November 2022 the Respondent union's Representation Appeals Committee (RAC) considered the Regional Secretary of Region 10 (London) [Mr Lambe] request for representation. Due to new evidence being introduced at that meeting an adjournment was agreed. Subsequently on 12 January 2023 the Respondent's RAC reconvened and considered the Regional Secretary of Region 10's (London) [Mr Lambe] request for representation and was declined in accordance with the All Different, All Equal Policy ([ADAE](#)).
18. On 25 July 2023 the Final Appeals Committee (FAC) considered the Regional Secretary of Region 10's (London) [Mr Lambe] appeal against the RAC decision on 12 January 2023 to remove representation. The appeal was refused.
19. On 5 September 2023 the Respondent's RAC was convened to consider the Executive Council member of Region 10's (London) [Mr Shek] request for representation. The RAC was adjourned to allow more time to receive comments on the ADAE report. Subsequently on 12 September 2023 the Respondent's RAC considered the Executive Council member of Region 10's (London) [Mr Shek] request for representation which was declined in

accordance with the ADAE policy.

20. On 27 October 2023 the Executive Council member of Region 10 (London) [Mr Shek] submitted an appeal against the decision of the Respondent union's RAC to decline representation.
21. On 12 December 2023 the Respondent's FAC considered the Executive Council member of Region 10's (London) [Mr Shek] appeal against the RAC decision to remove representation. The appeal was refused.
22. Consequently, the then General Secretary of the Respondent union [Mr Wrack] did not progress the Vice-President Selby's investigation report into the Applicant's complaints until 20 March 2024. That same day the then General Secretary [Mr Wrack] instructed a National Officer [Mr Rowe] to act as the secretary to the internal union discipline process and progress the complaint.
23. On 9 April 2024 the tasked National Officer (acting as secretary to internal union discipline hearings) [Mr Rowe] wrote to both the Regional Secretary [Mr Lambe] and the Executive Council member of Region 10 (London) [Mr Shek] to notify them that the Applicant's complaint would be considered at a disciplinary hearing.
24. On 12 June 2024 the Executive Council was notified that a disciplinary hearing to determine the Applicant's complaints was scheduled for 3 and 4 July 2024. This was rescheduled to 9-10 October 2024.
25. The Applicant settled her ET claim against the Respondent in or around May 2024. The claims against the Regional Secretary and the Executive Council member of Region 10 (London) [Messrs Lambe and Shek] remain listed for a hearing on 12-20 October 2026.
26. On 12 July 2024, a further RAC was scheduled for 20 August 2024, to hear additional evidence by the Regional Secretary and the Executive Council member of Region 10 (London) [Messrs Lambe and Shek].

27. On 13 August the RAC for 20 August 2024 was postponed and was rescheduled twice before it was convened on 5 December 2024.
28. On 20 August 2024 the Respondent union's former Assistant General Secretary [Mr Dark] corresponded with the FBU President notifying them that he would be representing the Regional Secretary and the Executive Council member of Region 10 (London) [Messrs Lambe and Shek] and alleging various breaches of the Rulebook. Further, Mr Dark demanded that the disciplinary processes against both the Regional Secretary and Executive Council member of Region 10 (London) [Messrs Lambe and Shek] be withdrawn.
29. On 2 October 2024 the Respondent's Executive Council discontinued the disciplinary hearings scheduled for 9 and 10 October 2024.
30. On 3 October 2024, the Respondent's then General Secretary [Mr Wrack], President [Mr Murray] and National Officers [Messrs Selby and La Torre] met with the Applicant, where she complained about the decision to discontinue the complaints.
31. On 11 November 2024, an Executive Council member from Region 1 (Scotland) [Mr Brown] made a complaint under Rule G1(3)(iii). That same day, the Applicant, the Regional Secretary and the Executive Council member of Region 10 (London) [Messrs Lambe and Shek] were informed of this complaint.
32. Subsequently, on 21 November 2024, the former Assistant General Secretary [Mr Dark], now representing the Regional Secretary and the Executive Council member of Region 10 (London) [Messrs Lambe and Shek] objected to the new complaint of 11 November 2024 by Mr Brown.
33. On 5 December 2024, the Respondent's RAC considered a further appeal for representation by the Regional Secretary and the Executive Council member of Region 10 (London) [Messrs Lambe and Shek] which reinstated

representation for them both.

34. On 6 December 2024, the Applicant sought to challenge RAC's latest decision.
35. On 12 December 2024, it was reported that the then General Secretary [Mr Wrack], Assistant General Secretary [Mr Selby] and National Officer [Mr Rowe] had revoked RAC's decision of 5 December 2024 due to the failure to adhere to the ADAE procedures and therefore the applications would be re-heard.
36. Subsequently, on 11 February 2025 the Respondent's Executive Council met and resolved that the RAC decisions of 5 December 2024 remained valid. However, due to there being merit to procedures raised, the matter would be referred back to the RAC.
37. On 14 February 2025 the Applicant corresponded with the Respondent's President [Mr Murray] to raise issues of rule breaches and errors throughout the ADAE procedures.
38. On 17 March 2025 the Respondent's RAC reconsidered the applications for assistance in respect of the Regional Secretary and the Executive Council member of Region 10 (London) [Messrs Lambe and Shek] and determined that there was an arguable defence under ADAE and the decisions dated 5 December 2024 were reconfirmed; thereby reinstating their representation.
39. On 22 March 2025 the Applicant made a formal complaint citing rule breaches relating to the ADAE process.
40. On 1 April 2025 the Certification Office was notified of complaints made by the Applicant against the Respondent.
41. On 29 May 2025 the Respondent's FAC did not uphold the Applicant's appeal against the decision of the RAC on 17 March 2025.
42. The Respondent's Executive Council met on 9 December 2025 to consider

the scheduling of the complaint from the Executive Council member of Region 1 (Scotland) [Mr Brown] which proved to be inquorate and therefore no decision could be made. The Respondent's Executive Council meeting was rescheduled for 9 January 2026 and at this meeting the Executive Council resolved to progress the complaint from the Executive Council member from Region1 (Scotland) [Mr Brown] under Rule G1(3)(iii).

