

UNIVERSITY AND COLLEGE UNION

Rule 13: Procedure for the Regulation of the Conduct of Members

Preamble

The Rules of the University and College Union require the National Executive Committee to establish a procedure to regulate the conduct of members:

The National Executive Committee shall (by the same procedure as it establishes its own Standing Orders) establish a procedure to censure or bar a member from holding any office for a specified period not exceeding three years or suspend from membership for a period not exceeding one year or expel a member from membership if it finds their conduct to be in breach of the Rules or is deemed to be a matter of significant detriment to the interests of the Union. The procedure, inter alia, shall include an appeals process. (Rule 13.1)

All members are required to abide by the Rules of the Union:

All members and student members have an obligation to abide by the Rules of the University and College Union, and shall refrain from conduct detrimental to the interests of the Union, from any breach of these Rules, Standing Orders or directions (properly made in accordance with these Rules or Standing Orders) and from all forms of harassment, prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital status, sexuality, disability, age, or other status or personal characteristic. (Rule 6.1)

UCU will...expel from existing membership, any person who is a known member or activist of any extreme right wing political organisation, including the BNP and National Front, where the organisation's aims, objectives and principles are contrary to those of UCU as outlined in 6.1 above. (Rule 6.1.1)

In interpreting Rule 6.1, those applying this procedure must bear in mind and adhere to the following. That it is unlawful to discipline a member of the union for:

- i. seeking to uphold the rules, question whether the rules have been followed, or question whether the actions of any official or representative are in the interests of the union, so long as the question or challenge is brought in a reasonable manner and in good faith (Trade Union and Labour Relations (Consolidated) Act 1992 section 65 (2) (c)).
- ii. seeking to support or vindicate the actions of any member who is reasonably thought to be facing unlawful disciplinary action (TULR(C)A 1992 65 (2)(d)).

The Procedure

1 Scope

- 1.1 Complaints under Rule 13.1 may be brought by any member or employee of UCU.
- 1.2 This Procedure does not apply to disagreements or disputes between members unless there is an allegation of evidence of conduct which comes under Rule 13.1, namely, conduct in breach of the Rules or of significant detriment to the interests of the Union.
- 1.3 This Procedure shall not be applied where the matters complained of concern members in capacities unrelated to their UCU membership.
- 1.4 This Procedure does not cover complaints about the provision of Union services by UCU employees. Such complaints are covered by the Membership Complaints Procedure. This can be accessed by members on the UCU website (www.ucu.org.uk).
- 1.5 This Procedure deals with complaints against individual members. If the complainant believes that more than one member has infringed Rule 13.1, separate complaints must be lodged.
- 1.6 This Procedure does not form part of the rules of UCU.
- 1.7 In the event of any dispute arising about procedural matters on which this Procedure is silent, the dispute shall be referred to the National Executive Committee for resolution and its decision shall be final.

2 Lodging a Complaint

- 2.1 Complaints should be addressed to the General Secretary at UCU head office in the standard form set out in section 4 below and using the form at **Schedule One** to this Procedure.
- 2.2 The UCU is committed to good equality practice in the application of its procedures. If members involved in this procedure have difficulties in accessing or participating in any aspect of it, they should contact the General Secretary or the official referred to in paragraph 6.4 below in order to discuss any reasonable adjustments or other arrangements that may be required.
- 2.3 Subject to paragraph 2.3, no complaint shall be considered for investigation if it relates to an event occurring more than three months before the date on which it is received by the General Secretary. Where the issue relates to a series of events which are all part of the same matter the three months period shall commence from the date of the last such event.

- 2.4 Exceptionally, a complaint may be considered for investigation where the General Secretary considers that it would be fair and equitable to extend time due to the illness of the complainant, the fact that the event only became known to the complainant after the time limit or if the complaint if proven might result in the expulsion of the respondent.

