

# Bye-Law 12: Member & Associate

## Disciplinary Procedure

*The Bye-Law outlines the procedure for managing allegations of misconduct made against members of York SU. This Bye-Law should be read in conjunction with Bye-Law 10: Student Member Code of Conduct and Bye-Law 11: Associate Code of Conduct.*

### Purpose

1. To provide a transparent framework for managing disciplinary matters;
2. To ensure that disciplinary action is applied fairly and consistently as required.

### Scope

**3. This Disciplinary Procedure applies to:**

- 3.1. All Student Members of York SU as defined in Section 9 of our [Articles of Association](#);
- 3.2. The SUMmit officers, as defined in Bye-Law [THE SUMMIT], excluding for accountability matters.
- 3.3. All Associate Members of York SU as defined in Section 13 of the [Articles of Association](#);
- 3.4. All non-students who hold positions of responsibility within a Student Group setting including but not limited to; coaches, instructors, managers, physiotherapists and other service providers.

**4. This Disciplinary Procedure applies to any action that:**

- 4.1. Occurred on York SU premises;
- 4.2. Is committed while using York SU facilities or attending a York SU event or activity;
- 4.3. Is committed while a member is representing, acting on behalf of or could be perceived to be representing or acting on behalf of York SU at any event, during a trip, online (i.e. via Social Media) or in

correspondence. This includes actions that take place during any student group organised socials.

## Roles & Responsibilities

5. The definitions used in this procedure are as follows:
- **Case Handler** refers to the staff member who triages complaints, appoints investigating officers, produces risk assessments and makes decisions on whether cases should proceed to a disciplinary review panel
  - **Investigating Officer** refers to the named individual appointed to undertake a complaint investigation.
  - **Reporting Party** is the person or group raising the complaint/allegation/concern.
  - **Reported Party** is the person or group who is alleged to have breached the Code of Conduct.
  - **Student Group** refers to affiliated York SU activity groups including sports clubs, societies, volunteer projects, committees and networks.
  - **Supervising Trustee** refers to the external trustee appointed to provide governance oversight of the Union's complaints processes.
  - **Disciplinary Review Panel** is the panel of people appointed to make any disciplinary decisions and determine appropriate sanctions.

## Confidentiality & Anonymity

6. It may be necessary and appropriate for Reporting and Reported Parties in a disciplinary procedure to share certain confidential information with third parties, including:
- 6.1. University wellbeing services;
  - 6.2. University academic departments for the purpose of receiving academic advice and support;
  - 6.3. Family members;

- 6.4. Relevant external bodies such as the Police or the Office for Students (OfS);
- 6.5. Professional advisers.
- 7. York SU may also disclose information, including:
  - 7.1. To the University, where it is required to take a coordinated approach to a case;
  - 7.2. To witnesses/involved parties that are involved in the case;
  - 7.3. To York SU advisers for the purposes of obtaining advice;
  - 7.4. To relevant external bodies such as the Police, Safeguarding agencies or the Office for Students (OfS).
- 8. All individuals involved in disciplinary procedures must ensure that they maintain, as appropriate, the confidentiality of the process within and outside the University. Any meetings called will be private (not held in public) to the individuals whose attendance is requested and no audio or video recordings are permitted, except where needed as a reasonable adjustment.
- 9. Complaints from reporting parties who wish to remain anonymous throughout the process will not normally be accepted without a compelling reason and / or related evidence. Any such circumstances will be agreed by the Case Handler.
- 10. Complaints are not normally accepted by third parties other than in exceptional circumstances. Any such exceptions must be agreed by the Case Handler.

## **Complaint Process**

- 11. If the standards of behaviour set out in the Bye-Law [STUDENT MEMBER CODE OF CONDUCT] or Bye-Law [ASSOCIATE CODE OF CONDUCT] are not met, a complaint may be submitted using the Complaints Policy with a subsequent investigation taking place under this procedure.
- 12. Decisions made in relation to breaches of the Codes of Conduct are taken on the balance of probability.

13. Complaints relating to a breach of either of the Codes of Conduct should be made in writing via this [Complaint Submission Form](#) and include information on the individual or group to whom the complaint refers, the nature of the complaint and a preferred course of action to resolve the matter. The complaints team can be contacted via [complaints@yorksu.org](mailto:complaints@yorksu.org)
14. The Case Handler will contact the reporting party to obtain further information as needed to ascertain whether the most appropriate policy for the issue being raised, considering the nature of the issue, the preferred course of action (where appropriate) and any scope for informal resolution.

