

Bye Law 5 – Disciplinarys, complaints & appeals

Owned by: President

Date passed: 27/01/2016

Body passing: Student Senate

Review required: January 2019

Introduction

The Objective of this bye law is to regulate the Discipline and Appeals procedure and the jurisdiction on which the Union's discipline structure operates. It also defines the process by which a member can bring a complaint against Winchester Student Union, as an organisation or in the body of its staff or officers.

This bye law notes that Winchester Student Union (herein referred to as the Union) wishes to provide a safe and non-discriminatory environment; whilst within Union operated physical spaces, virtual spaces and during all Union activities. The Union has both a legal duty to uphold its Premise License, and a duty of care towards its members, staff and guests.

In line with the Union's Constitution, the President is responsible for upholding and enforcing this bye law, accepting the below legal requirement as defined by the Licensing Act.

In line with the Licensing Act, the Duty Manager of an event night has the responsibility of lawfully upholding the Premises License and can therefore enforce a "Right of Admission Reserved" (R.O.A.R.). Furthermore the Designated Premises Supervisor can apply, rescind and alter suspensions from licensed premises as they see fit, in the reasonable application of their duty to uphold the licensing objectives defined by the Licensing Act.

This policy applies to all members of the Union. Where incidents involve non-members, if a member has signed a non-member in as a guest to the venue, the member who has signed them in is responsible for their behaviour and therefore is liable for discipline in accordance with this bye law.

Any non-members who have not been signed in and are involved in incidents are subject to a decision by the duty manager or DPS in accordance with the Licensing Act.

1. General Provisions

- 1.1. The Union shall consider any complaints made by members, staff or officers against any other members in respect of:
 - 1.1.1. Misconduct on Union premises, Union events or Union activities; both physical and virtual.
 - 1.1.2. Breach of regulation, policy or paper of the Union.
 - 1.1.3. Any form of personal harassment or assault, including but not limited to: physical, verbal, racial, or homophobic behaviours.
 - 1.1.4. Misconduct on the premises of organisations associated with the Union under reciprocal or other agreements.
- 1.2. Any duly authorised member of Union staff may temporarily exclude any persons from the Union premises in respect of misconduct or other actions outlined in 1.1 above, and shall make a complaint arising from the exclusion to the President.
 - 1.2.1. Where such a temporary exclusion has arisen from a need to protect the Union's license, it shall be the sole province of the DPS to decide if and when that individual shall be permitted to use licensed facilities again. This may supersede any decision made by the President or disciplinary committee; or stand on its own as a disciplinary action.

2. Misconduct

- 2.1. The following list, which is not exhaustive, provides examples of offences, which are normally regarded as misconduct:
 - 2.1.1. Anti-Social Behaviour: including acts that contravene the Union's equal opportunities policy,
 - 2.1.2. Threatening Behaviour: verbal, physical or visible harassment to any member or guest,
 - 2.1.3. Abuse of Security Practices: fraud or deliberate falsification of records, non-compliance with Union personnel,
 - 2.1.4. Dangerous Behaviour: Boisterous or over intoxicated behaviour,
 - 2.1.5. Vandalism: Deliberate damage to University/Union property, graffiti,
 - 2.1.6. Use, distribution or acquisition of illegal or illicit substances,
 - 2.1.7. Non-compliance with Union licensing personnel or duly delegated representatives.

3. Complaints (against a member as per 1.1)

- 3.1. Complaints against any member shall be made in writing and made available to the President or the Vice President Education or General Manager in the President's absence. A recorded incident log citing misconduct may be accepted as a complaint made in writing.
- 3.2. On receipt of a complaint the President or their delegate will:
 - 3.2.1. Confirm receipt of the complaint,
 - 3.2.2. Contact the member who is being considered for that complaint within 2 working days and confirm:
 - 3.2.2.1. Details of the complaint,

- 3.2.2.2. That they are suspended from Union events &/or activities pending an investigation.
- 3.2.2.3. That they will be given an opportunity to reply to the complaint and details of the meeting of the Disciplinary Committee.
- 3.2.2.4. That they may be accompanied at the meeting of the disciplinary committee by another member, who will not have speaking right, but can observe that the meeting is conducted equitably,
- 3.2.2.5. That they may submit a written statement in lieu of attendance at the meeting of the disciplinary committee.
- 3.2.3. Arrange a meeting of the Disciplinary Committee within 7 working days of the complaint.

4. Disciplinary committee

- 4.1. There will be a Disciplinary Committee formed to hear evidence of each complaint.
- 4.2. The chair of the committee shall be the President or their delegate.
- 4.3. The other members of the committee shall number 2 and shall be drawn from the Executive committee of the Union as long as no conflicts of interest arise. In such case they may be drawn from Trustees or Student Senate.
- 4.4. When the committee meet, the meeting will observe the following structure;
 - 4.4.1. The chair shall state the reason for the hearing.
 - 4.4.2. The member shall be invited to present their version of the incident.
 - 4.4.3. The chair shall inform the member of any evidence they have gathered, and invite a response.
 - 4.4.4. The panel may ask any relevant questions of the member and the member may ask any relevant questions of the panel.
 - 4.4.5. Outcomes will be explained to the member.
 - 4.4.6. The panel will enter a closed session to discuss the case.
 - 4.4.6.1. The Disciplinary Committee shall arrive at a decision regarding what action, if any, befit each case. A majority vote supporting a proposed form of action, put forward by any member of the Committee, shall be deemed to be the decision of the Committee. The Chair shall only have the casting vote.
 - 4.4.6.2. The Disciplinary Committee will form their decision based upon the materials submitted, testimonials given and the balance of probabilities.
 - 4.4.6.3. If disciplinary action is agreed the Committee shall reference the Offence Penalty Framework (6). They are however at liberty to transcend the framework as they see fit as long as the rationale for such deviation is clear.

