

UNISON policy and procedure for dealing with misconduct by members in relation to UNISON employees

Formerly known as Appendix 2

UNISON policy and procedure for dealing with Misconduct by members in relation to UNISON employees

UNISON NATIONAL EXECUTIVE COUNCIL

1.0 PREAMBLE

1.1 This regulation was made by resolution of the National Executive Council on 13 June 2017. It will be reported to the National Delegate Conference and will have the force of rule unless, and until, it is not approved by a majority vote at Conference.

2.0 PURPOSE OF THE REGULATION

2.1 This regulation establishes the procedure to be used for investigating allegations of misconduct in relation to a UNISON employee by a UNISON member and for determining whether a UNISON member has been found on the balance of probabilities to have committed such misconduct which will constitute a breach of rule. In the event of allegations being upheld the Disciplinary Panel (see 4.1) shall decide what penalty or penalties to impose.

2.2 This procedure is to be adopted when such allegations are made because the National Executive Council is of the view that the Disciplinary Action Rule I, and the Disciplinary Procedures (schedule D), which govern the behaviour of members to each other and to the union, are not appropriate when its obligations as an employer have to be considered.

2.3 UNISON employees have the right not to be subject to acts of misconduct by UNISON members.

2.3.A DEFINITION OF MISCONDUCT: the following is a non-exhaustive list of misconduct:

- Verbal or physical abuse
- Disrespectful, threatening or intimidating behaviour
- Conduct which may expose a member of staff to ridicule, embarrassment or contempt
- Conduct which violates the dignity of the member of staff concerned
- Bullying or harassment
- Discrimination (which includes discrimination, harassment, or victimisation on grounds of race, gender, marital status/civil partnership, sexuality, gender identity, disability, age, creed or social class, or any other discriminatory conduct).

A member who commits an act of misconduct will be guilty of an offence as defined by Rule B.2.4, B.2.6, B.4.6, C.6.1, Rule I 2.1 and/or 2.2 in so far as they are applicable. A member who commits an act of discrimination involving a member of staff will be guilty of an offence as defined by Rules A.3, B.2.4, B.2.6, B.4.6, C.6.1, and I 2.3 (i) – (ii) in so far as they are applicable.

2.3.B Where allegations involve both misconduct in relation to a member of staff as well as conduct in relation to a member(s) under Rule I, the General Secretary or person delegated to act on their behalf, after consultation with the President, the Chair of the Staffing Committee and the Chair of the Development & Organisation Committee, shall decide how to proceed, for example whether there should be separate investigations and disciplinary procedures under

both Appendix 2 and Rule I, or whether to address all the allegations under Rule I.

2.3.C SUSPENSION

2.3.C.1 If the member faces disciplinary investigation under Appendix 2, and it is considered appropriate in the interests of the member of staff, branch, or the union generally, the President shall have the power to suspend a member from office for a period of up to 60 calendar days in the first instance.

2.3.C.2 In exceptional circumstances, the President shall also have the discretion to extend the period of suspension, and such suspension is to be reviewed on a monthly basis.

3.0 INVESTIGATION PROCEDURE

- 3.1** The manager receiving the complaint shall, normally within seven working days, report the matter to the General Secretary or person delegated to act on their behalf.
- 3.2** The General Secretary or person delegated to act on their behalf, upon receipt of the allegation and within seven working days, shall notify the officer responsible for constitutional issues who will consult with the Head of HR and appoint an Investigation Team.
- 3.3** Subject to any guidance produced by the National Executive Committee, ACAS guidance (and in the case of Northern Ireland, the equivalent code of conduct) and good practice, the Investigation Team shall be able to conduct its investigation in whatever way it considers is appropriate, given the nature of the allegation(s).
- 3.4** On the recommendation of the Investigation Team, the General Secretary or person delegated to act on their behalf, after consultation with the Chair of the Staffing Committee, may require the member concerned not to come into contact with the employee while the investigation is proceeding, and until any consequent Disciplinary Hearing or Appeal Hearing is concluded; or impose any other condition or restriction on the member concerned as is reasonable and proportionate having regard to the interests of the employee and the member, the need to maintain confidentiality, or otherwise.
- 3.5** Depending upon the nature and complexity of the complaint, the Investigation Team will normally be expected to complete its investigation within 28 calendar days of its appointment. In the event that the Investigation Team believes that more time is needed to complete its work, the General Secretary or person delegated to act on their behalf, in consultation with the Chair of the Staffing Committee, shall have the power to extend the investigation period for a further period as appropriate.
- 3.6** Where there appear to be reasonable grounds to believe that a member of UNISON or any other person can give relevant evidence, or has witnessed the alleged misconduct, the Investigation Team shall request an interview with that member or person. The member or person will be invited to produce any evidence including but not limited to any document, printed material, recording or photographic image that he/she or the Investigation Team considers might be relevant to the inquiries of the Investigation Team. A friend or fellow UNISON member may be present at the interview for the purposes of accompanying the member or person but may not answer questions on their behalf.
- 3.7** A request to give evidence to the Investigation Team may be treated as an instruction of