3 Members' responsibilities

- 3.1 It is the responsibility of complainants to ensure that they have familiarised themselves with this Procedure.
- 3.2 All members involved in this Procedure are required to behave in a reasonable, cooperative and courteous manner at all times, and, unless for good reason, meet any deadlines applicable and make themselves available for any meetings and hearings.
- 3.3 If the complainant acts at any point in the course of the investigation in a manner which in the opinion of the Investigating Officer will seriously inhibit the investigation or fails, without reasonable excuse, to meet a deadline or attend any meeting or hearing, the Investigating Officer is empowered to proceed on the basis of the documentary evidence available alone or to cease the investigation or any proceedings against the respondent.
- 3.4 If the respondent acts at any point in the course of the investigation in a manner which in the opinion of the Investigating Officer will seriously inhibit the investigation or fails, without reasonable excuse, to meet a deadline or attend any meeting or hearing, the Investigating Officer is empowered to proceed on the basis of the documentary evidence available alone or, in the case of the respondent not attending a meeting or hearing, proceed in the respondent's absence and without reorganising such meeting or hearing.
- 3.5 The General Secretary may, after consultation with the Officers, require members who are parties in this Procedure not to come into contact with each other while the investigation is proceeding, and until this Procedure is concluded; or following consultation with the officers, impose any other condition as the General Secretary considers appropriate having regard to the interests of UCU, the parties, the need to maintain confidentiality, or otherwise.

4 Documentation

- 4.1 A complaint under this Procedure must be set out by completing the form attached as **Schedule One** to this Procedure, and attaching supporting documentation and must include:
- 4.1.1 A clear statement of the complaint and how exactly it relates to misconduct under Rule 13.1.
 - 4.1.2 A clear explanation of how each item of supporting documentation attached relates to the complaint.
 - 4.1.3 A chronology of the events associated with the complaint
 - 4.1.4 A statement that the complainant has read and understood this Procedure
- 4.2 It is incumbent on the complainant to ensure that the supporting documentation is set out in an accessible and organised manner, with minimal repetition, and with clear cross-referencing to the substance of the complaint.
- 4.3 Documentation, including the Schedule One form, should not exceed 50 pages of A4 in total, of at least 10 point font.

5 Confidentiality

- 5.1 This is an internal UCU procedure and, subject to paragraph 18 of this Procedure, the conduct of any investigation and disciplinary proceedings under this Procedure is strictly confidential. All members and employees must respect this.
- 5.2 It is accepted that members may share documents and information arising from this Procedure on a strictly confidential basis with another member of the union acting as their advisor at any stage of the Procedure; and, if different, and on the same basis, with the 'friend' referred to in paragraph 8.6 below and the member assisting at the panel hearing referred to in paragraph 12.3 below. It is also accepted that complainants and respondents will need to share documents and information on a strictly confidential basis with their approved witnesses in the course of preparing for the panel hearing referred to in section 12 below.
- 5.3 **Apart from these exceptions, no documents or information arising from this Procedure should under any circumstances be shared with third parties.**
- 5.4 In the event of there being evidence that confidentiality has been materially breached by the complainant at any stage in this Procedure, the General Secretary may dismiss the complaint with no further action.

- 5.5 Breaches of confidentiality may be sufficient grounds to trigger the application of this Procedure to those responsible.
- 5.6 **It should be noted that defamation is excluded from the areas of support available to members under the Union's Legal Scheme.**

6 Appointment of Investigating Officer

- 6.1 When a complaint is received the General Secretary may appoint a senior officer of the Union ("the Investigating Officer") to carry out a preliminary investigation. Suitable officers are: the Immediate Past President, the President-Elect, and the Vice-President. Should none of these be readily available, the General Secretary may appoint an experienced member of the National Executive Committee (NEC), preferably with previous presidential experience, a senior national official of UCU or an independent person suitably qualified to conduct an investigation.
- 6.2 For the avoidance of doubt, the General Secretary may, in exercising discretion under paragraph 6.1, decide not to appoint an investigation officer. Circumstances include but are not limited to instances where it is considered that the complaint discloses no case to answer, or the facts, if established, would be unlikely to result in any action being taken against the member who is the subject of the complaint; or it is decided that the matter should be dealt with by means of informal guidance being provided to the member who is the subject of the complaint, or through the offer of mediation to the parties.
- 6.3 The General Secretary may delegate the power to appoint under paragraph 6.1 to another senior official of the Union.
- 6.4 The General Secretary shall appoint an official to administer the application of this Procedure. The duties of the official shall be to provide administrative support to the investigation, to act as secretary to the NEC Panel and Appeals Panel and to provide professional advice and guidance on the application of this Procedure. The official shall also ensure that the complainant is kept informed of the progress of the complaint through the various stages of this Procedure.