- 4.4.7. Wherever possible the member will be told of the panel's decision the same day. If this is not possible the chair of the panel will write to the member as soon as is practically possible and no later than 5 working days from the hearing. The member will also be told of their right to appeal.
- 4.5. All meetings of the Disciplinary Committee will be minuted by an appointed clerk. They will not normally have speaking rights beyond ensuring the above structure is followed.
- 4.6. All meetings of the Disciplinary Committee will remain confidential beyond data shared with the University or other authority if deemed appropriate.

5. Appeals

- 5.1. All members shall have the right to appeal up to 5 working days following the decision of the Disciplinary Committee. Appeals shall normally be heard within 5 working days of the member notifying their wish to appeal. Any member wishing to appeal must notify the President in writing detailing the grounds of their appeal. During this period the Committee's original decision shall be operative.
- 5.2. The Appeals Committee shall normally be made up of the President or Vice President, Education; whoever has not heard the Disciplinary matter in its first stage, Chair of Student Senate and a member of the Union appointed by the Executive Committee in consultation with the President.
- 5.3. The Appeals Committee will look at the process of the Disciplinary Committee and the decision they made based on all available evidence. They will not normally make a determination about the original incident or cause for complaint and may or may not wish to meet with the complainant.
- 5.4. The Appeals Committee will make one of the following determinations, to uphold the appeal and rescind all sanctions placed on the member; or deny the appeal.
- 5.5. The member will be advised of the outcome of their appeal within 5 working days of the Appeals Committee meeting.
- 5.6. The Decision of the Appeals Committee shall be final.

6. Offence penalty framework

- 6.1. In the determination of a suitable penalty should a complaint be upheld, the following framework should be referenced:

	1 st Offence or mitigating circumstances - minimum	Subsequent or aggravated offence - minimum	Further possible sanctions
Anti-social behaviour -	2 weeks suspension*	4 weeks suspension	*Possibility of a litter pick to

Noise			reduce 1 week suspension
Anti-social behaviour – public indecency	2 weeks suspension	4 weeks suspension	Refer to authorities/letter of apology if neighbours involved.
Threatening behaviour	3 weeks suspension	6 weeks suspension	
Abuse of security practices	Formal warning	2 weeks suspension	
Dangerous / inappropriate behaviour	Formal warning	2 weeks suspension	Referral to University/Student Services
Vandalism or property damage	until cost of repair received	1 semester suspension & until cost of repair received	Referral to University
Abuse of fire/safety rules	One semester suspension	Lifetime suspension	Referral to University
Assault on staff or member	One semester suspension	Lifetime suspension	Referral to authorities and University
Theft	One semester suspension	One year suspension	Referral to authorities and University
Use/ distribution / possession of illegal or control substances	Lifetime suspension	N/A	Referral to authorities and University

7. Complaint (about the Union).

- 7.1. Any Full Member, or student eligible for Full Membership but who has exercised the right not to be a member in accordance with the Education Act 1994, shall be entitled to complain about unfair or unreasonable treatment by the Union.
- 7.2. Complaints shall be submitted in writing to the President, who shall respond, or who shall pass it to another Union Officer or the Union's Senior Manager to respond. A written response will be provided within 10 working days of the receipt of the complaint by the President.
- 7.3. Complaints against the President may be submitted to any other Union Officer Trustee, who shall follow the procedure outlined in this Bye Law fulfilling the responsibilities assigned to the President.
- 7.4. If the complainant or complainants are not satisfied with the response from the President, Senior Manager or other Officer, they may request

that the President convenes a Complaints Panel, outlining the reason that the response of the President or other Officer is not acceptable. Such a request should be submitted in writing within 10 working days of receipt of the response.

- 7.5. The President should be required to convene a Complaints Panel within 15 working days of receiving a request to do so in accordance with 7.3 above. The Panel shall consist of 3 members selected in accordance with the provisions for the selection of a Disciplinary Panels (4.2). The President shall arrange for a member of the staff of the Union to attend to record the proceedings.
- 7.6. The Panel shall operate in accordance with the following procedure:
 - 7.6.1. Appoint a Chair from within the membership of the Panel;
 - 7.6.2. Receive copies of the complaint, the response of the President, senior Manager or other Officer, and the request for a Panel meeting.
 - 7.6.3. The complainant shall present the details of the complaint.
 - 7.6.4. S/he may then be questioned by members of the Panel, and by the President, senior Manager or other Officer.
 - 7.6.5. The President, senior Manager or other Officer shall present the response to the complaint.
 - 7.6.6. S/he may then be questioned by members of the Panel, and by the complainant.
 - 7.6.7. Further information may be considered in writing, or from other persons attending at the request of the complainant or the President, Senior Manager or other Officer.
 - 7.6.8. Such information shall be open to comment by the complainant or the President, senior Manager or other Officer.
 - 7.6.9. The complainant and the President, Senior Manager or other Officer shall be given the opportunity to make a closing statement, which shall not introduce new information.
 - 7.6.10. The complainant and the President or other Officer shall then withdraw and the Panel shall decide on the complaint.
- 7.7. If the complaint is upheld, the panel shall be empowered to require any Officer, official, or committee of the Union to take action to remedy the complaint.
- 7.8. The complainant and President shall be notified in writing of the decision of the Panel within 5 working days of the meeting.
- 7.9. If the complainant or President is not satisfied with the decision of the panel, s/he may appeal to the Ombudsman of University, who shall consider the complaint and respond according to their own schedule and policy on such matters. The Ombudsman's decision shall be final.