

Executive Council Guidance on Rule 27 Discipline of Members

Rule 27.2 provides that disciplinary hearings shall be organised and conducted under directions issued by the Executive Council. This document sets out those directions and should be read in conjunction with Rule 27.

THE DISCIPLINARY PROCESS

The disciplinary process is intended to be fair and conducted in accordance with the principles of natural justice. The following directions are designed to ensure that this is the case.

A copy of these directions should be given to any member when they are charged under rule.

a) The charge

What can a member be charged with? A member may be charged with one or more of the offences detailed in rules 27.1.1 to 27.1.6. A member may **not** be charged with anything falling outwith these rules. See also the section headed "Legal Guidance" below for matters which may not by law form the basis for disciplinary proceedings against a member.

Who decides on the charge to be brought against a member? Rule 27.3 provides that charges are to be heard by a Branch (or Branch Committee), a Regional Committee or the Executive Council (or a sub-committee of the Executive Council). Where the charge is to be heard by a Branch (or Branch Committee) the charge shall be brought by the Branch. Where the charge is to be heard by the Regional Committee the charge shall be brought by the Regional Committee. Where the Charge is to be heard by the Executive Council (or a sub-committee of the Executive Council) the charge shall be brought by the Executive Council (or a sub-committee of the Executive Council) or one of the Joint General Secretaries (or the General Secretary).

Before any charge is brought the Branch, Branch Committee or Regional Committee shall send a draft letter of charge to the Executive Council Disciplinary Sub-Committee. The letter shall be sent to the Union's King Street Office marked for the attention of the Executive Council Disciplinary Sub-Committee and shall be copied to the office(s) of the Joint General Secretaries/General Secretary. The Executive Council Disciplinary Sub-Committee shall determine whether the charges should be brought and heard by a Branch, a Branch Committee, a Regional Committee, the Executive Council Disciplinary Sub-Committee or the Executive Council. The Executive Council Disciplinary Sub-Committee will write to the body which is to bring and hear the charge, copying its letter to the body which referred the matter to it if appropriate. The body which is to hear the charge will then send the letter of charge to the member.

How are charges to be brought? A charge shall be brought by a letter being sent to the member setting out the circumstances (in outline form) giving rise to

the charge and specifying the rule which it is alleged has been breached. A copy of these directions should also be sent to the member when they are charged.

Timing of charge: there shall not be unreasonable delay before a member is charged.

b) Suspension

A member may only be suspended in accordance with rule 27.4. The Joint General Secretaries (or the General Secretary) may under their delegated powers suspend members in addition to the bodies referred to in rule 27.4.

c) Preparation for the disciplinary hearing

Evidence against member: the circumstances giving rise to a charge are to be described in outline form in the letter charging the member (see above). Any documents to be relied upon in support of the charge should be sent to the member at least 8 weeks before the hearing is to take place. If the Union is to rely on witness evidence, witness statements should be prepared and sent to the member at least 4 weeks before the hearing.

Evidence of member: the member must ensure that any documents upon which they wish to rely in their defence are received by the body or individual which has charged them at least 6 weeks before the hearing is to take place. If the member is to rely on witness evidence, witness statements should be prepared and sent to the body or individual which has charged them at least 2 weeks before the hearing.

Late documents/witness evidence: if the member provides documents or witness statements outside the timescale set out above whether such documents or witness statements shall be considered will be at the absolute discretion of the body hearing the charge against the member.

Timescale for hearing: the body hearing the charge shall arrange for the disciplinary hearing to take place within a reasonable period of the charges being brought. This will normally result in the disciplinary hearing taking place within 10 weeks of the charges being brought.

Arrangements for the hearing: the body hearing the charge shall decide, and give the member at least 8 weeks' notice of, the date, time, length and place for the hearing.

d) The disciplinary hearing

Accompaniment: the member may be accompanied and/or represented by another member of the Union who is not an employee of the Union. A member shall not be legally represented unless the Executive Council decides at its absolute discretion that there are exceptional circumstances which make legal representation appropriate.

