

REASONS TO EXCLUDE OR EXPEL – GUIDANCE TO BRANCHES

Introduction

1. Whilst recruiting new UNISON members remains a key objective for all branches, branches occasionally ask for advice on excluding or expelling someone from membership.
2. Although UNISON rules delegate powers to branches to decide whether or not to admit an applicant, since 1992 the law has placed restrictions on the freedom of unions to determine these matters for themselves¹.
3. Legislation ostensibly changed the balance in favour of the “right” of an individual to join or remain in a trades union; imposing costly legal sanctions on unions that did not comply. One significant effect has been to limit the freedom of trades unions to deny membership, or to expel a member, because of their political affiliation. For example, the law prevents us from denying membership to an individual, (for example, a perceived “hostile” manager, whose membership may alienate a group of members). However, UNISON’s position has always been that membership of far right parties, such as the BNP, is incompatible with our rules (e.g. Rule 1.3²) and equality objectives.

Excluding from membership

4. UNISON would *admit* into membership anyone who meets the following UNISON rules:
 - a. the person’s employment is within Rule C1;³
 - b. the person has completed, signed and submitted an application form (Rule C5.1);
 - c. the person has not previously been expelled or barred from the Union, or left the Union whilst a Union disciplinary charge has been pending (Rule C5.2);

¹ Trade Union and Labour Relations (Consolidation) Act 1992 amended by the Employment Relations Act 2004 and Employment Act 2008.

² Rule 1.3 gives the NEC power to exclude or expel any individual “who gives encouragement to, or participates in, the activities of any fascist organisation, faction or grouping whose policies or aims have expressed or implied promotion of white supremacy or racial hatred at the core”.

³ Employment by any body, authority, company or corporation which has a public, charitable, educational, or statutory function, including those employed in the local government service, the health services, the electricity supply industry, the gas, transport and water industries, the education services, and in the voluntary and community sectors. And in addition, any “such other areas of work and such other persons ... as the NEC may from time to time determine”.

Note that UNISON rule does not contain any *occupational* restriction on membership.

- d. A person is able and willing to comply with the Union's rules contained in the Union's Rule book.
5. The law⁴ specifically prevents the Union from excluding someone from membership:
 - a. because that person is or was a member of another trade union; or
 - b. because they work or worked for a particular employer or at a particular place or because they refused to participate in industrial action or crossed a picket line⁵; or
 - c. because of past conduct within UNISON that did not lead to expulsion.
6. The law allows UNISON to exclude an applicant who is a member of a political party, where membership of that party is contrary to a rule or objective of the Union. An applicant can also be excluded from membership due to their conduct, i.e. their political activities as a member of a political party.
7. If a branch refuses to accept an application then the procedure under Rule C 5.5 provides that:
 - a. the applicant should be informed by the Branch Secretary in writing of the reason. The Branch Secretary may only send the template letter below once advice is received from their Regional Organiser. (see template 1 below).
 - b. Following receipt of a letter, the applicant must be given the opportunity to respond to the letter, make representation and to provide evidence within a reasonable timescale.
 - c. There must be fair consideration of the applicant submission before a decision is made and the Notice of Exclusion issued.
 - d. The applicant or member has a right of appeal to the Regional Appeals Committee under Rule C.5.6 (See template 2 below).
8. Such a refusal must be based on the applicant falling outside one of the four requirements at 4, or in accordance with 6 above. However, a decision to deny membership to someone must be the exception and ***in all cases*** a branch should seek prior advice from their region office.

Expelling from membership

9. Once in membership, membership would normally cease automatically where:
 - a. the member's employment is no longer covered by Rule C1;

⁴ S.174 of the Trade Union and Labour Relations Act 1992.

