Complaints Procedures & Disciplinary Regulations

These regulations are drawn up by the Disputes & Complaints Committee, and are approved by the Trustee Board and the Council under delegation set down in Bye-Law 10 (Disputes & Complaints).

Amendments made by the Council require the resolution to amend to be approved by a two-thirds majority vote.

A. Jurisdiction

1. This Regulation establishes or provides for the disciplinary and complaints procedures across the Union as set out in Bye-Law 10 and Bye-Law 21 (which includes the Code of Practice, as established by the Education Act 1994).

2. Officers and representatives may only be suspended, censured or dismissed within the provisions of this regulation.

3. The Chair of Trustees is responsible through the Executive Committee (except for staff matters) to the Trustee Board for discipline in the Union.

Complaints and Disputes

4. A student or group of students who wish to make a complaint shall follow the procedure established in Part B.

Definitions

5. A Union Officer or other person holding elected or unpaid appointed office in respect of whom an investigation or disciplinary action is being taken shall be referred to as the “defendant officer”.

6. A defendant officer who is a Sabbatical Officer or otherwise derives employment from office shall also be referred to as a “defendant sabbatical”.

7. The authority and responsibility for dealing with misconduct by any defendant officer shall be the Chair of Trustees, though the Chair of Council shall deal with cases involving the Chair of Trustees. The person concerned or his or her nominee shall be referred to as the “relevant authority”.

Union Officers and other holders of office

8. This Regulation deals in Parts C, D, E, F and G with misconduct, negligence or failure to maintain the confidence of the Council or other body by Officers of the Union, others holding elected or unpaid appointed office in any part of the Union.

9. This Regulation deals in Part H with the powers of the Trustee Board to act as a disciplinary tribunal and to suspend, censure or dismiss a defendant officer for misconduct. Union policy may provide for other sanctions to be imposed by a disciplinary tribunal.

Union Members and registered students

10. Misconduct by students of a non-academic nature within the Union shall be dealt with by the Union under Union policy (such as the Code of Members Conduct). Such a policy may also deal with misconduct by clubs and societies, Associate or Life members. Other policies or rules may provide for disciplinary sanctions.

Staff

11. Misconduct by Union staff shall be dealt with by the Chair of Trustees/Treasurer and General Manager (or where provided for, the Trustee Board) through the line management structure, under policy established by or under the authority of the Trustee Board (including Bye-Law 11 – Employment Regulations & Staff Protocol). No other part of this Regulation shall govern staff discipline.

Miscellaneous
12. Any committee or person exercising disciplinary or quasi-disciplinary powers within the Union except in relation to staff matters shall follow the natural justice provisions in Part I.
13. Action under multiple parts of this Regulation may taken in respect of the same conduct.
14. No person or body may be required or mandated to take disciplinary action against a named person or body.

Trustees

15. Trustees are also dealt with in the Trustees' Code of Conduct. For the purposes of dealing with disciplinary or complaints relating or involving Non-Executive Trustees, the relevant authority shall seek advice from the Chair of the Audit Committee, and if not available, such other Non-Executive Trustee the Company Secretary shall appoint.

B. Complaints & Disputes Procedure

16. This complaints procedure is provided for all students or groups of students who:

- Are dissatisfied in their dealings with the Students' Union,
- Claim that they have been unfairly disadvantaged by reason of having exercised their right not to be a member of the Students' Union, or
- Are dissatisfied with the conduct or performance of an officer or member of staff.

17. Any complaint shall in the first instance be referred to the Chair of Trustees, who shall take such steps as are reasonable to meet the complaint. A complaint in relation to the Chair of Trustees (or in the absence of the Chair of Trustees), shall be passed on to the Treasurer. This person shall be known as the "Complaint Manager". In relation to complaints about Students' Union services, the Complaint Manager shall seek advice from the General Manager.

18. A complaint may, if in relation to a constituent part of the Union (e.g. autonomous Liberation Committees, Clubs & Societies, Publications etc) and at the discretion of the complainant, be referred to its chair, president or captain (or other person set out in its rules) for resolution.

19. If a complainant is dissatisfied with the resolution of the complaint by the Complaint Manager, it may be referred to a Hearing Committee (as constituted by the Complaints & Disputes Committee). The Complaint Manager may determine that the compliant is of such a nature that they themselves refer the matter to a Hearing Committee.