Evidence at the hearing: the body hearing the charge may not take account of any evidence to which the member charged has not been given an opportunity to respond.

Questioning at the hearing: the body hearing the charge may require the member charged to answer questions relating to the conduct which is the subject matter of the charge. The body hearing the charge shall not be obliged to ask any or all of any individuals who have given witness statements to attend the hearing. If such individuals do attend, the body hearing the charge is not obliged to permit them to be cross examined.

e) After the hearing

Notification of whether charge upheld: within 28 days of the conclusion of the hearing the body which heard the charge shall normally write to the member notifying them whether the charge has been upheld and, if it has, any disciplinary sanction imposed in accordance with rule 27.

Sanctions that may be imposed: sanctions may only be imposed in accordance with rules 27.5 and 27.6.

Appeal: rule 27.7 provides that a member has a right of appeal against any disciplinary sanction imposed and sets out general provisions for how the appeal must be conducted. If a member wishes to exercise that right of appeal they shall do so in accordance with rules 27.7.2 to 27.7.4. Any appeal must be received by the relevant body within 28 days of the date on which the result of the disciplinary hearing was sent to the member. The relevant body will send a copy of the appeal to the office of the General Secretary or to the offices of the Joint General Secretaries for information. The office of the General Secretary/offices of the Joint General Secretaries will confirm to the relevant body that they have received a copy of the appeal. The appeal shall set out the grounds on which appeal is made. Any appeal to the Executive Council may be heard by a sub-committee of the Executive Council. The union will aim to conclude the appeal no later than 10 weeks after it was submitted.

f) General

Subject to the provisions of these directions and the Rules of the Union the body hearing the charge shall decide its own procedure for investigating, hearing and otherwise dealing with the charge.

LEGAL GUIDANCE

As stated above, the Union may only discipline members for conduct which is in breach of rule. In addition, the Trade Union and Labour Relations (Consolidation) Act 1992 severely limits the ability of the Union to discipline and expel its members. If the Union disciplines or expels a member in breach of the 1992 Act the member will be able to bring a claim in the employment tribunal against the Union. This can have serious financial consequences for the Union.

Members must not be disciplined or expelled in breach of the 1992 Act. Accordingly a member may **not** be disciplined or expelled for any of the following reasons:

- a) they have opposed or not participated in a strike or other industrial action;
- b) they have failed to break their contract in connection with industrial action;
- c) they have claimed that the Union or one of its officials, representatives or trustees has broken or is proposing to break the law or the Union's rules;
- d) they have failed to agree to pay their subscriptions by check-off or have cancelled a check-off arrangement;
- e) they have joined another union or belong to another union;
- f) they work with non-union members or members of another union;
- g) they work for an employer who employs non-union members or members of another union;
- h) they have required the Union to do something which it is required to do by the 1992 Act.
- i) grounds of political party membership - only be permissible if the membership of that political party is contrary to a rule or objective of the union. There is not currently a Unite rule re political party membership.

Members may also not be disciplined or expelled for proposing to do these things or for encouraging or assisting others to do these things.

Members may not be expelled except by the EC. Where expulsion is a possible outcome of proceedings the disciplinary proceedings should be conducted on the basis of legal advice obtained via Legal Services at King St.

If a Branch or Regional Committee requires legal advice in relation to proposed disciplinary proceedings against a member it should seek Head Office legal advice via Kendal Gaw on 020 7420 8925 [please note that Kendal will not provide advice herself, but will contact someone who can. In most cases this will be Shubha Banerjee in the first instance.] Branches and Regional Committees are urged to take legal advice if they have any doubt whatsoever about the legality of the disciplinary proceedings concerned.

Advice must be sought in relation to all cases involving proposed disciplinary action in relation to membership of a political party.