SD/10/26-27

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

Mr David Tarrant Applicant

and

Unite the Union Respondent

Date of Decision 3 November 2026

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Decision

1. On 10 May 2026, Mr David Tarrant applied to the Certification Officer for a declaration, claiming that there has been a breach of the rules of Unite the Union.

2. For the reasons given in this decision, I find that the application is not one which the Certification Officer has the jurisdiction to determine.

3. Consequently, the application is dismissed.

Background

4. Mr Tarrant ("the Applicant") is a member of Unite the Union ("the Respondent").

5. The Applicant first contacted the Certification Office by email on 10 May 2026.

6. The Applicant identified Rule 4.6 of the Respondent's rules, and described the complaint as:

> Fundamental breach of Rule 4.6 – Failure to Provide Legal Assistance. The Union breached Rule 4.6 by failing to provide legal assistance for a meritorious disability discrimination claim.

7. On 6 July 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).

8. The letter explained to the Applicant that the CO had delegated to me, as the Assistant Certification Officer (ACO), responsibility for determining questions of jurisdiction arising at the stage of initial consideration of applications.

9. Given the preliminary view that the application did not fall within the CO's jurisdiction, the Applicant was told that they had two options:

    9.1. **Option 1** was to withdraw the application, in which case no formal decision would be made or issued and the matter would be closed;

    Or,

    9.2. **Option 2** was to request that a formal decision be made following the preliminary view. The Applicant was told that if they chose this option, I would formally consider whether the complaint fell within the CO's jurisdiction and issue a written decision. That decision would be sent to the Applicant, and the Union, and would be published on the CO's website.

10. The Applicant was also told that should they select option 2, they would then have 2 weeks to provide any supplementary evidence or argument on which they wished me to rely in determining the issue of jurisdiction.

11. On 14 July 2026, the Applicant wrote to the Certification Office confirming their preference for a formal decision regarding the issue of jurisdiction.

12. On 15 July 2026, the Applicant requested an extension to the deadline for providing supplementary evidence or argument. I considered the reasons behind the request and granted it.

13. On 2 August 2026, the Applicant requested a further extension, again providing reasons. Again, I considered the request and its reasons and granted it.

14. On 30 September, the Applicant provided a detailed submission, accompanied by 17 authorities, and 37 supporting documents. I have considered the material provided solely for the purposes of deciding whether the application falls within the jurisdiction of the CO under section 108A of the 1992 Act.

15. The application has not been accepted for determination by the CO. Therefore, there has been no correspondence with the Respondent in respect of the application.

Scope of the jurisdictional sift

16. For the avoidance of doubt, I have made no findings of fact about the events alleged by the Applicant or about whether the Respondent breached its rules.

17. The Respondent has not been asked to respond to the allegations, and I have not heard or tested any evidence.

18. For the purposes of this jurisdictional sift decision, I have taken the Applicant's factual case at its highest. My conclusions are confined to whether, on the facts alleged by the Applicant, the rule relied upon

relates to a matter listed in section 108A(2); whether the alleged breach engages the rule in that respect; and, whether the application has been made within time.

The relevant statutory provisions

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

> **The Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):**
>
> **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.

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(4) The Certification Officer may delegate to an assistant certification officer such functions as he

thinks appropriate, and in particular may delegate to the assistant certification officer for Scotland such functions as he thinks appropriate in relation to organisations whose principal office is in Scotland.

References to the Certification Officer in enactments relating to his functions shall be construed accordingly.

The relevant rules of the Union

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

Rule 4. Membership contributions and benefits

4.6 The Union will provide legal assistance, as follows:

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

4.6.2 A member seeking legal assistance must ensure that a request in the appropriate form is lodged at the appropriate Union office in sufficient time and with sufficient information to enable the request to be considered and appropriate action taken.

4.6.3 A member who requires advice and/or representation on a problem relating to the member's employment which first arose at a time when the member was entitled to benefit and which cannot be resolved through the member's workplace representative should refer the matter to the appropriate Regional Officer. The Union may provide such advice and/or representation as the Executive Council shall consider appropriate, whether by a full time officer or otherwise, and on such terms as the Executive Council shall consider appropriate.