the union issued in accordance with the rules and this regulation. In the event of a member unreasonably refusing to respond to the request, or obstructs the investigation process, then evidence of that refusal may be treated as evidence of disregarding a regulation of the union. It shall be open to the National Executive Council to take action against such a member under Rule I.

- 3.8** Strict confidentiality will apply to all aspects of the investigation and evidence will be invited and received on the basis that it is to be treated in strictest confidence. The member facing the allegations, the complainant and all persons invited to attend interview are to maintain confidentiality. In the most exceptional of circumstances it may be necessary to disclose evidence to a person(s) outside the Investigation Team. Examples of exceptional circumstances are a real risk of physical harm if evidence is not disclosed, or when a third party may have witnessed the alleged misconduct, and may not be aware of it.
- 3.9** The Investigation Team shall prepare a report for the General Secretary or the person delegated to act on their behalf, summarising the evidence and will conclude either that:
- a)** there are sufficient grounds to believe that the member has committed misconduct in relation to the employee and it is considered appropriate for the matter to proceed to a disciplinary hearing; or
 - b)** there are no sufficient grounds to believe that the member has committed misconduct in relation to the employee.

4.0 *DISCIPLINARY PROCEDURE*

- 4.1** In the event that the Investigation Team's conclusion is that the matter proceeds to a disciplinary hearing, a Disciplinary Panel shall be established by the officer responsible for constitutional issues in consultation with the Chair of the Staffing Committee.
- 4.2** The Disciplinary Panel shall consist of a minimum of two and a maximum of three members drawn from the National Executive Council's Disciplinary Committee members and where possible having regard to the nature of the case and the need for proportionality and fair representation. The Panel shall have received appropriate training. The Secretary to the Disciplinary Panel, who shall also be trained, shall be a senior officer of the union chosen from Grade 1, Grade 2 or Assistant General Secretary or equivalent.
- 4.3** The member shall be charged with committing an act (or acts) of misconduct in relation to one or more named employees of the union.
- 4.4** No later than 21 calendar days before the disciplinary hearing the member shall be sent a written notice of the charge setting out the allegations of misconduct. At the same time the member shall be sent copies of any material to be considered in relation to the allegations, together with the report of the Investigation Team, and shall be told the date, time, and place at which the charge against him or her is to be heard. The date of the hearing of the allegations shall be set by the Disciplinary Panel. They shall have the power to postpone the hearing only in exceptional circumstances.
- 4.5** The member must submit, not later than seven working days prior to the hearing, any material in support of his/her case including any witness statement of any witness that the

member wishes to call to give evidence at the hearing.

