

# EQUITY

## **DISCIPLINARY PROCEDURE (GENERAL SECRETARY)**

*Approved by the Council: 14 March 2023*

\* References to Rules in these Standing Orders refer to the Rules in the Union's Rulebook

### **Introduction**

1. This procedure sets out the process that will apply to disciplinary action by the Council against the General Secretary under Rule P24.

### **Case to Answer**

2. A member of the Council may bring a motion to the Council that the General Secretary has committed one or more of the disciplinary offences at Rule P24.
3. The motion must:
  - (a) identify which of the disciplinary offence/s at Rule P24 the General Secretary is said to have committed; and
  - (b) be proposed and seconded by two Council members.
4. Notice of the meeting at which the motion is to be discussed must be sent to all Council members at least seven days before the date of the Council meeting.
5. The Council will vote on whether the General Secretary has a case to answer. A case to answer means that the action/s and/or omission/s concerned:
  - (a) must be capable of amounting to one or more of the disciplinary offences at Rule P24 on the facts stated in the motion; and
  - (b) are not trivial or vexatious.
6. The motion is passed if two-thirds of those voting for and against, vote in favour of it.

### **Disciplinary Committee**

7. Members of the Council who sit on its Disciplinary Committee shall not be present when the Council discuss and vote on whether there is a disciplinary case to answer.
8. If passed, the complaints will be referred to the Union's Disciplinary Committee who will form a panel of not less than five of its members to hear the charge/s.

9. The proposer and seconder of the motion are not permitted to sit on the panel.
10. The panel will nominate one of its members as its Chair.

### **Notification**

11. The Chair of the Disciplinary Committee will write to the General Secretary to confirm the charge/s against them.
12. The General Secretary will be required to attend a disciplinary hearing before the panel to provide their response to the charge/s. Notice of the charges and the disciplinary hearing date will be at least 20 working days.

### **Companion**

13. The General Secretary may be accompanied at the hearing by an Equity colleague or member, a trade union representative or other official employed by a trade union.

### **Postponement**

14. If the General Secretary or their chosen companion is not available to attend the disciplinary hearing, it will be postponed to a further date.
15. If the General Secretary continues to be unavailable to attend the disciplinary hearing, the disciplinary panel will decide the charge in their absence on the evidence available, including any written representations received from the General Secretary.

### **The Hearing**

16. At the start of the disciplinary hearing, the Chair will confirm the charge/s.
17. The proposer of the disciplinary motion will present their reasons for believing that a disciplinary offence has been committed and answer any questions from the panel and from the General Secretary.
18. The General Secretary will then provide their response and answer questions from the panel.
19. The General Secretary may call witnesses to the disciplinary hearing to provide relevant evidence if they wish. The panel may also request the attendance of any witness that it believes will assist them in reaching their decision.

20. Witnesses will, at the appropriate time, be called by the Chair into the hearing to give their evidence and answer any questions from the panel and the General Secretary. Witnesses will then be required to leave.
21. The General Secretary must provide written notice of their witnesses to the Chair not less than 10 working days before the disciplinary hearing. The Chair will provide written notice of any witnesses attending at the request of the disciplinary panel to the General Secretary of not less than 10 working days before the disciplinary hearing.
22. Recordings of the disciplinary hearing are not to take place unless expressly agreed by all parties present.
23. The Chair (or another nominated panel member) will take a note of the disciplinary hearing for use by the panel. The General Secretary (or their companion) may take a note for their own use and is encouraged to do so.

### **Documents & Statements**

24. The Chair will provide the General Secretary with copies of any documents, written statements, or other information that the proposer of the disciplinary motion intends to put before the panel at least seven working days prior to the hearing.
25. The General Secretary must provide the Chair with any documents, witness statements or other information that they wish the panel to consider at the hearing at least five working days prior to the hearing.
26. Should any documentation come to light at any stage after the submission deadlines above, it shall be at the discretion of the Chair to accept or reject this documentation.
27. The Chair may restrict the submission of documents, statements, or other information if, in their opinion, they are not relevant to deciding the charge/s.

### **Panel's Decisions & Report**

28. The panel will make a decision on whether it upholds the charges and if so, what penalty, if any, it considers is appropriate (the panel's decisions).
29. The Chair will provide a report to the Council setting out the panel's decisions and a summary of their reasons. A copy of the Chair's report will also be provided to the General Secretary.

## **The Council's Decision**

30. The Council will discuss the Chair's report at a meeting of the Council.
31. Notice of the meeting at which the report is to be discussed must be sent to all Council members at least seven days before the date of the Council meeting.
32. The General Secretary is not permitted to be present during the Council's discussions at 30. or any vote below.