20. The Complaint Manager shall respond to any complaint within ten clear working days after receiving the complaint. At this stage, the complainant shall be informed of progress and whether a remedy is proposed or whether a Hearing Committee is being convened.

21. If a complaint is upheld an effective remedy should be provided, which may, but need not, involve disciplinary action under this Regulation.

22. If a complainant is still dissatisfied with the resolution of the complaint they may pursue the matter with the College under the Code of Practice (as set down in Bye-Law 21).

23. This procedure does not prevent a complainant from taking proper action themselves under this Regulation or participating in any open Union meetings.

C. Warnings

24. The authority and responsibility for issuing disciplinary warnings shall be undertaken by the relevant authority.

25. A warning shall take the following forms:

- A verbal warning, which may take the form of an informal or formal discussion of the problem. This shall be reported to the Complaints & Disputes Committee and any other relevant committees.
- A written warning, which will take the form of a letter written by the relevant authority and copied to the Complaints & Disputes Committee and any other relevant committees.

26. The relevant authority issuing the warning must inform the defendant officer being warned of his or her rights of appeal and what scope and effect an appeal has, if granted.
27. The presidents and chairs of the Union’s standing committees, clubs and societies may also deal with minor cases involving their officers and members.

D. Investigations

28. An investigation may be undertaken in respect of misconduct by a defendant officer. An investigation is compulsory in the case of alleged misconduct by a defendant sabbatical or Trustee. In other cases it is not compulsory, but the Council or other body may take into account the extent of any investigation prior to a motion being presented to it.

29. The purpose of the investigation is to establish any facts and explanations that may be relevant to an allegation of a motion of censure or no confidence.

30. The relevant authority shall commence the investigation and appoint its manager. The Complaints & Disputes Committee may upon request of any person institute an investigation, replace an investigation manager with another person, take it over as an inquiry, or shut it down.

31. The investigation, if undertaken, must:
   - Be managed by a person senior in office to the defendant officer, or an independent person (who may, but need not be a Full Member of the Union, though not a member of the permanent staff),
   - Put the allegations and evidence of misconduct to the subject of investigation in a manner he or she can understand,
   - Be concluded prior to the motion being debated at the Council or other body and,
   - Be provided to the Trustee Board, if the inquiry relates to a defendant sabbatical or Trustee.

32. An investigation manager or proposer may, with the permission of the Council Chair, put a proposed motion back to a later meeting of the Council, Trustee Board or General Meeting within the same academic year for the purpose of ensuring an investigation is concluded satisfactorily. A request by petition to put a motion of no-confidence to Referendum supersedes this procedure and Regulation.

E. Suspension

33. The Chair of Council or the Trustee Board may suspend any defendant officer holding sabbatical office or otherwise deriving employment by the Union from office upon full pay if there are reasonable grounds for so doing, and in particular:
   - gross or serious misconduct is alleged,
   - there may be risks to third parties or Union or College property
   - where the working relationship between the defendant officer and others may be impaired, or
   - to assist, if necessary, an investigation.

34. The Chair of Trustees or the Chair of Council may also suspend any defendant officer in relation to whom either chair is the relevant authority. This power may be reasonably delegated to other Union Officers. Any such delegation shall be reported to and minuted by the Executive Committee, and may be revoked by the Complaints & Disputes Committee if unreasonable.

35. The person or body suspending shall determine the extent of the suspension, which shall not restrict the defendant officer's ordinary rights as a Full Member of the Union (however, they may be excluded from the working environment and other premises occupied by the Union). A suspension including removing the right to attend and vote at any Union meeting requires the approval of the Executive Committee.

36. A suspension by the relevant authority for more than fourteen clear days requires the Complaints & Disputes Committee or Trustee Board to be satisfied and remain satisfied that the grounds of the suspension are reasonable and proper.

37. The Executive Committee, may allocate any duties of the suspended officer during the course of a suspension. Any suspension may only continue for as long as is reasonable.

F. Censure and No Confidence Motions

Jurisdiction
38. The Council may censure or dismiss any defendant officer in the Union (though dismissal of a sabbatical defendant shall be notified to the Trustee Board).

39. Clubs & societies and autonomous Liberation Committees of the Council may censure or dismiss their officers and representatives (including those that are members of the Council). These committees’ standing orders shall comply with Part I and may further restrict or prohibit censure or dismissal.