43. On 22 May 2026 the Respondent informed the Applicant that the agreement for the proceedings to be scheduled after her ET claims would not be honoured and that the hearings would be scheduled before the end of July 2026.
44. On 3-4 July 2026 the disciplinary hearing was convened concerning Messrs Lambe and Shek.

## **Issues**

45. The following issues before the Certification Officer (CO) were agreed between the parties, as follows:

### **Complaint 1**

- 45.1.1 Whether the CO possesses jurisdiction to consider this Complaint on the basis that it has been presented out of time, pursuant to s. 108A (6) or (7) TULRCA 1992?

- 45.1.2 If not, the Respondent accepts that it did not comply with the requirement to convene a disciplinary meeting as soon as practicable for the purposes of Rule G1(5) (ii).

### **Complaint 2**

- 45.2 Whether the CO possesses jurisdiction to consider this Complaint on the basis that it has been presented out of time, pursuant to s. 108A (6) or (7) TULRCA 1992?

45.2.1 If not, is the breach minor and/or one which occasioned no substantial injustice?

45.2.2 If not, the Respondent accepts that Rule G3(2)(i) was not complied with in this case.

### **Complaint 3**

45.3 Whether the CO possesses jurisdiction to consider this Complaint on the basis that it has been presented out of time, pursuant to s. 108A (6) or (7) TULRCA 1992?

45.3.1 If not, the Respondent accepts that Rule G3(2)(ii) was not complied with in this case.

### **Complaint 4**

45.4 Whether the Respondent acted in breach of Rule G2.3(i) in deciding to discontinue disciplinary proceedings against the Regional Secretary of Region 10 (London) (Mr Lambe)?

### **Complaint 5**

45.5 Whether the Respondent acted in breach of Rule G3.2(i) in deciding to discontinue disciplinary proceedings against the Executive Council member of Region 10 (London) (Mr Shek)?

### **Complaint 6**

45.6 Whether the Respondent was required to progress a complaint re-submitted by the Executive Council member of Region 1 (Scotland) (Mr Brown) on 11 November 2024?

### **Complaint 7**

45.7 Whether the Respondent was required to progress an identical complaint re-submitted by the Executive Council member of Region 1 (Scotland) (Mr

Brown) on 11 November 2024?

### **Complaints 8 - 11**

45.8 Does the CO possess jurisdiction to determine any complaint about the operation of the All Different, All Equal policy (“ADAE”). Specifically, is the application of ADAE (i) a rule; and (ii) is it a matter “relating to” “disciplinary proceedings by the union” within the meaning of s. 108A(2)(b)?

46.8.1.1 If so, does the CO possess jurisdiction to evaluate the substance of each decisions reached which form the subject matter of Complaints 8-11?

And,

46.8.2 Does the CO possess jurisdiction under s. 108A(2)(d) to determine any complaint about the constitution or proceedings of decision-making meetings which form the subject matter of Complaints 8 - 11?

### **Reasons**

46. I now turn to determine each complaint, as thematically arranged and agreed by the parties, as follows:

### **Complaints 1-3**

#### **1) Mr Selby’s complaint against London Regional Secretary [Mr Lambe]**

Between 9 June 2023 and 2 October 2024 the Fire Brigades Union breached Rule G2.3(i) and implied principles of natural justice - and by doing so consequentially breached rules G1.5 (i to iv) and G2.4(iii) when it failed to convene a disciplinary meeting following the submission of Mr Selby’s complaint report that concluded London Regional Secretary Mr Lambe had committed disciplinary offences of discrimination and victimisation, contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

## **2) Mr Selby's complaint against London Executive Council Member [Mr Shek]**

On or soon after 9 June 2023 the Fire Brigades Union breached Rule G3.2(i) when it failed to convene a meeting of the Executive Council within 48 hours of the receipt of Mr Selby's investigation report that concluded that London Executive Council Member Mr Shek had committed disciplinary offences of discrimination and victimisation, contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

## **3) Between 9 June 2023 and 2 October 2024, the Fire Brigades Union breached Rule G3.2(ii) and implied principles of natural justice**

And by doing so consequentially breached rules G1.5 (i to iv) and G3.3(iii) when it failed to convene a disciplinary meeting following the submission of Mr Selby's complaint report that concluded London Executive Council Member Mr Shek had committed disciplinary offences of discrimination and victimisation, contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

46.1 The parties ask me to determine whether:

46.1.1 I have jurisdiction to consider complaint 1 on the basis that it has been presented out of time, pursuant to s. 108A (6) or (7) TULRCA 1992?

If not, the Respondent accepts that it did not comply with the requirement to convene a disciplinary meeting as soon as practicable for the purposes of Rule G1(5) (ii).

And,

46.1.2 I possess the jurisdiction to consider complaint 2 on the basis that it has been presented out of time, pursuant to s. 108A (6) or (7) TULRCA 1992? If not, is the breach minor and/or one which occasioned no substantial injustice?

and/or,

If not, the Respondent accepts that Rule G3(2)(i) was not complied with in this case.

And,

46.1.3 I have jurisdiction to consider complaint 3 on the basis that it has been presented out of time, pursuant to s. 108A (6) or (7) TULRCA 1992? And, if not, the Respondent accepts that Rule G3(2)(ii) was not complied with in this case.