4.6.4 The Executive Council may provide such additional legal advice and representation to members and to members' families as it may consider appropriate.

4.6.5 The Executive Council may extend legal assistance to a member who is not otherwise entitled to benefits.

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

The Applicant's submissions

21. The application concerns an alleged breach of rule 4.6 of the Respondent's 2019 Rulebook in respect of the provision of legal assistance for an employment dispute and Employment Tribunal claim. In respect of jurisdiction, the Applicant relies on section 108A(2)(d).

22. The Applicant submits that I should not read Rule 4.6 in isolation, but alongside other provisions in the rulebook. The Applicant refers me, in particular, to Rule 14.9 which places the government, management, and control of the Respondent within the powers of its Executive Council. He specifically relies upon its sub-rule, Rule 14.9.12, which includes the discretionary provision of legal services among the

Executive Council's powers. The Applicant also relies on Rules 14.9.14, 14.11 and 15.6, which each concern the delegation of powers.

23. The Applicant submits that when all of these provisions are read together, they show that requests made under Rule 4.6 fall to be determined under the authority of the Executive Council or through a delegation of its powers. The Applicant further submits that this gives Rule 4.6 a sufficient relationship with the constitution or proceedings of the Executive Council.

The jurisdiction of the Certification Officer

24. The Applicant submits that the rule allegedly breached in his application (Rule 4.6), relates to the constitution or proceedings of an executive committee or decision-making meeting ("relevant committee"), the limb of the CO's jurisdiction found in section 108A(2)(d) of the 1992 Act.

25. Since its introduction in 1999, the meaning of this limb of the CO's jurisdiction has generated considerable discussion around complex questions of interpretation. Notably, *Harvey on Industrial Relations and Employment Law* acknowledges its complexity in its description of it as "the trickiest" of the various categories listed in section 108A(2). Particularly instructive discussions are found in **Fradley v TSSA** D/28-30/03 and **Scobie v TGWU** D/6-14/05. The limb has also been discussed in several of the jurisdictional sift decisions which I have issued, including many of those which the Applicant has referred me to in the present application (including: **Hussain v PCS** SD/3/25-26, **Molina v**

Advance Union SD/7/25-26, **Scilio v GMB** SD/7/26-27, and **Ferguson v UNISON: the public service union** SD/10/26-27).

26. Since the present application raises the distinction between a rule relating to the functioning of a relevant committee and a rule relating to definitions of its substantive objects, powers or responsibilities, it may be helpful to draw together the principles emerging from those earlier decisions before turning to the immediate rule relied upon.

27. Subject to the law, trade unions have the right to draw up their own constitutions and rulebooks and to organise their own administration. Therefore, rulebooks may establish a wide range of relevant committees, and regulations administering how those relevant committees are to operate and be constituted. It is, therefore, neither desirable nor possible, to draw up an exhaustive definition which aims to identify a list of the rules capable of falling within this category that might be simply applied to future applications to the CO. Instead, past decisions of the CO have adopted a functional definition, defining the nature and common characteristics of rules relating to "constitution or proceedings", whilst acknowledging that the precise form and content of such rules is likely to vary greatly from union to union.

28. In my view, drawing together the principles explored in earlier decisions, the scope of the terms "constitution" and "proceedings" can be summarised as follows:

    28.1. Rules relating to "constitution" will usually concern how a relevant committee is formed or able to function. In **Fradley**,

the CO identified rules about the membership and quoracy of the relevant committee, with a caveat that it would also encompass rules about "other such issues relating to constitution". In **Scobie**, the CO elaborated on what those "other such issues" might be, explaining that they might be inclusive of rules such as those which are necessary for the proper functioning of the body, such as rules about when and how its meetings are called. Read together, **Fradley** and **Scobie** indicate that "constitution" includes the composition of the body and the arrangements by which it is brought together and made capable of functioning. For the avoidance of doubt, it is important to be clear that to be brought into the jurisdiction of the CO, the constitution to which the rule must relate is the constitution of the relevant committee, not the constitution of the union. The fact that a rule is fundamental to the union, or appears in its constitutional rule book, does not by itself make it a rule relating to the constitution of a relevant committee.