⁵ Or where to take such conduct into account would be 'unjustifiable' under s.65 Trade Union and Labour Relations Act 1992

- b. the member falls into arrears of subscriptions exceeding 3 months; or
 - c. as a result of a disciplinary sanction under Rule I (which only the NEC has the power to impose).
10. Where a member ceases to be eligible for membership in accordance with Rule C.1 and C.2, or is in arrears of subscription exceeding 3 months (the situations in 9a. and 9b. above), the Branch should send the letter at template 3 below. The NEC has the power to use its discretion to reverse expulsion in these circumstances.
 11. The only other legally acceptable reason to expel a member is because of that person's conduct. But the law limits trades unions on what conduct can and cannot be taken into account. UNISON is permitted by legislation⁶ to expel a member on the grounds of their political activities as a member of a political party - for example where a member is standing for election, canvassing, making political speeches or leafleting in support of a political party.
 12. Branches must always seek advice from their Regional Secretary where they are seeking to expel a member because of their membership of a political party or because of their political activities or because of a breach of Rule I.3. Such an expulsion may only arise through the application of Rule C.5.5, or Rule I on disciplinary charges which will be determined according to the particular facts. Any expulsion would occur after due consideration of the facts of each case. Only the NEC has the power to expel a member under the Rule I procedure (Rule I 8(6)).

Where an applicant / member of UNISON is also a member of a political party

13. UNISON may take a position that the policies of some political parties conflict and are antipathetic to UNISON's own policies and core values. It is legally acceptable to exclude or expel a member or an applicant for membership, whose political party membership is contrary to a rule or objective of the Union; or because of his/her political activities as a member of a political party.
14. Branches *must* seek advice from their region to minimise the risk of legal challenge and financial penalty falling on the branch or Union.
15. Branches that are aware of applicants, or existing UNISON members, who are members of far right organisations should obtain, by legitimate means, whatever evidence is available of their membership and activity on behalf of that organisation, and should be aware that such evidence may be

⁶ S.174 Trade Union and Labour Relations (Consolidation) Act 1992

presented to the person concerned as grounds for possible exclusion or expulsion, under UNISON's procedures.

16. In all cases, any branch that may wish to consider either refusing to accept someone into membership, or the expulsion of someone from membership, must always seek advice from their region and act only so far as their branch has the power to do so and within the law.

Next steps after exclusion or expulsion

17. Where an applicant has been excluded or expelled this must be recorded on RMS.

These guidance notes are provided only for the guidance of the Branch Secretary and Regional Organiser and must *not* be provided to the applicant.

Template 1:

Notice of potential exclusion

[to be sent by the Branch Secretary to the applicant or member, only after advice has been received from the Regional Organiser / Head of Democratic Services as appropriate]

Dear

Application for UNISON membership

We believe that you may be ineligible under UNISON's Rules for membership of this union and propose to exclude you from membership.

The reason for this is [INSERT – evidence].

You have the right to make representations in respect of this proposal. If you wish to do so, you should provide your written representations to me by [DEADLINE – 10 working days from the date of the notice].

We will consider your written representations fairly and we will respond in writing within 10 working days of receipt of your written representations.

Yours sincerely

Branch Secretary

Template 2:

Notice of exclusion or expulsion

[to be sent only after consideration has been given to the applicant or member's response to Document 1, or if no response is received from the applicant/member.]

Dear

Exclusion from membership

I write further to my letter dated xx/xx/xx to which you [*had/took*] the opportunity to respond.

I have to confirm that following detailed consideration you are not eligible to become a UNISON member. Accordingly, I will make arrangements to refund to you any contributions you may have already paid.

You have a right to appeal this decision to the Regional Appeals Committee by [DATE] at [ADDRESS].

Yours sincerely

Branch secretary

Template 3:

Loss of Eligibility or Arrears of Subscription

Dear

Application for UNISON membership

We believe that you have ceased to qualify for membership as you [no longer work in a qualifying sector or fall within a permitted category of membership under UNISON's Rules] / [owe more than 3 months' subscriptions].

Please contact us within [*10 working days from the date of the notice*] if you think this information is incorrect. Your membership will cease as of mm/yyyy if we do not hear back from you by this date.

Yours sincerely

Branch Secretary