46.2 The Applicant contends that her complaints 1-3 relate to the disciplinary procedures of the FBU and therefore fall within my jurisdiction. However, as to the jurisdictional time limitation, the Applicant submits that her primary position is that, until a disciplinary hearing is convened, any breaches are ongoing. Therefore, the Applicant contends that a continued/threatened breach exists within my jurisdiction. In the alternative, the Applicant contends that the breach was ongoing until 2 October 2024 and consequently, her application to me on 1 April 2025 was within the 6 months limitation under s.108A(6) of the Act. Further, the Applicant contends that she had no knowledge of the breach until 2 October 2024, in any event. The Applicant avers that she was informally notified of a breach on 2 October 2024, as evidenced by the Minutes of the Respondent union's Executive Council of 3 October 2024, which record that:

“...[the General Secretary] told Sis[ter] Munslow that her case is not over but, if it were to be reconsidered, would need to be considered through a different mechanism”.

From this date, the Applicant contends that less than 6 months later the issue was not resolved, upon which the Applicant made her complaint to me on 1 April 2025. The Applicant relies on Fradley and the Transport Salaried Staffs' Association (D/28-30/03) where she then learned

Certification Officer (David Cockburn CBE) guided that:

“Section 108A(6)(b) is a savings provision which allows an application to be made at a later time in restricted circumstances. It provides that ‘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)’. Subsection (7) provides that 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”.

Further, the Applicant asserts that complaints 1 and 3 are about failures to convene a disciplinary hearing. Namely, that Rule G2 of the Respondent’s Rulebook details disciplinary processes for Regional Secretaries and Rule G3 details the disciplinary rules for Executive Council members. The Applicant further submits that both Rules G2.3(i) and G3.2(ii) require a disciplinary hearing to be ‘convened’ and require adherence to Rule G1.5. G1.5(ii) requires that the hearing notice be sent “as soon as practicable”. The Applicant invites me to adopt common sense reading of Rules G2.3(i) and G3.2(ii), both read together with G1.5, and to conclude that the hearing notice is required to be sent “as soon as practicable”, with a minimum of 21 days’ notice, for a hearing to be convened. The Applicant complains that the Respondent’s failure to convene any hearing has caused her untold stress and affected her physical and mental health. However, the Applicant accepts that the breach of Rule G1.5(i) (complaint 2) was rectified on 11 June 2024; yet, avers that the requirements to convene a meeting are still not adhered to and that she was unaware and could not have reasonably been expected to be aware of these breaches until 2 October 2024. Therefore, she asserts that she had no knowledge of the breach until 2 October 2024, having utilised the Respondent’s internal procedures.

46.3 The Respondent submits that the Applicant submitted her complaint of

discrimination and victimisation to the Respondent union on 4 April 2022 and subsequently, the Respondent investigated it and produced an investigation report into that complaint on 9 June 2023. However, this investigation report was not progressed until 20 March 2024, when the Respondent's (now former) General Secretary instructed Mark Rowe to proceed with the disciplinary process. Yet, on 20 March 2024, the General Secretary corresponded with the Applicant to advise:

“Apologies for the delay in responding. We have been waiting for the resolution of an Employment Tribunal which has caused a delay. I am passing the complaint to a National Official for progressing”.

Furthermore, the Respondent relies on Rule G2(3)(i) which states that the General Secretary convenes an Executive Council meeting to consider the disciplinary investigation report without any timescale or deadline for the convening of a disciplinary meeting. It specifically provides:

“(3)(i) Upon receipt of a complaint under G1(2) the General Secretary shall convene a meeting (which may be an ordinary meeting) of the Executive Council in accordance with Rule G1(5) for the purpose of a hearing to consider the complaint. In addition to the matters referred to in that rule the notice of the meeting sent to the defendant shall also inform him/her/them that the proceedings may lead to him/her/them being permanently debarred from office in the Union”.

However, the Respondent acknowledges that Rule G1(5)(ii) requires a meeting to be called “as soon as practicable”. Whilst the Respondent acknowledges that the delay between 9 June 2023 - 12 June 2024 does not satisfy the requirement to convene a disciplinary meeting as soon as practicable for the purposes of Rule G1(5)(ii), the Respondent accepts that Rule G3(2)(i) of its union Rulebook was not complied with in the instant application before me. However, the Respondent asserts that such a breach

was minor or insignificant and occasioned no substantial injustice to the Applicant. Praying in aid to its submissions, the Respondent relies on the Foss v Harbottle (1843) 2 Hare 461 principle that a Court or Tribunal may decline to intervene if there is an irregularity which occasions no substantial injustice, particularly in circumstances where this has been ratified by the Executive. In respect of complaint 3 the Respondent accepts, as reaffirmed by Mr Murray in his evidence before me, that Rule G3(2)(ii) requires the disciplinary meeting to be convened within 28 days of the Executive Council meeting and therefore, in the instant application, the Respondent's Executive Council meeting was required to be held by Wednesday 14 June 2023 and therefore the disciplinary meeting should have been convened at the latest by Tuesday 11 July 2023. The Respondent accepts that Rule G3(2)(ii) was not complied with, since on 12 June 2024 the Executive Council was notified that a discipline hearing was scheduled to take place on 3 and 4 July 2024. Yet, this hearing was rescheduled to 9-10 October 2024.

