

# 9.3a



## **Revised EC Directions Rule 27: Membership Discipline**

## **EC DIRECTIONS: 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 must 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. These directions are designed to ensure that this is the case.

### **Investigation and Charge**

A member may be charged with one OR more of the offences detailed in Rules 27.1.1 to 27.1.7. A member may not be charged with any matter falling outside of these rules, and at the end of these directions a general statement is provided concerning the law in this area. If there is any doubt as to the matter under consideration, then the body proposing to deal with the matter should seek legal advice from the union's Director of Legal Services.

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. When 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 the General Secretary.

If the union receives notice of a matter which may lead to a disciplinary charge against one more members, then the situation should be investigated to determine if there should be a charge. The means of investigation shall be determined by a body referred to in Rule 27.3 or by the General Secretary. Notice of the fact of an investigation being undertaken shall be sent to the office of the General Secretary.

The investigation shall be completed as soon as is practicable in the circumstances and the outcome of the investigation shall be recorded in writing. The investigation shall report to the body (or the General Secretary) which commissioned the investigation with a recommendation as to whether there is a charge to answer.

After receipt of the investigation report, there shall be no unreasonable delay before a member is charged.

If a charge is to be brought, a letter shall be 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. The member shall also receive a copy of the investigation report and any associated documents. A copy of the letter of charge shall be sent to the office of the General Secretary.

### **Suspension**

A member charged may be suspended in accordance with Rule 27.4. In cases of a serious nature, as a precautionary measure, Rule 27.4 allows that a member under investigation prior to charges being laid may be suspended from holding office or otherwise representing the union. The General Secretary may also suspend a member under delegated powers if this is deemed by the General Secretary to be in the interests of the union.

Under the terms of Rule 27.4.1 members under disciplinary investigation or charged with a disciplinary offence may not attend:

- meetings of their own branch
- meetings of other branches of the Union
- constitutional committees of the Union

other than in connection with the disciplinary process.

Members under investigation shall not communicate (particularly by way of social media) matters relating to such investigation to fellow members whilst the disciplinary process remains in process.

### **Preparation for the Disciplinary Hearing**

The Union shall ensure that any documents to be relied upon in support of the charge should be sent to the member at least 4 weeks before the disciplinary hearing is to take place. If the union is to allow witness evidence, then witness statements shall be prepared and sent to the member at least 4 weeks before the hearing.

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

The body hearing the charge shall arrange for the disciplinary hearing to take place within a reasonable period of the charges being brought. The body hearing the charge shall decide and give the member at least 4 weeks notice of the date, time and place for the hearing.

### **At the Disciplinary Hearing**

The member may be accompanied and/or represented by another member of the union who is not an employee of the union.

The conduct of the hearing including in relation to attendance of witnesses and cross examination of witnesses shall be in the absolute discretion of the body hearing the case. This can include a decision to rely upon the receipt of witness statements only.

### **After the Hearing**

The body which heard the charge shall 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. Reference should be made to Rules 27.5 and 27.6. A copy of the document confirming the outcome of the disciplinary hearing shall be sent to the office of the General Secretary.

### **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 appeal, notice of the appeal must be received in writing by the relevant body within 14 days of the date on which the result of the disciplinary hearing was sent to the member. The notice of appeal must set out the grounds of the appeal. The relevant body will then send a copy of the appeal to the office of the General Secretary. The union aims to conclude an appeal no later than 10 weeks after it was submitted save in exceptional circumstances.

## 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 directs the union as to the conduct for which disciplinary action can be pursued. If a member is disciplined in breach of the 1992 Act, this can lead to a claim against the union in the Employment Tribunal and the member may be eligible to receive financial compensation.

Members must not be subject to disciplinary action in breach of the 1992 Act. Whilst it may be necessary to take expert legal advice, the following is a list of the reasons for which disciplinary action cannot be taken:-

- 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 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 subject to disciplinary action for proposing to do the things outlined above, or for encouraging or assisting others to do these things.

Only the Executive Council and Regional Committees are authorised to expel members and if the conduct in question may lead to expulsion as an appropriate sanction, then guidance should be sought from the union's Director of Legal Services and/or the office of the General Secretary. Advice must be sought in relation to all cases involving proposed disciplinary action in relation to membership of a political party.