7 Preliminary investigation

- 7.1 The Investigating Officer shall, upon referral of the complaint, and normally within seven working days, first determine:
- 7.1.1 Whether it has been received in time.
- 7.1.2 Whether it is set out in the correct form.

7.1.3 Whether the subject matter is within the scope of Rule 13.1.

7.2 If the Investigating Officer determines that the complaint is not in time, or in the correct form, or outside the scope of Rule 13.1 the Investigating Officer shall recommend to the General Secretary that the complaint be dismissed. If the General Secretary decides to accept this recommendation, the complainant shall be informed.

8 Substantive investigation

8.1 If a complaint proceeds to a full investigation, the Investigating Officer shall conduct such enquiries as the Investigating Officer considers fit. Such investigation may include interviewing potential witnesses and the consideration of documents. The investigation shall normally take no longer than six working weeks from the date the issue is first referred to the Investigating Officer.

8.2 The complainant and the member whose conduct is alleged to be in breach of Rule 13.1 ("the respondent") shall be notified at the start of the investigation by the Investigating Officer. Respondents shall be entitled to know details of the case against them, and shall be sent the documents submitted by the complainant, together with a copy of this Procedure.

8.3 The respondent shall be invited to submit a written response to the complaint, which must normally be submitted to the Investigating Officer within two working weeks of the receipt of the invitation. The Investigating Officer may allow a longer period for responses in exceptional circumstances.

8.4 The Investigating Officer may meet either or both parties separately for the purpose of clarifying any points in the complaint or response. A note of any such meetings shall be taken by a member of staff.

8.5 No audio recording of these meetings, or of any other meetings under this Procedure, shall be made (subject to requirements relating to disability).

8.6 Should meetings with the Investigating Officer take place, the complainant or the respondent may, if they wish, be accompanied by a friend who must be a member of the Union. Legal representation is not permitted at any stage of this Procedure.

8.7 Members attending meetings at the request of the Investigating Officer shall be entitled to receive payment of standard travelling, subsistence and child care costs incurred.

9 Outcome of investigation

- 9.1 After the completion of the investigation, the Investigating Officer shall decide either:
- 9.1.1 That there is no case to answer and that the matter should therefore proceed no further; or
- 9.1.2 That there is *prima facie* a case that the member's conduct has been in breach of rule or of significant detriment to the interests of the Union and that the matter should proceed to the next stage of this Procedure.
- 9.2 In either case, the Investigating Officer shall send the decision and supporting reasons in writing to the complainant, respondent and General Secretary.

10 National Executive Committee Panel: appointment

- 10.1 If the matter is to proceed to the next stage, the Investigating Officer shall report accordingly to the Officers, who shall establish a panel of three ordinary members of the NEC to hear and decide upon the complaint. No member of the panel shall have played any previous part in the procedure.
- 10.2 The panel shall normally complete its work within six working weeks of its appointment.