Accordingly, the Respondent submits that in accordance with s.108A(6)(a) of TULRCA 1992, the primary time limit was the period of six months, "starting with the day on which the breach or threatened breach is alleged to have taken place". A rule of this type is breached when the disciplinary meeting is not convened within 28 days of the latest point at which the Executive Council meeting should have been convened. Since the breach is incapable of remedy and without cure, the deadline to apply to the Certification Officer or start an internal complaint about that breach expired on 10 January 2024. Neither occurred by that date and this complaint (complaint 3) is out of time. Nevertheless, the Respondent categorically denies that I have jurisdiction to entertain these complaints because they are out of time. The Respondent contends that pursuant to s. 108A(6)(a), this complaint had to be presented within the period of six months "starting with the day on which the breach or threatened breach is alleged to have taken place". Accordingly, the Respondent contends that given that the Applicant first raised her complaint with my office on 1 April 2025; knowing that there had been an

omission to convene a disciplinary hearing within a reasonably practicable period following the promulgation of Mr Selby's investigation report dated 9 June 2023, then these complaints are out of time.

- 46.4 In my view, the starting point, in order to determine the fundamental time limitation issue in respect of complaints 1-3, is Section 108A of TULRCA 1992 which provides that:

**108A Right to apply to Certification Officer**

(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.

From this reading, it is clear to me that Parliament enacted a strict 6 months' time limitation for all applications before me. Namely, TULRCA 1992 provides that:

(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

It is therefore accepted by the parties that I have no power to extend time. Moreover, Parliament expressly intended that

(6) An application must be made—(a).....

(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.

To that end, Parliament expressly differentiated between and provided for situations where internal procedures were concluded and where they remained ongoing. Applied to the instant application before me, whilst the Applicant submits that her complaints are ongoing (save for complaint 2 which she now concedes is concluded), it is agreed between the parties that she commenced her complaints through the Respondent's internal procedures on 4 April 2022. Moreover, it is agreed between the parties that the Selby Report on 9 June 2023 responded to the Applicant's complaints by finding a 'case to answer'. It therefore seems to me that since complaints 1-3 accept that 9 June 2023 is the date of the breach, then the time limits run from thereon. Consequently, applying s. 108A(6)(a) of TULRCA 1992, the primary time limit was the period of six months "starting with the day on which the breach or threatened breach is alleged to have taken place", was 9 December 2023. As Mr Brittenden KC, on behalf of the Respondent, starkly submits the Applicant presented her complaints to me, out of time, on 1 April 2025. In fact, on the agreed factual matrix before me, the Applicant's complaints 1-3 were all appreciably out of time, as follows: complaint 1 was 662 days out of time; complaint 2 was 657 days out of time; and, complaint 3 was 629 days out of time for complaint 3. In my view, the Applicant is an experienced trade union official. In fact, she has instituted her proceedings before the Employment Tribunal, mindful of the requisite statutory time limits; and, similarly she should have applied her mind to the statutory time limits which apply to my jurisdiction. Unfortunately, she and her advisors failed to do so causing her application to be out of time.

46.5 Furthermore, seeking to clarify the law on 'ongoing' procedures, Parliament, in my view, expressly intended that neither myself nor my predecessors, nor my successors unless the law is changed, have any statutory powers to extend time, akin to those which exist for proceedings before Employment Tribunals. Addressing this issue directly, my predecessor Certification Officer (David Cockburn CBE) in Foster v Musician's Union (D/13-17/03) guided that:

“To bring the claim within time the Applicant must establish that within six months of the ...dates [he/she] invoked an internal complaints procedure to resolve [his/her] claim”.

Further, given the precarious nature of ‘ongoing’, ie unresolved, internal trade union procedures, the Legislature’s foresight was to provide a fail-safe provision with the 12 months’ extended time limit. For the avoidance of doubt, the Certification Office guidance on how to ‘Complain about a trade union or employers’ association, or to apply to the CO for a declaration’ ([Complain about a trade union or employers’ association, or apply to the Certification Officer for a declaration - GOV.UK](#)) sets out the strict time limits and encourages all parties to seek advice. For all these reasons, complaints 1-3 are out of time and are dismissed.

## **Complaints 4-7**

### **4) Rule breaches Executive Council**

On 2 October 2024 the Executive Council of the Fire Brigades Union breached rules Rule G2.3(i) and implied principles of natural justice - and by doing so consequentially breached rules G1.5 (i to iv) and G2.4(iii) when it made a decision to discontinue a complaint that Mr Lambe had committed disciplinary offences of discrimination and victimisation (detailed in Mr Selby’s report), contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

### **5) On 2 October 2024 the Executive Council of the Fire Brigades Union breached rules G3.2(ii) and implied principles of natural justice**

By doing so consequentially breached rules G1.5 (i to iv) and G3.3(iii) when it made a decision to discontinue a complaint that Mr Shek had committed disciplinary offences of discrimination and victimisation (detailed in Mr Selby’s report), contrary to rules G1.1(iv), G1.1(vi) and G1.1(vii).

## **6) Rule breaches Mr Brown complaint**

Between 11 November 2024 and present the Fire Brigades Union breached Rule G2.3(i) and implied principles of natural justice - and by doing so consequentially breached rules G1.5 (i to iv) and G2.4(iii) when it failed to convene a disciplinary meeting following the resubmission by Mr Brown of complaints of disciplinary rule breaches (discrimination and victimisation) by London Regional Secretary Mr Lambe detailed in Mr Selby's complaint report of 9 June 2023.

## **7) Between 11 November 2024 and present the Fire Brigades Union breached Rule G3.2(ii) and implied principles of natural justice**

By doing so consequentially breached rules G1.5 (i to iv) and G3.3(iii) when it failed to convene a meeting following the re-submission by Mr Brown of complaints of disciplinary rule breaches (discrimination and victimisation) by London Executive Council Member Mr Shek detailed in Mr Selby's complaint report of 9 June 2023.