## **Informal Resolution**

15. It is recommended that before a formal process is considered, cases of misconduct are best dealt with informally, where appropriate.
16. This approach may be appropriate in cases including, but not limited to, minor disagreements or relationship breakdowns.
17. Informal resolution may involve inviting all parties to a meeting or separate meetings to discuss the matter and agree a course of action. This should involve outlining expectations and next steps. Where necessary, a York SU member of staff can support this process.
18. An informal resolution will not be taken if:
  - 18.1. The member has not improved their behaviours following a previous informal resolution meeting;
  - 18.2. The severity or risk of the situation requires the situation to be dealt with formally
19. When the issue cannot be satisfactorily resolved informally or the alleged infraction is serious enough to be dealt with formally, the remainder of this procedure will be applied.

# Precautionary Measures

20. Upon receiving a complaint, York SU will make an immediate assessment of risk and where appropriate will undertake a full risk assessment, including consideration of whether precautionary measures may be necessary.
21. Risk assessments may be conducted in cases where relationships have broken down; issues are of a highly sensitive nature or threaten serious disruption to students or York SU activities; where it is considered there are risks to property or the Union's responsibilities to other parties; or safeguarding/ health and safety risks are identified in relation to one or more parties.
22. Risk assessments are carried out by a small panel that includes the Case Handler and a member of York SU Senior Leadership Team.
23. Precautionary measures may include:
  - 23.1. Temporary restriction from accessing specified York SU activities;
  - 23.2. Temporary restriction from accessing specified York SU spaces;
  - 23.3. Reporting to the University, Police or safeguarding agencies;
  - 23.4. Temporary suspension of entitlements
    - 23.4.1. Because the ability to hold elected office in York SU is dependent upon membership status and one of the rights and privileges of membership, suspension of entitlements would represent a suspension of that holding of office.
24. Precautionary measures are only considered when necessary to prevent harm and to protect individuals or property.
25. The Supervising Trustee must approve any request for a precautionary measure to be implemented.
26. Precautionary measures will only be imposed after careful consideration and should be reviewed regularly by the relevant case handler in conjunction with the supervising trustee to ensure that it is not unnecessarily protracted.

# Investigation

27. When the issue cannot be satisfactorily resolved informally or the allegation is serious enough to be dealt with formally, the following steps will be taken:
  - 27.1. An impartial York SU staff member will be appointed as the Investigating Officer and will undertake a preliminary investigation to establish the facts.
  - 27.2. The Case Handler or the Investigating Officer will formally notify the reporting party and the reported party of the investigation and provide the name of the investigating officer and a summary of the allegation(s).
  - 27.3. The reported party will be encouraged to attend an interview or submit a statement in response to the complaint, setting out their response and any mitigation. The deadline for submitting a statement is five working days.
  - 27.4. If an individual does not respond to communication or engage with the investigation or subsequent process, York SU may proceed with the process and reach a decision in the individual's absence..
  - 27.5. The Investigating Officer will carry out the investigation, which will usually include interviewing the reported party, any other witnesses and collecting any available evidence.
  - 27.6. The Investigating Officer will produce a preliminary investigation report that is referred to the Case Handler.
  - 27.7. The Case Handler will review the report and decide on the appropriate next steps as per section 30 of this procedure.
28. York SU aims to confirm the conclusion of the preliminary investigation within 20 working days, as far as practicable, of the formal notification of the investigation.
29. The Case Handler will review the case and consider the next steps, confirming the outcome of the preliminary investigation to the parties involved within 5 working days, as far as practicable.

30. In extenuating circumstances, and where practicably possible, the timeframes as outlined within this policy may be extended. This may be in cases where an investigation is far reaching and requires extensive review, or where the individual is unable to appropriately respond due to the investigation falling within the exam and assessment period or mid semester vacation and the individuals involved are unable to respond at this time.
31. Any requests for an extension from the Reported Party must be formally sent to the Case Handler or Investigating Officer via email, and include an explanation as to why the extension is required and the required additional time. Please note any extension to the timeframes will result in a resolution being delayed and the need for precautionary measures to be reviewed.
32. York SU will recognise that being the subject of a complaint can be a difficult time for an individual. Any necessary investigations and procedures will be undertaken with appropriate discretion, care and consideration with support options being made available and signposted throughout. The University of York Students' Union will endeavour to ensure all steps in the process remain fair and in line with equal opportunities policy and procedures.

