

## **Byelaw L: Members' Disciplinary Procedure**

### **1. Purpose**

This Byelaw has been established to provide further details regarding the consequences of a potential breach of the Members' Code of Conduct (Byelaw J) when participating in Union activities, under Article 4 of the Constitution.

The Board will also publish an additional Code of Conduct and associated Disciplinary Procedure for all trustees of the Union, which will be made publicly available.

### **2. Principles of the Discipline Procedure**

The Discipline Procedure sets expectation that all allegations of misconduct which may require a disciplinary process are:

- i. Taken seriously and proceed in a timely fashion.
- ii. Consistent with principles of natural justice.
- iii. Raised as soon as possible, and no later than three months following the event.
- iv. Made by an aggrieved party; the Union will not usually accept allegations of misconduct made anonymously or on behalf of others.

Allegations of misconduct raised more than three months after the event will be accepted only in exceptional circumstances, at the discretion of the Senior Management Team.

This Discipline Procedure is appropriate for use to consider allegations against members, individually or collectively. The Discipline Procedure sets out how:

- i. Summary offences will be managed.
- ii. Allegations of misconduct should be raised.
- iii. Allegations of misconduct will be investigated.
- iv. Appropriate outcomes are determined.
- v. Appeals may be submitted.
- vi. Appeals will be heard.

The Discipline Procedure is not appropriate for allegations regarding:

- i. Political decisions taken by elected representatives, which should be raised through the political accountability framework.
- ii. Conduct of Union trustees, which should be considered through the appropriate charity law practices.
- iii. Conduct of Union staff, which should be considered through appropriate employment practices.
- iv. Behaviour or activity which is not related to Union membership or employment.

### **3. Summary Offences**

The Disciplinary Procedure is only appropriate for use in considering allegations of misconduct against members or groups of members; for the avoidance of doubt, this does not include misconduct which occurs when students are using Union services.

The Chief Executive has managerial authority to enforce good conduct in the use of services, in line with standard operating procedures, using appropriate discipline against summary offences. The exercise of this authority, therefore, may not limit membership of the Union, and only refers to the use of services.

The Chief Executive may refer any allegation of misconduct to the President or another Trustee for consideration under this Disciplinary Procedure, at their discretion.

#### 4. Triggering an Investigation

The Union may investigate an allegation of misconduct for any reason. Where a student wishes to raise an allegation directly, this should be made via the online Complaints Form on the Students' Union website. Where this is not possible, complaints may be submitted in writing to the President.

A Full-time Officer, appointed by the President will act as the Deciding Officer. They will be supported by a member of staff appointed by the Chief Executive as an Investigation Lead. Together the Deciding Officer and Investigation Lead will determine probable cause for an investigation. The Deciding Officer and Chief Executive will determine that an allegation of misconduct does, in fact, refer to behaviour or actions that relate to Union membership or employment. In any event, they will write to the person making the allegation to confirm receipt of the allegation and any action taken.

Allegations which do not relate to Union membership or employment may be more appropriately considered by the College, under their Student Conduct Regulations, or by an external partner, such as a local authority or the police. The Deciding Officer will refer any person who makes an allegation of misconduct which the Union declines to proceed with to appropriate external partners.

If a person makes an allegation of misconduct to the Union as well as to the College or to external partners, the Union reserves the right to suspend consideration of the allegation until the conclusion of other processes. For the avoidance of doubt, the President may at this time suspend membership entitlements if there is reasonable grounds to do so, while the third party investigation takes place.

The President will refer any allegations of misconduct about the President to another Full-time Officer with no conflict of interest.

#### 5. Investigation Process

The designated Deciding Officer will work with the appointed Investigation Lead to ensure the investigation proceeds efficiently and in-line with timeframes outlined below. The Investigation Lead will be tasked with the responsibility of investigating the complaint and producing an Investigation Report to be sent to the Deciding Officer. In complex cases, the Senior Management Team may refer the case to an external partner who will then be appointed as the Investigation Lead.

If during the investigation a potential serious offence is uncovered that is illegal in nature, deemed a risk to student welfare/life or may cause serious reputational damage to the University, the Investigation Lead can recommend to the Deciding Officer that the case is referred to one of our external partners including but not limited to, the University, the local authority or the police. This decision will be made jointly by the Chief Executive and Deciding Officer and may include legal counsel.

On receipt of the Investigation Report, the Deciding Officer will rule on the outcome of the investigation as detailed in Section 6. The Investigation Report will concisely summarise the facts of the complaint and, if the complaint is upheld, a recommendation as to an effective remedy.