48.1 The parties ask me to determine whether:

48.1.1 the Respondent acted in breach of Rule G2.3(i) in deciding to discontinue disciplinary proceedings against the Regional Secretary of Region 10 (London) (Mr Lambe)?

And,

48.1.2 the Respondent acted in breach of Rule G3.2(i) in deciding to discontinue disciplinary proceedings against the Executive Council member of Region 10 (London) (Mr Shek)?

And,

48.1.3 the Respondent was required to progress a complaint re-submitted by the Executive Council member of Region 1 (Scotland) (Mr Brown) on 11 November 2024?

And,

48.1.4 the Respondent was required to progress an identical complaint re-submitted by the Executive Council member of Region 1 (Scotland) (Mr Brown) on 11 November 2024?

48.2 The Applicant repeats and recites her previous submissions in terms of time limits; moreover, the Applicant contends that complaints 4 and 5 are almost identical and submits that both complaints 4 and 5 relate to limitations of the Respondent's Executive Council powers under rule C3.6 to discontinue discrimination/victimisation complaints against Messrs Lambe and Shek. The Applicant relies on the fact that the Respondent accepts that it breached complaint 2. Furthermore, the Applicant contends that to discontinue such serious allegation of discrimination/victimisation (ie complaints 4 and 5) is not only ultra vires because it exceeds the powers within rule C3.6 (with rule A2.8 taking precedence), but also a disproportionate response. Further, in respect of complaints 6 and 7, Mr Wharnsby, lay representative on behalf of the Applicant helpfully clarified and submitted that the delays incurred constituted the breaches. Further, the Applicant submits that complaints 6 and 7 demonstrate the Respondent's breaches, as there was a legitimate expectation amongst membership that complaints must be heard.

48.3 The Respondent submits that the power of the Respondent's Executive Council to discontinue disciplinary proceedings against a member has already been settled by the Certification Officer (cf. Embery (No.4) v FBU D/8/24-25). The then Certification Officer (Sarah Bedwell) observed that:

"I am satisfied, therefore, that the EC were entitled to reach the decision to discontinue the proceedings by relying on Rule C3(6).11 There may have been other options open to them, including proceeding to a hearing, however they were entitled to take the decision to discontinue.

In reaching this view I have taken into account G1(2)(ii). A common sense reading of that Rule is that Rule G1, G2, and G3 do not fetter the EC's powers in any way. Consequently, the EC must, where necessary, be able to depart from the procedures set out in the rules. When relying on this power I would expect the EC to be able to justify its decision. It is clear from the minutes of the EC meeting on 13 February 2024 that the EC considered its decision, carefully considered the advice and explored the options which were available to them" (at paras. 40-41).

The Respondent contends that in Embery (No.4) the disciplinary proceedings were discontinued on the basis of legal advice received by the Respondent union, which is a similar state of affairs to the instant application before me, to justify the decision to discontinue the proceedings against Mr Lambe. The Respondent does not waive its privilege in respect of the legal advice received. Moreover, the Respondent therefore submits that the Respondent union acted responsibly and obtained legal advice which its Executive Committee considered on 2 October 2024 and it determined to discontinue proceedings against Messrs Lambe and Shek. Consequently, the Respondent reminds me that it is the merits of the decision taken by the Respondent's Executive Committee. Applying Hamlet v GMB [1987] ICR 150: "The only duty of the courts in considering questions of appeals and the internal machinery for resolving disputes in unions is to see that the machinery has been properly followed through. The decision is not one which the court has any business to go into..." ((per Harman J, at p. 154). In fact, I am also reminded that I have previously opined in Nesbitt v NASUWT (D/33-41/25-26) it is not for me to intervene in respect of the decision, save in exceptional cases where the decision is demonstrably perverse. Furthermore, in terms of complaints 6 and 7, the Respondent relies on the factual background which, as heard in evidence before me, reaffirms that the complainant (Colin Brown) is a member of the Respondent's Executive Council. He was in fact present at

the meeting on 2 October 2024 where the decision was taken to discontinue proceedings against Messrs Lambe and Shek. Thereafter, being unhappy with that outcome, he (ie Mr Brown) submitted a complaint, dated 11 November 2024. Therefore, the Respondent disputes the premise of complaint 6 and denies that the same complaint can be submitted repeatedly and that the Respondent is under a contractual obligation to address it again under any Rule, or that any repeated failure to address it is capable of giving rise to an actionable breach. This is particularly so, the Respondent submits, in circumstances where the Respondent's Executive Council had already made a determination that the proceedings should be discontinued having followed its due process.

48.4 From the evidence heard before me, it is clear that in terms of complaints 4 and 5, it is not for me, applying Embery (No.4), to interfere with the Respondent's discontinuance of proceedings as it was quite simply a legitimate decision for the Respondent to take in light of the legal advice received and its due process undertaken as a consequence. Further, in respect of complaints 6 and 7, I find that Mr Brown's complaint amounted to a collateral challenge to the decision of the Respondent's Executive Council on 2 October 2024. Accordingly, the principles of fairness apply to this decision and no breach arises. In any event, I acknowledge that under s. 108A TULRCA 1992 I could entertain a complaint about a threatened or anticipatory breach of rule. However, the purpose of Parliament granting me jurisdiction over threatened breaches is to allow me to give a ruling to prevent the breach occurring (ie quia timet – 'because she/he fears'). Therefore, I should not entertain any application relating to a threat which was made at some time in the past, but which never in fact came to anything.