11 Preparation for NEC Panel hearing

- 11.1 The parties shall be consulted about dates for the hearing and their availability taken into consideration. The final decision on the date of the Panel hearing shall be made by the Panel Chair.
- 11.2 The respondent shall be informed of the date, time and place of the Panel hearing at least three working weeks in advance.
- 11.3 At the same time, the respondent shall receive confirmation of the papers to be considered at the hearing, which at this stage shall normally consist of the original complaint and supporting documentation, the respondent's response to the complaint, the notes of any interviews conducted by the Investigating Officer and a copy of the Investigating Officer's report.
- 11.4 If the respondent or the Investigating Officer wishes to call witnesses at the hearing, they must inform the Secretary to the Panel and submit to the Secretary of the Panel witness statements at least two working weeks in advance of the hearing. Witness statements shall be exchanged between the parties by the Secretary to the Panel as soon as possible following their submission. In the event that there are any additional documents that the respondent or the Investigating Officer wishes to submit, these should be

submitted to the Secretary of the Panel at least eight working days in advance of the hearing. Unless there are highly exceptional circumstances, the Panel shall not accept any witness statement or document submitted after the appropriate deadline.

- 11.5 The Panel reserves the right to refuse attendance by witnesses where it is clear to the Panel from the witness statements that their evidence is irrelevant, repetitive or otherwise unnecessary to the Panel's deliberations. A witness whom the Panel agrees may attend to give evidence shall be described in these procedures as an "agreed witness".
- 11.6 All those attending a Panel hearing shall be entitled to receive payment of standard travelling, subsistence and child care costs incurred.
- 11.7 The panel hearing shall normally be concluded within one day. The Panel will expect the parties to have read the witness statements and supporting documents before the hearing. A note of the meeting shall be taken by a member of staff for the sole purpose of assisting the Panel in the preparation of its report. The Panel's report shall form the written record of the hearing.
- 11.8 In accordance with section 5 above, all proceedings before the Panel are confidential and no party or witness may repeat any matter or allegation outside of this Procedure or use for any other purpose any document produced for the investigation or hearing (otherwise than required by law or by court or tribunal order).

12 NEC Panel hearing

- 12.1 Subject to the following paragraphs of this section, the NEC Panel may regulate its own procedure, and without prejudice to the generality of this power, may decide whether any witnesses should attend to give evidence, and if so may limit the time for questioning of any witness, the number of questions, and the time for submissions by either the Investigating Officer or the respondent.
- 12.2 At the panel hearing the Investigating Officer shall present the Investigation report on behalf of the Union, and call agreed witnesses and refer to pre-submitted documentary evidence as necessary. This is the central feature of any hearing, to which the respondent and the witnesses, if any, shall be expected to address themselves.
- 12.3 The respondent shall also be entitled to call agreed witnesses and refer to pre-submitted documentary evidence as necessary in response to the charges. Neither the Investigating Officer nor the respondent shall be represented by a lawyer, but the respondent may call upon a member of the

Union for assistance. The respondent may be present throughout the hearing.

- 12.4 If the respondent acts at any point in the course of the preparation for the hearing or at the hearing in a manner which in the opinion of the Panel will seriously inhibit the hearing, the Panel is empowered to proceed on the basis of the documentary evidence available. The Panel may determine the matter in the absence of the respondent.

13 NEC Panel decision

- 13.1 At the conclusion of the hearing the Panel shall produce a written report of the hearing and its deliberations, setting out its reasoned decision.
- 13.2 If on the balance of probabilities, a breach of Rule 13.1 is found to have occurred, the panel may impose a sanction as permitted by Rule 13.1. In deciding on an appropriate sanction the Panel may take into account any previous Rule 13.1 breaches by the member which remain on the member's record, but shall not consider any that have been expunged in accordance with paragraph 18.3 below.
- 13.3 The Panel's report shall be sent to the respondent, complainant, Investigating Officer, President and General Secretary within 21 working days of the Panel hearing.
- 13.4 The sanction shall not be put into effect until the period of notice for an appeal has elapsed without an appeal having been lodged or until an appeal has been lodged and the appeal process concluded.

14 Appeals: submission

- 14.1 The respondent may appeal against the decision of the Panel, and any sanction imposed on the following grounds:
- 14.1.1 Evidence of procedural irregularity or bias in the conduct of the Panel hearing.
- 14.1.2 That the decision of the Panel was so unreasonable that no reasonable panel would have reached such a decision.
- 14.1.3 That the level of any sanction imposed is disproportionate in relation to the conduct found.
- 14.2 Appeals must be received by the General Secretary within 10 working days of the date on which the written decision of the panel was sent to the parties and must set out clearly the grounds of the appeal and include any supporting evidence.