## **Council's Vote**

33. The Council may not vary the decision by the panel on whether to uphold the charge/s. If the panel decision is not to uphold the charge/s, the charge/s are dismissed.
34. If the panel decision is to uphold the charge/s the Council will vote on whether to adopt the panel's penalty decision. The proposer and seconder of the motion at 2. above are not permitted to be present during the Council's penalty discussions or to vote.
35. If the Council vote not to adopt the panel's penalty decision, a motion may be proposed and seconded for the Council to impose a lesser penalty. The motion must identify the lesser penalty sought. If passed, the lesser penalty shall be imposed.
36. The Chair will write to the General Secretary to inform them that the charge has been upheld, the penalty that will apply and of their right to appeal to the Union's Appeals Committee.
37. If the motion at 34. is not passed or if no motion is moved, the Chair will write to the General Secretary to inform them of the panel's decision to uphold the charge and the Council's decision to impose no penalty and of their right of appeal to the Union's Appeals Committee.
38. A vote is passed for the purposes of 34. and 35. above if:
  - (a) at least 50% of the Council's members are present when the vote is taken; and
  - (b) at least two-thirds of those voting for and against, vote in favour.

## **Penalties**

39. The panel may consider (and the Council may impose) any of the following penalties having regard to the severity of the offence/s and any mitigating factors:
  - (a) removal from office;
  - (b) suspension from office;
  - (c) disqualification from any future office;
  - (d) a formal written warning or reprimand;
  - (e) any combination of the above.

## **Notice of Appeal**

40. The General Secretary may appeal against the decision to uphold a charge against them and/or impose a penalty on them by submitting a written notice of appeal to the President within 14 days of receipt of the Council's decision. The notice must state the grounds of appeal.
41. On receipt the President shall refer the appeal to the Union's Appeals Committee and appoint a member of Equity staff to act as its Secretary for the appeal.

## **Appeals Committee**

42. The Secretary will liaise with the Appeals Committee to form a panel of not less than three of its members to hear the appeal. The panel will nominate one of its members to act as its Chair.

## **Appeal Hearing**

43. The appeal shall be by way of a review and will not be a re-hearing of the evidence before the Disciplinary Committee. If the Chair of the Appeals panel considers that new evidence (evidence that was not before the Disciplinary panel) is necessary to fairly determine the appeal, the Appeals panel will consider that new evidence as part of its review.
44. The Secretary will write to the General Secretary to confirm their grounds of appeal and to invite them to attend an appeal hearing. Notice of the appeal hearing will be at least 20 working days.

45. The General Secretary may be accompanied at the appeal hearing by an Equity colleague or member, a trade union representative or other official employed by a trade union. The General Secretary (or their companion) may take notes for their own use and is encouraged to do so.
46. If the General Secretary or their chosen companion is not available to attend the appeal hearing, it will be postponed to a further date.
47. If the General Secretary continues to be unavailable to attend the appeal hearing, the panel will decide the appeal in their absence, taking account of the written grounds of appeal set out in the appeal notice and any written submissions in support.
48. At the start of the appeal hearing, the Chair will confirm the grounds of appeal.
49. The General Secretary will then have the opportunity to address their grounds of appeal and answer any questions from the panel.
50. The General Secretary may submit written submissions in support of their appeal if they wish. Submissions must be sent to the Secretary not less than 10 working days before the appeal hearing.
51. Recordings of the appeal hearing are not to take place unless expressly agreed to by all the parties present.
52. The Secretary will take a note of the appeal hearing for use by the panel.
53. The panel and the General Secretary may not call any witness at the appeal hearing unless:
  - (a) the witness's evidence is new evidence within the meaning of 43. above; and
  - (b) the Chair of the panel has determined that the witness's attendance is necessary to fairly determine the appeal.
54. A request by the General Secretary to submit new evidence and/or have a named witness/es attend the appeal hearing must be submitted to the Secretary not less than 15 working days before the appeal hearing. The request should include the new evidence.
55. The General Secretary will be told by the Secretary at least 10 working days before the appeal hearing if their request has been granted by the Chair.

## **Documents & Statements**

56. The Secretary will prepare an appeal bundle and provide copies to the panel and the General Secretary at least five working days before the appeal hearing. The appeal bundle will contain a copy of :
- (a) the Chair's (or other panel member's) note of the disciplinary hearing;
  - (b) the documents including any written statements that were before Disciplinary Committee panel at the disciplinary hearing;
  - (c) the Disciplinary Chair's report submitted to the Council;
  - (d) the relevant minutes from the Council meeting at which it made its penalty decision;
  - (e) the grounds of appeal;
  - (f) any new evidence and/or any witness statement dealing with new evidence if admitted by the Chair; and
  - (g) any written submissions by the General Secretary in support of the appeal.

## **Appeal Decision**

57. The Appeals panel may confirm or dismiss the decision to uphold the charge. If confirmed, the Appeals panel may confirm or vary the penalty decision to a lesser penalty or no penalty. The Appeals panel cannot increase the penalty.
58. The Secretary will aim to write to the General Secretary with the appeal decision within 10 working days of the appeal hearing.
59. The decision of the panel is final and binding on the Council and the General Secretary.
60. The Chair will report the appeal decision to the Council.