48.5 For all these reasons, I do not uphold complaints 4-7 and are therefore dismissed.

## **Complaints 8-11**

### **8) RAC - Breach of FBU rules**

On 5 December 2024 the Representation Appeals Committee breached Fire Brigade Union rules C2.1 and C3.6 and implied principles of natural justice when failed to follow FBU rules/policies when it:

- Failed to consider allegations of victimisation by Mr Lambe as required within the process;
- Considered documents/evidence which were not significant/new or compelling, as required under appeals process in the hearing of Mr Lambe;
- Considered documents that had not been distributed to the complainant, as required under appeals process in the hearing of Mr Lambe;
- Reinstated FBU/legal representation to Mr Lambe without correctly following the appeals process as required;
- Considered documents/evidence which were not significant/new or compelling, as required under appeals process in the hearing of Mr Shek;
- Considered documents that had not been distributed to the complainant, as required under appeals process in the hearing of Mr Shek;
- Reinstated FBU/legal representation to Mr Shek without correctly following the appeals process as required.

### **9) On 11 February 2025 The Executive Council breached rules G1.4(iii)(g), C2.1 and C3.6 and implied principles of natural justice when it:**

- Failed to consider allegations of victimisation by Mr Lambe as required within the process;
- Reinstated representation rights to Mr Lambe without a properly

convened RAC meeting as required under process;

- Reinstated the decision of the RAC (5 December 2024) that had been made in contravention of All Different All Equal (ADAE) policy/procedures in relation to Mr Lambe;
- Determined that the decision Representation Appeals Committee should supersede the decision of the Final Appeals Committees (made on 25 July 2023 and 12 December 2023) and automatically reinstate representation on receipt of an appeal in relation to Mr Lambe;
- Reinstated representation rights to Mr Shek without a properly convened RAC meeting as required under process;
- Reinstated the decision of the RAC (5 December 2024) that had been made in contravention of All Different All Equal (ADAE) policy / procedures in relation to Mr Shek;
- Determined that the decision Representation Appeals Committee should supersede the decision of the Final Appeals Committees (made on 25 July 2023 and 12 December 2023) and automatically reinstate representation on receipt of an appeal in relation to Mr Shek.

**10) On 17 March 2025 the Representation Appeals Committee breached Fire Brigade Union rules C2.1 and C3.6 and implied principles of natural justice when it:**

- Failed to consider allegations of victimisation by Mr Lambe as required within the process;
- Considered documents / evidence which were not significant / new or compelling, as required under appeals process in the hearing of Mr Lambe;
- Reinstated FBU / legal representation to Mr Lambe without correctly following the appeals process as required;

- Considered documents / evidence which were not significant / new or compelling, as required under appeals process in the hearing of Mr Shek;
- Reinstated FBU / legal representation to Mr Shek without correctly following the appeals process as required.

**11) On 29 May 2025 the Final Appeals Committee breached Fire Brigade Union rules C2.1 and C3.6 and implied principles of natural justice when it:**

- Failed to consider allegations of victimisation by Mr Lambe as required;
- Considered documents / evidence which were not significant / new or compelling, as required under appeals process in the hearing of Mr Lambe;
- Reinstated FBU / legal representation to Mr Lambe without correctly following the appeals process as required;
- Considered documents / evidence which were not significant / new or compelling, as required under appeals process in the hearing of Mr Shek;
- Reinstated FBU / legal representation to Mr Shek without correctly following the appeals process as required.

**49.1 The parties therefore ask me to determine whether:**

49.1.1 I possess jurisdiction to determine any complaint about the operation of the All Different, All Equal policy (“ADAE”). Specifically, is the application of ADAE (i) a rule; and (ii) is it a matter “relating to” “disciplinary proceedings by the union” within the meaning of s. 108A(2)(b)?

And,

49.1.2 If so, do I have the jurisdiction to evaluate the substance of each decision reached which form the subject matter of Complaints 8-11?

And/Or,

49.1.3 Do I possess jurisdiction under s. 108A(2)(d) to determine any complaint about the constitution or proceedings of decision-making meetings which form the subject matter of Complaints 8-11?

49.2 The Applicant submits that complaints 8, 9 and 10 relate to the constitution of executive decision-making meetings under 108A(2)(d) of TULRCA 1992 and that the proceedings therein referred to concern the authority, vires, methods and thresholds of decision-making meetings) of the Respondent under 108A(2)(d) of the Act, not the merits of its decisions. Consequently, the Applicant avers that the Executive Council of the Respondent is the executive decision-making body of the Respondent union under rules C2.1 and C3.6 of the Respondent's Rulebook. Accordingly, the Applicant contends that the Respondent's Final Appeal Committee (FAC) and Regional Appeal Committee (RAC) are sub-committees of the Executive Council under rule C3.6(iv), with delegated power to make final decisions. The Applicant relies on Kelly v Unison [D/4-5/01/2000] where the then Certification Officer (Ted Whybrew) observed that 'an executive decision' is one:

"that is final and which is acted upon. It is one which does not require the ratification or approval of another party before action is taken on it".