15 Appeals Panel

- 15.1 The membership of the Appeals Panel shall be drawn from a pool of 15 members of the Union elected for this purpose every three years by National Congress. Members so elected shall have been members of UCU for at least five years, with experience of elected office at branch, regional or national level. The Appeals Panel shall consist of three people selected from that pool by the President or, in the event that the President has ruled on any matter at an earlier stage in this Procedure, by another national officer of the Union who has had no previous involvement with the case.
- 15.2 If there is an insufficient or no elected pool of members, the President or other officer may appoint to the Appeals Panel members of the NEC not previously involved with the case.
- 15.3 Appeals will normally be heard within four working weeks of receipt of the appeal.

16 Appeals Panel procedure

- 16.1 Subject to the following paragraphs of this section, the Appeals Panel may regulate its own procedure.
- 16.2 The Appeals Panel shall not conduct a re-hearing of the original allegations. The Panel shall restrict itself to the review of the NEC Panel's decision in relation to the Appellant's grounds of appeal and supporting argument and evidence.
- 16.3 Appellants may address the Appeal Panel in support of their appeal statements and may be asked questions by the Panel. A maximum of one hour shall be allocated for this purpose.
- 16.4 Appellants attending an Appeal Panel hearing shall be entitled to receive payment of standard travelling, subsistence and child care costs incurred.
- 16.5 The Appellant shall not be represented by a lawyer, but may call upon a member of the Union for assistance.

17 Appeals Panel decision

- 17.1 The Appeals Panel may uphold or overturn the decision of the NEC Panel that a member's conduct has been found to be in breach of rule or to have been of significant detriment to the interests of the Union. If the Appeals Panel upholds the decision of the NEC Panel it may confirm the sanction imposed or substitute a lesser sanction or no sanction at all. The Appeals Panel may not under any circumstances increase the sanction imposed by the NEC Panel. The Appeals Panel shall give reasons for its decision.

17.2 The decision of the Appeals Panel shall be sent to the complainant, respondent, President and General Secretary. The decision of the Appeals Panel shall be final.

17.3 The report of the Appeals Panel containing its decision shall remain strictly confidential to the parties, but any sanction shall be promulgated to the membership, as below.

18 Promulgation of sanctions

18.1 Any sanction imposed on a member under this Procedure shall be promulgated to the membership of the Union by being published in the Union's magazine, or other appropriate medium of membership communication, in the form:

Following the application of the Union's Procedure for the Regulation of the Conduct of Members the following sanction has been imposed on [name of member]: [sanction as expressed in Rule 13].

18.2 The sanction shall not be published until the period of notice for an appeal has elapsed without an appeal having been lodged or until an appeal has been lodged and the appeal process concluded.

18.3 Expulsion from the Union is permanent. Other sanctions shall remain on the member's record for a period of five years, after which they shall be expunged.

19 General

19.1 Notices to be given under this Procedure if sent by prepaid first class mail or by email or delivered by the relevant party at the address last provided by the member to the Union shall be deemed to be served, if posted, the day after posting and, if personally delivered or emailed, at the time of delivery.

20 Approval of Procedure

20.1 This Procedure was approved by the National Executive Committee on 15 March 2019.

Schedule One (Procedure for the Regulation of the Conduct of Members)

FORM FOR SUBMISSION OF COMPLAINTS (continue on separate sheet if necessary)

1. Statement of complaint

1.1 Specify how the complaint relates to a breach or breaches of rule and/or conduct of significant detriment to the interests of the Union.

2. Attach and number any documents in support of the complaint and indicate below how each item relates to the complaint.

3. Provide a chronology below of the events associated with the complaint.

I confirm that I have read and understood this Procedure¹.

I give consent to the processing of my personal data for the purposes set out in this Procedure.

Signed:.....Date:.....

¹ Please contact Alan Scobbie (ascobbie@ucu.org.uk) at UCU head office if you have questions