28.2. Rules relating to "proceedings" will usually be concerned with the process by which a qualifying body conducts its business, rather than the substance or merits of its decisions. This may include rules about the matters the body is authorised to consider; the procedure it must follow; and any limits on the decisions available to it. A simplified example may illustrate this:

e.g., If, for example, a rule required a relevant committee, when deciding a particular matter, to choose either

option A or option B, it would have two relevant aspects: a discretion, and a limitation. The limitation on the options available to the committee may be an inherent aspect of the rule that relates to its proceedings. A complaint that the committee chose option C might engage that aspect of the rule, thereby falling within the jurisdiction of the CO. By contrast, a complaint alleging simply that the committee chose option A when it ought to have chosen option B would not engage the aspect relating to its proceedings. It would instead challenge the merits of a decision which the rule permitted the committee to make, thereby falling outside of the jurisdiction of the CO. For the avoidance of doubt, this example is intended to be illustrative only, and whether any particular rule does indeed relate to proceedings will always depends on its wording, context and practical effect.

28.3. This illustrates that an application will not be found to be within the jurisdiction of the CO simply through the identification of a connection between a rule and a relevant committee. It is necessary to consider this particular inherent aspect of the rule which the alleged breach engages. A distinction must be drawn between, on the one hand a rule relating to the proceedings of a relevant committee, and on the other, a rule relating to an activity over which that committee has general authority. A relevant committee may hold broad powers covering much of a

union's work, but the existence of those powers does not mean that every rule concerning them will be found to feature an inherent aspect that relates to the relevant body's proceedings.

Conclusions

29. The question for me to determine in this jurisdictional sift decision is whether Rule 4.6, properly construed, relates to the constitution or proceedings of a relevant committee, in accordance with section 108A(2)(d). I have considered all the Applicant's detailed submissions on earlier decisions of the CO, along with the other authorities relied upon. However, in writing these reasons, I have not found it necessary to refer to each authority separately.

30. Rule 4.6 concerns the provision of legal support to members. Within that rule:

    30.1. Rule 4.6.2 requires a member seeking legal assistance to ensure that a request in the appropriate form is lodged at the appropriate office, in sufficient time and with sufficient information.

    30.2. Rule 4.6.3 states that a member requiring advice or representation in relation to an employment problem should refer the matter to the appropriate Regional Officer. It further states that the Respondent may provide such advice or representation as the Executive Council considers appropriate, on such terms as the Executive Council considers appropriate.

31. Neither Rule 4.6.2 nor Rule 4.6.3 require the request to be placed before the Executive Council or any other identified relevant committee.

32. The reference in Rule 4.6.3 to what the Executive Council considers appropriate grants it discretion over legal support. It does not prescribe how the Executive Council must conduct its business; it does not require the Executive Council to consider each request at a meeting; it does not require the Executive Council to allocate such requests to another qualifying body; and it does not require the Executive Council to follow a particular prescribed procedure when exercising its discretion.

33. I have considered the Applicant's submission that Rule 4.6 should be read with Rules 14.9, 14.9.12, 14.9.14, 14.11 and 15.6. Accordingly, it is necessary for me to briefly explore those provisions only so far as they assist me in understanding the operation of Rule 4.6:

    33.1. Rule 14.9 vests the government, management and control of the Respondent in the Executive Council;

    33.2. Rule 14.9.12 includes the discretionary provision of legal services among the Executive Council's powers.

    33.3. Rules 14.9.14, 14.11 and 15.6 provide for the delegation of powers, subject to their terms.

34. Those rules establish that the Executive Council holds broad authority over the provision of legal support and may delegate certain of its

powers. This context does not serve to alter the meaning of Rule 4.6, which remains a rule relating to the provision of legal support and the discretion available in relation to it.

35. The Applicant's submission does not, in my view, take account of the important and necessary distinction between a rule regulating an activity for which a relevant committee is responsible, and a rule relating to the constitution or proceedings of that committee.