The Applicant asserts that the Respondent's Rulebook is clear that all members, officials and committees (including the Executive Council) are required to adhere to Conference decisions. Therefore, the Applicant submits that the status of the Respondent's 'All Different, All Equal'

(ADAE) Policy is binding and its procedure is mandatory. More significantly, whilst it is designed to oppose, challenge and eradicate discrimination, bullying and harassment; it also provides a mechanism for the Respondent union to withdraw representation from its members who engage in discriminatory practices. The Applicant therefore submits that any non-adherence to ADAE procedures is to be considered a breach under rule G1.1(vi), since all members of the Respondent union have a multilateral obligation to adhere to ADAE procedures. Moreover, given that the ADAE procedure has been agreed and regularly ratified by Conference since 1995, the Applicant contends that it is clearly the intention of both parties to adhere to the ADAE as an express term of the Rulebook and/or by custom and practice (cf. Heatons Transport v TGWU [1972] ICR 285). Consequently, the Applicant contends that the Respondent's actions have breached the ADAE (ie complaints 8-11). Namely, FAC decisions are final under Rules C4.13, G1.4(ii)(b) and G1.4(iii)(g). Therefore, any reconsideration of new evidence or re-convening the RAC to rehear an application is a decision reserved for FAC. To do otherwise is a breach, contends the Applicant. Therefore, the Applicant contends that any final decisions of the Respondent's Executive and/or delegated committees (as in complaints 8, 9 and 10) contravened the ADAE procedures and acted ultra vires. Furthermore, the Applicant contends that the Respondent's Conference mandated that ADAE procedures impose mandatory procedural requirements for re-hearings and its decision criteria to be assessed by the appeal committee (ie FAC for Messrs Lambe and Shek) being that any re-hearings are limited to a threshold of new (compelling and substantial) evidence. The Applicant submits that the Respondent's RAC made no attempt to establish if evidence was new or apply the appropriate test of 'new evidence', notwithstanding the request(s) made by the Applicant. Moreover, the Applicant contends that the Respondent failed to administer the correct method/threshold for new evidence. The ADAE policy defines evidence as:

“Evidence must not include hearsay, but may include eye-witnesses, witnesses present in the immediate aftermath of any incident and any non-witness evidence such as documents, property, photographs, recordings etc”.

And, that:

“Spurious and yet hypothetically possible speculation on theoretical scenarios do not constitute an arguable defence which requires a realistic consideration of the available evidence”.

Also, the Applicant avers that there was no consideration of victimisation in the ADAE procedure. Moreover, any rehearing should be considered by FAC for officials, not RAC, nor any other executive body (ie complaint 11). Consequently, due to these procedural failings, as alleged by the Applicant, the Applicant relies on the established rules of natural justice, as implied in the Respondent union’s Rulebook. Therefore, adopting a holistic view, Mr Wharnsby on behalf of the Applicant invites me to find bias against the Applicant in these flawed procedures; such as the decisions to immediately reinstate legal support prior to appeal (cf. complaints 8, 9 and 10); the Respondent’s Executive Council and its RAC acting beyond its powers (ie ultra vires).

49.2.1 The Respondent contends that the subject matter of complaints 8–11 rely upon alleged breaches of the Respondent’s ADAE Policy which is a policy and not a rule. Nor is the ADAE Policy sufficiently related to a relevant rule for the purposes of s.108A(1) TULRCA 1992. Therefore, the Respondent submits that the ADAE sits outside of the prescribed matters in s.108A(2) TULRCA 1992. Accordingly, I lack jurisdiction in respect of complaints 8-11 concerning ADAE, contends the Respondent. Further, the Respondent contends that the ADAE process is separate to and distinct from internal union discipline

proceedings under Rule G. In order for disciplinary proceedings to be initiated, the Respondent union must comply with Rule G. This is made explicitly clear by its final bullet point):

‘The executive council recommends that, with the agreement of the complainant(s), in cases where representation is withheld then consideration should be given to implementing the disciplinary procedure under rule to ascertain whether the rules and/or policies of the union have been breached’.

Any doubt about its effect is eliminated by Rule G1(2)(ii)(d) which Mr Brittenden KC opines affords the accused member the right to require that the ADAE investigation report be inadmissible in any disciplinary proceedings and that a different Regional Committee is appointed to investigate the allegations completely afresh. The latter was confirmed by the Respondent union’s President, Ian Murray, in his evidence before me. Further, Mr Brittenden KC commends and seeks to rely on my Assistant Certification Officer’s recent jurisdictional sift decision in Abdi v Unison (SD/5/25-26) at paragraphs 28-29, where ACO (Mike Kidd) clarified that:

“Accordingly, jurisdiction is not extended to rules relating to decision-making more broadly, such as rules governing the substance or merits of decisions”.

“By contrast, where the rules confer discretion within the subject matter (for example, to grant or refuse representation), disagreement with which permitted option was chosen, or a contention that a different outcome would better reflect the union’s aims or objects, would typically be better characterised as a complaint about the merits of the decision, which would not engage section 108A(2)(d), and would therefore not fall within the jurisdiction of the CO”.

49.2.2 Having carefully considered all the evidence before me, I have

determined that the Respondent union's 'ground breaking' ADAE Policy, as it was described by the Applicant in her evidence before me, is the Respondent union's process for allocating representation resource for certain types of complaint. The ADAE is therefore a policy which guides the Respondent union's decision-making as to who to provide support to and/or the circumstances in which support will be withdrawn. It is a merits-based approach which grants support according to the merits of the claim and/or defence as they can be ascertained at the time of the decision. During that process representation is provided by default until the process is complete and is then confirmed or removed. In short, the process is:

The union agreed at its annual conference in 2004 that given the experience of vexatious allegations against FBU members by others, including management, that members accused of discrimination, harassment or bullying would be afforded an interim period of representation between the time the allegation is made and the time it takes for an investigation to be carried out and a decision to be taken by a regional committee (the representation appeals committee in the case of union officials). The only objective of the investigating officials is to 'locate' an arguable defence.

Therefore, any member who considers or is informed that he or she may be party to any proceedings in which it is or may be alleged that he or she has committed any act of discrimination, harassment or bullying, will not automatically qualify for union or legal assistance. Any such member who wishes to apply for any assistance ("the applicant") should do so as soon as practicably possible to the regional secretary outlining the reason for the application. Failure to apply as soon as he or she is aware of any allegation is likely to be seen as a breach of rule.