In any event, the Deciding Officer will write to the complainant with a summary of the Investigation Report within 90 calendar days of receipt of the Formal Complaint. This timescale

may in exceptional circumstances need to be extended, where this is the case, the complainant will be informed and kept up to date with the progress of the investigation.

The Investigation Lead will, generally, ask the complainant whether they would like a face-to-face meeting during the investigation process. The Investigation Lead may also require members, staff, and trustees to support the collection of evidence in the investigation process.

The Investigation Lead will be guided by precedent during their investigation and will securely store their Investigation Report for an appropriate time period.

For the avoidance of doubt, the President has discretion to suspend membership entitlements while an investigation is in progress, including the recognition of student groups, and their members' access to support, funding, and facilities. There is no assumption of guilt during a period of suspension, but non-compliance with the President's decision may be considered a further disciplinary matter.

#### 6. Discipline Outcomes

At the conclusion of the investigation, the Deciding Officer will review the Investigation Report and conclude if the complaint is

- i. Upheld: whereby the Union will seek to adopt an appropriate solution or remedy, and issue an apology where appropriate. It may not always be appropriate for the complainant to be informed of all the details of any decision. Where this is the case, the rationale will be made clear in the outcome provided to the complainant.
- ii. Partially upheld: whereby the Union will seek to adopt a mutually agreeable solution or remedy. As before, it may not always be appropriate for the complainant to be informed of all the details of any decision.
- iii. Not upheld: whereby the Union determines that there is no case to answer, and will provide a clear rationale for the decision.

The President or Deputy President where there is a conflict of interest, is empowered to issue the following on the basis of the evidence provided by the investigation.

- i. A verbal warning
- ii. A written warning
- iii. A final written warning

Where the investigation finds there is a serious case to answer (over and above one of the three outcomes listed above), the matter will be referred to a disciplinary panel. The above list is not exhaustive and other sanctions may also apply.

#### *Disciplinary Panel*

The disciplinary panel will consist of three student members of the Union with no conflict of interest, from a pool that includes:

- i. Elected members of the Student Executives
- ii. Elected committee members of ratified Student Groups
- iii. Elected leaders of Student Collectives
- iv. Elected Academic Representatives

The panel will review the Investigation Report and will hear evidence from both the investigating officer and the individual accused of misconduct. It may choose to hear evidence from other related parties as it sees fit. Usually, the individuals subject to the process will receive all evidentiary documents not less than five working days before a panel. Where there is a delay, reasonable justification should be made.

An appropriate discipline outcome may be that:

- i. There is no case to answer
- ii. There should be a period of mandatory training and development
- iii. There should be a sanction imposed

The sanctions available to the panel include:

- i. A written warning
- ii. A final written warning
- iii. Termination or suspension of membership entitlements

The Panel, for the avoidance of doubt, has discretion to impose sanctions against members of student groups and the whole student group, individually and collectively and the above list is not exhaustive and other sanctions may also apply.

Where a serious offence has occurred that is statutory in nature, deemed a risk to student welfare or may cause serious reputational damage to the University, the Panel can refer the outcome of the case to our partners including but not limited to, the University, local authority or the Police.

## 7. Appeals

Any member or group who has an allegation of misconduct against them upheld has a right to appeal on three grounds, and must have evidence that the Deciding Officer:

- i. Allowed the Investigation Lead to conduct the investigation in a way that was procedurally irregular.
- ii. The disciplinary panel was not able to consider evidence that has now become available.
- iii. The disciplinary panel has imposed a disproportionate sanction.

The member or group against whom an allegation has been upheld may not appeal because they disagree that an allegation has been upheld, unless they also have one or more of the grounds for appeal. The member or group should submit their appeal in writing to the Chief Executive within five working days of the decision being communicated to the member or group, who will determine if grounds for appeal do exist.

The Chief Executive will, after finding grounds for appeal, make arrangements for a panel of the Board to consider the appeal. The panel will include at least three trustees, none of whom will have had previous knowledge of the allegation.

The panel will consider the outcome of the disciplinary panel and disputed by the member or group. The appeal will not necessarily require a hearing, and the panel may determine that it will conduct the process at a distance or electronically.

The panel will consider the appeal and may find that the disciplinary case should be:

- i. Dismissed
- ii. Upheld, and the original sanction applied
- iii. Upheld, and an alternative sanction applied

After the appeal process has concluded, there is no further opportunity to contest a disciplinary case. The Statutory Complaints Procedure will only be appropriate if there is probable cause to investigate a complaint that no confidence can be placed in the entire disciplinary process.