- 4.6** The member shall be entitled to be represented at the hearing by another person of his/her choice (subject to the approval of the Disciplinary Panel and such approval would not be unreasonably refused).
- 4.7** At the hearing the member shall be asked whether he/she accepts or denies the allegation(s). If he/she admits it, the Panel shall then consider whether to impose a penalty or penalties on the member, after considering anything that the member and his/her representative may wish to say or submit in mitigation.
- 4.8** If he/she denies the allegation(s), the Panel shall consider the evidence gathered by the Investigation Team, and the evidence presented by the complainant and/or the member in accordance with 4.4 and 4.5 above. The Disciplinary Panel shall have absolute discretion to decide the procedures to be used during the hearing in line with National Executive Council guidance. It shall be for the Panel to decide which witnesses shall be called, and whether, and to what extent, cross examination and re-examination of any witness will be allowed. The Panel shall also have the power to decide who shall be present during the examination of any witness. Guidance as to the conduct of the procedure including the exercise of the Disciplinary Panel's discretion shall be issued by the National Executive Council.
- 4.9** Strict confidentiality will be maintained throughout the hearing, and any evidence or material considered by the Panel will also be confidential.
- 4.10** The Panel will have absolute discretion to adjourn the hearing to allow for further evidence to be produced or for any other reason.
- 4.11** The Panel shall consider in private whether any allegation is proven, on the balance of probabilities on the evidence presented before them. All members of the Panel taking part in the discussion must have been present throughout the entirety of the hearing. The Disciplinary Panel will only consider the matters in the original allegation(s) against the member. If any point of uncertainty arises, the Disciplinary Panel may reconvene the hearing to hear further evidence.
- 4.12** If the Panel decides that any allegation is not proved, they should dismiss it.
- 4.13** If the Panel decides that the allegation(s) are proved, they shall decide what, if any, penalty to impose. The panel may impose any of the penalties under Rule 1.8 (4)-(7), namely:
- i.** Censure of the member;
 - ii.** Debarring the member from holding any UNISON office for whatever period seems to it to be appropriate, up to a maximum of 36 months;
 - iii.** Suspension of the member from all or any of the benefits of membership for whatever period seems to it to be appropriate, up to a maximum of 36 months;
 - iv.** Expulsion of the member from the union.
- 4.14** Before determining its decision and the level of sanction, the Panel may consider anything that the member and/or his/her representative may wish to say in mitigation.

- 4.15** The Panel may inform the member of its decision orally, but it shall in any event be confirmed to the member in writing within 5 working days of the conclusion of the hearing. Where the allegation(s) are found proved, the member shall be notified of his/her right of appeal, and the date on which the 3 week time limit for appealing expires.
- 4.16** If the member intends to appeal, he/she must exercise his/her right to do so by writing to the Secretary of the Panel within 21 calendar days of the date of the letter notifying of the decision subject to the appeal.
- 4.17** A member may appeal upon any or all of the following grounds:
- a)** That the provisions of Appendix 2 were not complied with at or before the original hearing, or that there has been a procedural irregularity, in either case such irregularity has had a material bearing on the outcome and/or any penalty imposed;
 - b)** The Panel's decision to find an allegation or allegations proven was unreasonable on the evidence available;
 - c)** The sanction imposed by the Panel was unreasonable and not commensurate with the allegation(s) proved.
- 4.18** Unless exceptional circumstances apply, normally no new evidence will be permitted to be produced at the appeal hearing. The admission of new evidence shall be at the discretion of the Appeal Panel who must be satisfied that the evidence could not have been obtained with reasonable diligence before the Panel's decision was made and that it may have had a material bearing on the outcome.

5.0 *APPEAL PROCEDURE*

- 5.1** At least 21 calendar days notice shall be given to the member of the date, place, and time at which the appeal is to be heard.
- 5.2** The Appeal Panel shall consist of a minimum of two, and a maximum of three members, drawn from the National Appeals Committee with no previous involvement with the case, and where possible having regard to the nature of the case and the need for proportionality and fair representation.
- 5.3** The Appeal Panel will consider all the member's grounds of appeal and may conduct a review of the procedures used in the investigation, and in the disciplinary hearing. If the Appeal Panel determines that inadequate procedures were used, then it shall review the evidence considered, and in addition, consider any evidence that was not available to the Disciplinary Panel due to the operation of the inadequate procedure.
- 5.4** The Appeal Panel will have absolute discretion to establish whatever procedure it considers appropriate to hear the appeal. Guidance as to the conduct of the procedure and the exercise of the Disciplinary Panel's discretion shall be issued by the National Executive Council.
- 5.5** The Appeal Panel shall have the power to confirm or vary any part of the decision of the Disciplinary Panel that is the subject of an appeal, or of the penalty or penalties imposed. The Appeal Panel may inform the member of its decision orally, but it shall in any event be confirmed to the member in writing within 14 calendar days of the conclusion of the hearing.



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