40. The censure or removal from office of other members on other committees:

- shall be permissible at a meeting of a committee provided that the standing orders of that committee expressly agree this as a power of the committee and those standing orders have been agreed by the senior governing body (in the case of Trustees’ Committees, the Trustee Board; in the case of Council Committees (that are not autonomous Liberation Committees), the Council in plenary session. For the avoidance of doubt, the Executive Committee is a joint committee of the Board and Council);

- the censure of motion to remove from office is moved and voted on at the body or meeting at which the office holders are elected or appointed (e.g. Liberation General Meeting removing members of Liberation Committees; or the Council removing Council-elected Executive Committee members).

Procedure for bringing motions to the Council

41. Motions of censure or no confidence shall be proposed to the Council by one of the following people and methods (and shall comply with Articles 89-91 and Bye-Law 6 – The Standing Orders of the Council):

Motions of censure (all require a simple majority to pass):

- Petition by an Ordinary Member of the Union, seconded by nine Ordinary Members of the Union. The petition shall include the signatures or College identification numbers and printed names of the petitioners.
- By a nominee of the Chair of Council, if the Council’s standing orders have been significantly breached or officer’s reports have been rejected on two occasions. If no-one wishes to be the proposer, the Council Chair shall be the nominal proposer.
- By the duly recognised chair of a committee of the Union, provided that there are minutes of the meeting at which a resolution was passed (simple majority) to propose censure.

Motions of no-confidence / motions to remove from office:

- Petition by a member of Council, seconded by nineteen Ordinary Members of the Union, who need not be members of the Council. The petition shall include the signatures or College identification numbers and printed names of the petitioners (this does not apply to Trustees). To pass this motion requires only a simple majority under Bye-Law 6).
- A motion of no-confidence signed by ten members of the Council (this does also extend to all Trustees – Article 89). To pass, this motion must acquire a two-thirds majority vote to remove any person from office who is a trustee. If the motion is not in a trustee, then only a simple majority is required).

42. All motions of censure or no confidence, except those arising from a rejected re-presentation of a report (or other breach of the Council’s Standing Orders as determined by the Chair of Council), must:

- Name individual officers or representatives,
- State clearly in writing the grounds of the complaints,
- State the nature and conclusions of any relevant investigations undertaken,
- Include details of previous warnings under Part B, or lack of them,
- Include details of any part of the Constitution, Bye-Laws, Regulations, Policies or rulings alleged to have been breached,
- Include in the case of Trustees, provisions of the Code of Conduct for Trustees that have been breached (if applicable),
- Be presented with its supporting petition to the relevant authority and communicated to the defendant, at least 14 clear days’ before the Council meeting and be scheduled as a priority on the agenda paper. For a motion of censure, the time shall be at least 5 clear days’ before the Council meeting.

43. No motion of censure may lie against a person already censured, whether by the Council, Trustee Board or other committee entitled to do so.
44. Upon receipt of the motion of censure or no confidence unless automatically generated by a twice rejected report, the relevant authority will take all reasonable steps to inform the defendant officer of the grounds of the complaint, the procedures laid out in this document and the date of the meeting.

**Procedure for debating the motion at the Council**

45. If more than one motion of censure or no confidence is submitted to any meeting, they may be considered as a single motion, but if separately submitted may be considered separately, at the discretion of the proposers of the motions and with the agreement of the Chair of Council.

46. The following provisions shall be observed while debating and despatching the motion:

- No motion of censure or motion of no-confidence may be amended to change the effect of the censure becoming a no-confidence and/or a no-confidence becoming a censure. If a motion that requires a two-thirds majority achieves a simple majority only, the motion is still considered completely rejected, without any censure.
- The defendant officer may bring their own representative (who may be any member of the College, but not a lawyer acting in a legal capacity), and either person may address the meeting and have full right of reply.
- The Council shall have due regard for the gravity of the motion.
- The Council may choose to vote on a single motion against several individuals separately for each individual.
- The proposer and subject of a motion may not vote upon it or disputed amendment to it. The quorum shall be recalculated under the Personal Interests rule.
- No vote may be proxied (if there is a proxy system in place).
- The vote upon the motion and any disputed amendment to it shall be held by secret ballot, unless the Council votes, with the majority present agreeing (an absolute majority present, not a simple majority), to hold a roll-call vote (each individual voter shall be listed in the minutes as voting YES voting NO or not voting/abstaining).
- A motion which having been voted on and rejected may not later be reconsidered by the Council unless further evidence of dissatisfaction is brought to the attention of the Chair of Council and the Chair of Council agrees to hear a motion, or at least forty days have passed.