## **Consideration by the Case Handler**

33. The Case Handler will review the Preliminary Investigation Report prepared by the Investigating Officer and will decide on the appropriate next steps from the options listed below:
  - 33.1. Request that further investigation work be carried out;
  - 33.2. Decide that no further action should be taken;
    - 33.2.1. In this case, all relevant parties would receive an email notifying them of this along with the support options available to them;
  - 33.3. Decide that the matter should be dealt with informally;
    - 33.3.1. This decision will be reviewed with a Sabbatical officer at a review meeting;

- 33.3.2. Informal action may involve the reported party receiving a written warning or being required to take part in an informal conversation, mediation, complete a learning & development task or writing an apology letter.
- 33.4. Decide that there is a case to answer and the matter should be referred to a disciplinary review group for formal consideration.

## **Disciplinary Review Group**

34. Disciplinary review groups will be formed when the Investigating Officer has established a case to answer but the situation is more complex or serious in nature, or the facts of the matter are disputed.
35. The Case Handler will appoint a group to review the preliminary investigation, undertake further investigation as required and rule on the alleged breach of the Code of Conduct.
36. The review group will consist of impartial members including:
- For Members and Associates**
- A York SU staff member;
  - A York SU sabbatical officer or member of the trustee board;
  - A member of York SU Senior Leadership Team.
- For Office Holders**
- A University of York Students' Union Trustee
  - A member of the York SU Senior Leadership Team or Trustee of another Students' Union
37. The review group *may* decide to invite the reported party to a hearing panel, where the review group will form a panel and give the individual(s) concerned the opportunity to state their case and respond to the allegations that have been made.
38. For Review Group Hearings, the below principles will apply:
- 38.1. The reported party will be notified in advance of a hearing and will be provided with any documents and written evidence to be used in the hearing as well as offered an opportunity to respond in writing

ahead of the hearing to respond to/challenge the report or set out mitigations.

- 38.2. The reported party will have the right to be accompanied by a representative of their choice from the University community (either a staff member, Union staff member, as appropriate, or student) during the hearing. They also have the right to call witnesses as appropriate. The individual must notify the panel in advance of their intention to be accompanied and/or call witnesses and provide the names of these individuals. Any proposals for exceptions to the type of representative but be submitted to the panel chair in advance.
  - 38.3. The Investigating Officer may be invited to present their findings to the review group panel in detail at the time of the hearing.
  - 38.4. Individual(s) can attend in person or via a hybrid meeting method where York SU resources allow.
39. York SU will take steps to avoid any perception of bias with review group composition. If it is found difficult to convene a review group with no previous involvement with the individual it may consider using staff or officers from neighbouring unions.
40. The review group will make a ruling on the breach and issue sanctions befitting the severity of the breach of the Code of Conduct.
41. The reported party will be informed of the decision in writing within five working days of the conclusion of a review group meeting or panel hearing.
42. Depending on the nature of the complaint, the reporting party may not necessarily be informed of the outcome, given privacy concerns.
43. Where it is believed the University's regulations and policies are breached, the matter may be referred to the University for consideration under the University's own regulatory procedures.

# Sanctions

- 44. Any breach of Bye-Law [STUDENT MEMBER CODE OF CONDUCT] or Bye-Law [ASSOCIATE CODE OF CONDUCT] may result in York SU disciplinary action.
- 45. If the incident occurred at the end of an academic year the sanction(s) may be levied for the following year regardless of whether they remain a student or become an Alumni associate.
- 46. In resolving to apply a sanction for a breach of the Code of Conduct, the Review Group will normally consider:
  - 46.1. The severity of the breach (minor, moderate or severe)
  - 46.2. The harm caused to others of the breach, including the reputational impact on students, the University or the Union.
  - 46.3. Whether this is a one off incident or shows a pattern of behaviour.
  - 46.4. Any mitigating or aggravating factors.