Therefore, in summary, as Mr Brittenden KC explained, an ADAE investigator's only function is to determine if an "arguable defence" can be located or not; an ADAE investigation does not determine guilt or otherwise. A decision to decline representation under an ADAE process does not, without more, result in the imposition of a disciplinary sanction. Evidently, the Respondent's ADAE Policy lacks the fundamental characteristic of any disciplinary process, namely that it must include the conferring on the Respondent union the power to impose sanction on the other party. ADAE is also applied without any disciplinary purpose. The only mechanism for discipline is found in Rule G of the Respondent union's Rulebook. The correct approach regarding the interpretation of union rules is found in FBU v Embery [2023] EAT 134 where Eady J clarified that:

"A trade union's rulebook is in law a contract between all of its members from time to time (Heatons Transport (St Helens) Ltd v Transport General Workers Union [1972] IRLR 25, [1972] ICR 308; Evangelou and ors v McNicol [2016]EWCA Civ 817, paragraph 19; Kelly, paragraph 36(1))

As such, it must be interpreted in accordance with the principles which apply generally to the interpretation of contracts (Evangelou, paragraph 20; Kelly paragraph 36(2)).

Nevertheless, context is important. Trade union rule books are not drafted by parliamentary draftsmen and should not be read as if they were. Further, unlike commercial contracts, it is not to be assumed that all the terms of the contract will be found in the rule book alone (particularly as regards the discretion conferred by the members upon committees or officials of the union as to the way in which they may act on the union's behalf) and may be informed by custom and practice developed over the years (Heatons Transport per Lord Wilberforce at pp 393G-394C; Kelly, paragraph 36(3)).

It is also important to recall that what falls to be construed in this context is in substance the constitution of a trade union. Although in law its status is that of a multilateral contract, it is the document which sets out the powers and duties of a trade union (Evangelou, paragraph 19; Kelly, paragraph 36(4)).

The rules of a trade union should thus be given an interpretation which accords with what the reasonable trade union member would understand the words to mean; a court should be slow to adopt a construction which, on the face of it, is contrary to what both the members and common sense would have expected. (Jacques v AUEW [1986] ICR 683 per Warner J, at p 692A-B; Coyne v Unite the Union (D/2/18-19) per HHJ Jeffrey Burke QC (acting as a CO), paragraph 30; McVitae and ors v Unison [1996] IRLR 33 per Harrison J, paragraph 57; Kelly, paragraph 39)".

Accordingly, the rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court's view, they must have been intended to mean, bearing in mind their authority, their purpose, and the readership to which they are addressed. Consequently, applying this guidance to the instant application before me, my jurisdiction in relation to matters of discipline is well-settled. In Fenton v GMB (D/16–20/04) my then predecessor CO (David Cockburn CBE) observed that:

‘... a rule contained in a union rule book cannot properly be described as a rule relating to disciplinary proceedings just because its operation may result in a decision contrary to the wishes of a particular member or in some detriment to that member. Any other conclusion would open up to scrutiny by the Certification Officer many union rules patently outside the intended scope of section 108A, including those relating to the discretionary provision of services and benefits’.

The decision in Fenton was endorsed by the EAT in Irving v GMB [2008] IRLR 202. Accordingly, since the Respondent's ADAE Policy does not confer the power to impose a sanction, such a policy (as ADAE) falls squarely outside my jurisdiction under s. 108A(2)(b) TULRCA 1992. As Mr Brittenden KC submits, the context of ADAE, which I accept, is that a member (such as Messrs Lambe or Shek) may at some point have felt that they had been subject to detriment until representation was restored. Likewise, the Applicant, as she does before me, may feel aggrieved that representation was eventually restored. In each case, those are not matters which relate to disciplinary proceedings for the purposes of s. 108A(2)(b) TULRCA 1992. In any event, the Applicant's own reference to Rules C2(1) and C3(6) of the Respondent's Rulebook implicitly acknowledges that the ADAE Policy does not operate as a disciplinary rule.

For completeness, with regard to the principle of natural justice which permeates the whole of the Applicant's complaints, at its most fundamental, rudimentary level the requirements of natural justice, include the rights to be heard by an unbiased tribunal/panel; to be given notice of the charges/allegations; and, to be heard before any sanction is imposed (Ridge v Baldwin [1964] AC 40). Further, Mr Brittenden KC directs me to University of Ceylon v Fernando [1960] 1 WLR 223 where Lord Jenkins reaffirmed the requirements of natural justice as:

“... I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more”.

Having concluded that the Respondent's ADAE Policy is outwith my jurisdiction, I need not make any further determinations. Save to add for completeness, that properly analysed, the Applicant is inviting me to interfere with the substantive decision taken by the RAC. I have no such jurisdiction to engage in the substantive merits of the decision made, as noted above

(cf. Hamlet v GMB [1987] ICR 150).

49.2.3 For all these reasons, complaints 8-11 are not upheld and are dismissed.

## **Remedy**

50. Given my decision, I need not address remedy.

## **Conclusion**

51. For reasons given (above), all the Applicant's complaints are dismissed.

52. However, based on the totality of the evidence before me, it is clear that the Respondent accepted that it had not complied with its Rules G3(2)(i), G3(2)(ii) and conceded some procedural breaches in its ADAE. Regrettably, that notwithstanding non-adherence to strict statutory time limits and being outwith my statutory jurisdiction, the Respondent would have been found to be in breach. I therefore expect the Respondent to reflect on these matters and ensure full procedural compliance in future.

53. In conclusion, the Applicant's complaints are not upheld and are dismissed.

**STEPHEN HARDY**

**The Certification Officer**