**Procedure for censure and no confidence motions at General Meetings, meetings of the Trustee Board, Liberation Committee General Meetings and other bodies**

**General Meetings:**

47. All the provisions as set down in Clause 45 and 46 shall be followed, with the following changes:

- Motions may only concern the conduct of Trustees and members of the Council.
- For Trustees, the provisions of Articles 89-91 are followed. For all other disciplinary motions, the requirement shall be for 50 Ordinary Members to bring the motion, with at least 21 days’ notice being served to the defendant.
- All motions of censure require a simple majority of those present and voting. For non-Trustees, a motion of no-confidence / motion to remove from office requires a simple majority (two thirds for a trustee).
- A Trustee removed from office has the right to appeal for the verdict to be overturned by a Referendum, provided that the Referendum is correctly requisitioned under Article 89 or Bye-Law 13 – Referendums.

**Meetings of the Trustee Board:**

48. The Trustees have general power of censure over any of their Board members and shall set down any provisions relating to censure they see fit in their own Standing Orders.

49. If a disciplinary motion of censure or no confidence is likely to cause significant harm to the reputation of the Students’ Union as an employer, the Trustee Board or a nominee, shall determine whether to extend the Staff Protocol to such motions and deliberations of committees. In extreme situations where the Trustee Board is the only viable body to conduct the hearing of a censure motion or no-confidence motion the proposer of the motion and the Chair of Trustees shall meet urgently to find a solution.

50. The provisions of Article 89 shall be observed when dealing with sensitive complaints or motions of no-confidence brought against a Trustee and the Trustee Board has extended the Staff Protocol to the motion. For the avoidance of doubt, a motion that has not been covered by the Staff Protocol, but has been tabled for discussion at the Trustee Board, shall be submitted to the next meeting or an extraordinary meeting of the Council, as determined by the Chair of Council.

51. No person who is not a Trustee can be censured or no-confidenced by the Trustee Board. In the event that the Staff Protocol is extended to a motion, and the defendant is not a Trustee, the motion shall be heard by the Council (in the first instance), with the General Manager and recognised Trade Union representative present (neither shall not have speaking rights, but may indicate their cause for concern on matters relating to the Staff Protocol).
52. The minutes of the meeting of the Trustee Board at which a disciplinary decision is taken on whether to approve a censure or no-confidence, shall detail whether the resolution is:

a. Approved nemine contradicte
b. Approved unanimously
c. Approved (with required majority)
d. Falls after a vote is held
e. Is taken from the table without a vote (withdrawn by agreement)

53. And in the case of c or d, those voting YES and those voting NO and those ABSTAINING/NOT VOTING shall be listed.

54. For the avoidance of doubt, the proposer and subject of a motion may not vote upon it or disputed amendment to it. The quorum shall be recalculated under the Personal Interests rule.

Liberation Committee General Meetings
54. Provided that 14 clear days’ notice has been given to the defendant, the proceedings of the censure or no confidence motion at a Liberation Committee General Meetings shall be valid if all requirements of that Liberation Committee’s standing orders are observed and

- The motion relates only to that Liberation Officer, Campaign Convenor or Liberation Committee member(s);
- The vote is taken by secret ballot;
- The provisions of Clauses 45 and 46 are followed (with disapplication of a roll call vote)

Procedure on the motion being passed at the Council or other body
55. On the passing of the motion, the defendant officer shall be informed by the Chair of the result of the motion and of the right of appeal, and if he or she is absent, all reasonable steps shall be taken to inform him or her of the result of the motion.

56. On the passing of a motion of censure the defendant officer shall be informed that further complaints may only be dealt with by a motion of no confidence.

57. On the passing of a motion of no confidence the defendant officer shall, if he or she does not hold sabbatical office, be dismissed immediately.

58. If a motion of no confidence is passed against a defendant sabbatical, the he or she shall be suspended from duty pending a meeting of the Trustee Board, which may then (after any further investigations and hearings which it may conduct) dismiss the defendant sabbatical, or remove the suspension.