36. That distinction is particularly important because of the way in which section 108A has been drafted. The statutory definitions of relevant committees encompass those committees which will commonly have authority over a wide range of union activities, because they exercise decision-making authority at the level of the union as a whole. The Applicant's submission would mean that, where one rule gives a relevant committee general authority over an activity, every other rule relating to that activity would be capable of being characterised as a rule relating to the committee's constitution or proceedings. If that were correct, much of a union's rule book could be brought within section 108A(2)(d) simply by linking the allegedly breached rule to the general authority of a relevant committee. The effect would be to give section 108A(2)(d) a substantially wider scope than its language allows and would make the requirement that the rule must relate to the committee's "constitution or proceedings" effectively meaningless.

37. Applying that to this case, the fact that Rules 14.9, 14.9.12, 14.9.14, 14.11 and 15.6 relate to certain overall responsibilities granted to the Executive Council in respect of legal support, does not mean that every

rule relating to legal support can be characterised as having an inherent aspect relating to the Executive Council's constitution or proceedings.

38. On this basis, I find that Rule 4.6 does not relate to the constitution or proceedings of an executive committee or decision-making meeting.

39. The application for a declaration that the Respondent breached Rule 4.6, is therefore not within the jurisdiction of the CO.

Alleged later breaches and the statutory time limits

40. Finally, and for the avoidance of doubt, it is also important to be clear that an application made on 10 May 2026 in respect of an alleged breach occurring in 2022 is plainly outside of the CO's statutory time limits.

41. The Applicant does not dispute this. However, he submits that two documents written by the Respondent, dated respectively 5 December 2024 and 20 June 2025, each applied Rule 4.6 afresh and constituted a further and distinct breach of that rule.

42. Whilst the Applicant did not explicitly seek declarations in respect of further breaches in 2024 and 2025 in his initial application to the CO, his jurisdictional sift submissions identify these two documents as further and distinct breaches of Rule 4.6. I have therefore adopted a broad reading of the application, on the basis that declarations are sought in respect of the alleged breaches on each of those later dates.

43. The documents can be summarised as follows:

43.1. The document dated 5 December 2024 was an outcome letter, following the Applicant's complaint about the legal support previously provided to him. It detailed the Respondent's investigation of his complaint, and explained the Respondent's position. In doing so, it referred to Rules 4.6.2 and 4.6.6.

43.2. The document dated 20 June 2025 responded to correspondence from the Applicant's solicitors. It stated that the Applicant had not engaged with the Respondent's legal support process, and again referred to Rules 4.6.2 and 4.6.6.

44. I find that both of these documents formed part of a continuing response to the Applicant's complaints about the events that allegedly occurred in 2022.

45. In considering matters before the CO, it is important to maintain a distinction between, on the one hand, a union's application of a rule when dealing with a new matter of the kind governed by said rule; and, on the other hand, a reference to a rule when investigating or commenting on the handling of an earlier application of that rule. The documents dated 5 December 2024 and 20 June 2025 fall into the second category. There is nothing in the documents themselves; the other supporting material provided by the Applicant; or in the Applicant's submissions; that demonstrates that either document did any more than comment on the Respondent's handling of the earlier matter. Therefore, the Applicant's characterisation of those documents as standalone breaches of Rule 4.6 cannot be sustained.

46. I therefore find that neither document constituted a further and distinct breach of Rule 4.6 as submitted by the Applicant. They do not provide later dates of breaches, from which separate statutory time limits could run.

47. For completeness and the avoidance of doubt, the alleged breach occurred in 2022, and therefore, the application made on 10 May 2026 was outside of the statutory time limit.

Overall conclusion

48. I find that the application for a declaration that the Respondent breached Rule 4.6 does not fall within the jurisdiction of the CO.

49. I also find that the application was made outside of the statutory time limit.

50. Accordingly, this application cannot be accepted for determination by the CO and is therefore dismissed.



MICHAEL KIDD

The Assistant Certification Officer

3 November 2026