## **47. Student Member Sanctions**

- 47.1. Informal action may lead to the following types of sanctions:
  - 47.1.1. A written warning
  - 47.1.2. A letter of apology
  - 47.1.3. Engage with a learning & development workshop, course or resource within an applied timeframe.
- 47.2. In addition to the above, formal action may lead to the following types of sanctions:
  - 47.2.1. Removal of student leadership position or privileges;
  - 47.2.2. Suspension from specific events or activities for a fixed period of time;
  - 47.2.3. Suspension from all membership events or activities for a fixed period of time;
  - 47.2.4. Suspension from specific York SU events for a fixed period of time;
  - 47.2.5. Suspension from all York SU events for a fixed period of time;
  - 47.2.6. Permanent exclusion from specific York SU activities;
  - 47.2.7. Termination of Entitlements for York SU

#### **48. Associate Sanctions**

- 48.1. Informal action may lead to the following types of sanctions:
  - 48.1.1. A written warning
  - 48.1.2. A letter of apology
- 48.2. In addition to the above, formal action may lead to the following types of sanctions:
  - 48.2.1. Permanent exclusion from specific York SU activities

#### **49. Summary of Termination of Entitlements**

- 49.1. In rare circumstances a member's entitlements may be terminated (or partially suspended) if it is established that after investigation and hearing that there has been an act of gross misconduct, major breach of duty or conduct that brings the organisation into disrepute.
- 49.2. As stated in 23.4.1, because the ability to hold elected office in York SU is dependent upon membership status and one of the rights and privileges of membership, termination of all entitlements would represent a termination of that holding of office. In the case of employed elected officers, this would therefore represent a termination of contract.
- 49.3. In such situations a resolution must be submitted to the next meeting of the trustee board for which the individual(s) concerned can reasonably be given 14 days notice, recommending their expulsion from the Union on the grounds that their continued membership is harmful to or is likely to become harmful to the interests of the Union in accordance with clause 10.5 of the Articles of Association.

## **Appeals**

- 50. If the reported party is dissatisfied with the outcome of the investigation and/or the sanctions applied, they may appeal.

51. The appeal should be made in writing stating the grounds upon which the appeal is to be made and must be received within 10 working days.
52. Members should note that an appeal is designed to remedy any defects in the disciplinary procedure; therefore, the grounds for appeal are:
  - Unfairness of judgement
  - The severity of the penalty
  - New evidence coming to light
  - Procedural irregularities
  - Extenuating circumstances
  - Bias of the review group
  - Unfairness of the interview
53. Where grounds for an appeal have been established, the appeal will be heard by a panel, who have previously not been involved in the case. The panel shall be made of three of the following:
  - A member of the York SU Trustee Board;
  - An office holder within York SU;
  - A member of York SU Senior Leadership Team;
  - A trustee or senior manager with another Students' Union.
54. The member may present their appeal in person or in writing and will have the right to be accompanied by a member of the University community of their choice. The individual must notify the Case Handler in advance of their intention to be accompanied and provide the names of these individuals.
55. Individual(s) can attend an appeal hearing in person or via a hybrid meeting method where York SU resources allow.
56. The member will be notified of the results of the appeal in writing within 5 working days of the hearing.
57. The possible outcomes of an appeal are:
  - The appeal is upheld and the original decision and sanction is revoked;

- The appeal is upheld and the disciplinary sanction reduced or removed;
- The appeal is upheld and the case is reinvestigated;
- The appeal is denied and the original decision is upheld.

## **Record Keeping**

58. Accurate records will be kept detailing:
  - Any breach of the Codes of Conduct;
  - The member or associates defence, including any mitigation;
  - The action taken and the reasons for it;
  - Whether an appeal was lodged, its outcome and any subsequent developments.
  
59. These records are to be kept confidential and retained in line with this disciplinary procedure and York SU's Data Protection and Information Security Policy.
  
60. Copies of any meeting records will normally be given to the individuals concerned. In certain circumstances information shall be withheld, for example to protect a witness.
  
61. For the avoidance of doubt, the Code of Conduct and the Union's complaints and disciplinary procedures do not provide for the use of non-disclosure agreements. The union does not, as a result of any aspect of the Code of Conduct, look to use such legal processes to bind complainants or any other party.

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