59. A defendant sabbatical suspended following a motion of no confidence shall receive full pay until the Trustee Board has determined the matter finally, with the following provisos:

- the suspension on full pay (pro-rata) shall last no less than one month (unless otherwise advised by an HR expert), or unless
- their term of office ends earlier, in which case pay terminates at the expiry of the term of office.

60. If the Trustee Board decides not to dismiss a defendant sabbatical following a motion of no confidence, he or she, if not already censured, shall be censured automatically. The Trustee Board shall provide the reasons for its decision to the Council.

Removal from membership of a committee
61. The Council may without notice and by simple majority remove any or all ordinary or co-opted members from any committee (but not individuals from their posts). This includes persons elected onto committees at General Meetings and appointed by the Council.

Disqualification from office
62. A person dismissed from office by the Council or any other committee by virtue of a motion of no confidence under this Regulation may not be elected to or hold that office again. In the case of a Trustee or person in paid elected office, a person may not hold any Trustee position or be eligible for election to any paid elected post again. The Council may remove this disqualification by supporting such proposal by a two-thirds majority.

G. Appeal Procedure for Warnings, Censure and No Confidence Resolutions
63. Any person warned under Part C may appeal to the Council whose decision is final. Warning appeals in constituent parts of the Union shall be governed by their rules.

64. Any person censured or dismissed by the Council (“the appellant”) may appeal to a General Meeting whose decision is final. The appellant should give notice of appeal within two working days to the relevant
authority. An appeal shall be upheld by a simple majority of those present and voting. A person censured or dismissed by a General Meeting who is a Trustee has the right to petition a Referendum to be called to “vote confidence” in that Trustee.

65. The appellant must then successfully petition a General Meeting / Referendum according to the Constitution within five clear days. The General Meeting shall then meet at a time and place agreed between the person censured or dismissed and the Chair of Council. If a time and place cannot be agreed it shall be determined by a nominee of the Trustee Board. A Referendum will only be called if the requisition for one is submitted to the Chair of Council within the five clear days. The start of the five clear days shall be at the end of the two working days’ notice of appeal.

H. Disciplinary Tribunals

66. The Complaints & Disputes Committee may establish a disciplinary tribunal to deal with misconduct by a defendant officer, or may delegate this function to the Business Committee. Relevant misconduct shall not merely constitute (though it may include):

- a failure to maintain the confidence of the Council or other policy-making body,
- a failure to adhere to any manifesto commitment, or
- inadequate representation on behalf of the student body.

67. A disciplinary tribunal may only be requested by an Executive Trustee, the Council Chair, the Chair of the Audit Committee or requested by letter signed by five members of the Council: and the Complaints & Disputes Committee may choose then whether to institute proceedings.

68. The Complaints & Disputes Committee shall administer the hearing in such manner as it may direct (complying with Part I), and may instigate an investigation and delegate any function to a panel or Hearing Committee.

69. A disciplinary tribunal, as well as exercising any other appropriate authority, may recommend warning, censure or dismissal of the defendant officer.

70. The Complaints & Disputes Committee has the right to reject frivolous, vexatious and academic tribunal requests.

I. Other disciplinary proceedings

Minimum requirements for any disciplinary or quasi-disciplinary proceeding

71. Any proceeding in any part of the Union which may result in disciplinary action being taken against any person or part of the Union, except staff matters, must satisfy the natural justice requirements set out in this Part.

72. Disciplinary or quasi-disciplinary action includes by way of example dismissal, censure, suspension, compulsory dissolution, withdrawal of rights or privileges, fine, compensation, or penal reduction or freezing of budget.

73. This Part does not apply to a person or constituent part of the Union in imposing any of the above outcomes upon themselves.

74. In proceedings resulting in disciplinary action:

- The defendant officer shall receive reasonable notice of any proceedings (which is deemed to have been provided if the proceedings are held at a scheduled Union meeting of which the defendant officer is a member or permanent observer),
- The proceedings shall be recorded in writing,
- The defendant officer may require the hearing to be in public, unless the quality of another person’s evidence would be improved by it being in private,
- The defendant officer and any representative may not be excluded from the proceedings at any point except for disorder or with the approval of the Trustee Board, Council or Court,
- The burden is upon the disciplinary authority or proposer to demonstrate misconduct on the balance of probabilities or suspect it as appropriate,
- The defendant officer and representative has the right of reply at any hearing,
- Any voting member of the committee who has knowledge or suspicion of any adverse fact relating to the defendant officer which would tend to persuade them to vote against him or her, or who have knowledge that others do, must tell the defendant officer so that he or she may respond to them,
- The proposer and subject of the motion may not vote upon it,
- No vote may be proxied, and
- The defendant officer shall be notified of the result.
75. In disciplinary proceedings relating to a constituent part of the Union, the “defendant officer” shall be taken to mean its chair, president or other representative

J. Appointment of Hearing Committees

76. Under the Bye-Laws, the Chair and Deputy Chair of the Complaints & Disputes Committee act jointly to convene and appoint panels (known as Hearing Committees). When the chair and deputy chair do not agree (or there is an insurmountable personal interest in a case), then the full Complaints & Disputes Committee shall determine outstanding matters or appointment and procedure.

77. Before a Hearing Committee is constituted and convened, the chair and deputy chair of the Complaints & Disputes Committee shall review the complaint as passed on by the Complaint Manager. At this stage, the chair and deputy chair, will jointly agree:

- That the complaint has merit being heard by a Hearing Committee, that it is not vexatious, frivolous or academic;
- That the complaint is within the auspices of the Students’ Union constitution and relates clearly to services, work or policies of the Students’ Union;
- That the complaint (or any part of it) is currently not at the time before a court in England & Wales, or Scotland, or Northern Ireland;
- The general strands within the complaint and what areas of Students’ Union activity the complaint covers.

78. Hearing Committees comprising one person may only comprise the Chair or the Deputy Chair of the Complaints & Disputes Committee and are only for the purposes of considering interim orders to support an investigation.

79. The minimum Hearing Committee membership shall be three persons, of whom, two shall be serving members of the Complaints & Disputes Committee. The quorum shall be two persons for such a committee, though by convention and best practice, a Hearing will only continue after every reasonable attempt has been made to contact the missing panellist.

80. The appointment of Hearing Committees shall give due consideration to:

- Knowledge of the area of work or department in which the complaint is based (for example, in the case of an election complaint, after the Returning Officer has determined that the complaint is “electorally significant”, to find suitable independent knowledgeable persons to hear the case);
- Independence from the parties to the case;
- Consideration to meet statutory requirements of the Equality Act 2010.

81. A stand-in member of a panel may be appointed, and such consideration is a requirement for panels of three or fewer.

82. The chair and deputy chair shall agree who the chair of the panel or Hearing Committee shall be. They shall not usually be members currently serving on the Council.
83. The General Manager shall assist in appointing a suitable person to act as the secretary for each Hearing Committee. If there is a conflict of interest with such an appointment, the chair and deputy chair shall appoint one of their number to form a panel to make an interim order on such appointment.

84. Once the Hearing Committee is properly constituted, the Hearing Committee shall be fully responsible for its own administration, procedure and recording. The Hearing Committee chair shall direct the appointed secretary with what support and clerking the Hearing Committee so requires. All communication between the Hearing Committee and the complainant/defendant/interested parties, shall be through the appointed secretary unless the Hearing Committee otherwise resolves.

K. Proceedings of Hearing Committees

85. The quorum for all Hearing Committee meetings (panels) shall be half of the panel membership, rounded up. In the case of a panel of one, it shall be one and in the case of a panel of two it shall be two.

86. The decision when to convene a meeting of the panel to hear evidence or hear cases presented, shall be determined by the chair of the panel after interested parties have given their views. Ultimately the decision of the chair of the panel is final and not subject to appeal.

87. After the chair of the panel has introduced the panellists, outlined the case, introduced the interested parties (if appropriate), the following shall be the order of business:

1. In the case of a complaint, the complainant shall be allowed to present their case and have their evidence heard and examined.
2. In the case of a disciplinary hearing, the defendant shall hear the case against them first and then have an opportunity to respond in full, and also has the right to the “final word” at the hearing.
3. In the case of a dispute (see below), the chair shall outline the proceedings of the hearing to interested parties beforehand.

88. All Hearing Committees or panels convened shall meet and receive cases and evidence in private, unless the panel otherwise decides.

89. Disorder or misconduct during a hearing is an offence and will cause disciplinary action against the offender. The chair of the panel may exclude any person from the hearing for disorder or unruly behaviour.

90. Once the panel has heard the cases and reviewed evidence, interested parties shall withdraw and the panel shall move into closed session to deliberate.

91. Decisions of panels are made by absolute majority.

92. The chair (or if not the chair a person appointed by the chair) shall sum up their views and decisions relating to the case presented and the evidence that was reviewed as presented. They may at this stage, before comment by other panel member, propose remedial action including – together this is known as “the determination”.

93. Other panel members will be asked whether they agree with the chair’s determination (or other lead person) or whether they dissent. Reasons for dissent must be provided. Total dissent should be set down as an alternative determination.
94. The final determination of a Hearing Committee is usually agreed upon without a vote by discussions moving towards consensus. However, if the chair feels that a consensual determination is not reasonable or forthcoming, the Hearing Committee shall divide – if an absolute majority backs one determination over another, this shall be the decision of the Hearing Committee. The dissenters shall be listed along with their objections.

95. If an absolute majority is not able to be achieved by a vote, the abstaining party shall be excluded from the meeting and the Hearing Committee shall revote (after any further necessary discussion). The abstaining party shall be deducted from the vote, at which point an absolute majority or a consensus should now be possible.

96. Abstaining parties shall be deemed resigned from the Complaints & Disputes Committee and shall not be eligible to hear any further complaints, disputes of disciplinaries.

97. The outcome and report of a Hearing Committee shall be communicated to interested parties within seven clear days of conclusion. The reports of hearings may be published on the Union website, with any required redactions, with the permission of the Complaints & Disputes Committee, which will not be unreasonably withheld.

98. As part of the determination, the Hearing Committee may make the following:

- Orders – which order individuals or parties to do or refrain from doing things. And order may also require damages to me made or for a committee to meet to make urgent reparations or decisions. An order could exclude a person from an election as a candidate.
- Quash – which strikes down a rule or regulation as it is repugnant to higher rules. Interim rules can be created in urgent instances by panels, but usually a Hearing would “order” a committee responsible to meet to make a reparation.
- Sever – which separates out parts of a complaint/dispute for a separate hearing or separate investigation.
- Recommendation – the most common type – a non binding, but important part of the process which makes formal recommendation to committees, staff or officers about governance, management, conduct or policy implementation

L. Rights of Appeal

99. An request to appeal the decision of a Hearing Committee must be notified to the General Manager or the Chair of Trustees within five working days of the receipt of the decision of the Hearing Committee.

100. In regards to a complaint, only the complainant or Chair of Trustees has the right to appeal. In this instance, the Appeal Body is the Trustee Board (with any trustees with a personal interest withdrawn and quorum recalculated). The Appeal shall only be allowed if:

- There is evidence of misconduct of the handling of the complaint during the investigation of the complaint; or
- New evidence that casts doubt on the security of the Hearing Committee’s determination has come to light

The Trustee Board may review the case and make one of the following determinations:

- To dismiss the appeal (has not met grounds of appeal)
- To dismiss the appeal (has met groups of appeal but the weight of the case is such that ordering a re-hearing is not in the interests of justice)
- To uphold the appeal in part and order a review of the section upheld by the same panel
• To uphold the appeal fully, ordering a new hearing committee is convened, quashing the original hearing.

101. In regards to a dispute, only the parties involved in the dispute have the right of appeal. This is set down in Part M of this Regulation.

102. In regards to a disciplinary hearing (i.e. a motion of censure or no-confidence), only the defendant has a right of appeal. These are set down in Part F of this Regulation.

M. Dispute Resolution

103. A dispute is defined as being a quasi-democratic complaint between Union officials or organs of governance:

• Between one or more Union Officers;
• Between one or more clubs and societies; or
• Between election candidates.

104. The definition of “Union Officer” is any person elected or appointed to a representative position within the Union, including executive officers, council members, course representatives, clubs and societies committee members etc.

105. The nature of the complaint must be quasi-democratic, such that the resolution of the complaint would normally fall into one of the following areas:

• A declaration of what the procedure or rule is
• That a nomination or status of a representative is confirmed
• That conduct within a meeting or actions outside can be resolved by mediation
• That work of an officer or representative is clarified within a set portfolio or boundary
• Anything that is reasonably solved by a panel giving independence of thought to supporting two or more bodies agree on the resolution.

106. The Business Committee is responsible for making interpretation of rules generally and when asked. This Regulations empowers to the Complaints & Disputes Committee to take these rulings of the Business Committee and apply them at the coal face, with two or more parties (in dispute) presenting their cases before a panel.