

By-law (12): YUSU Code of Conduct

This By-law sets out the personal conduct expected from all members of the Union when on Union property, taking part in activities organised by the Union or representing the Union within or beyond the University (Specific Codes of Conduct for York Sport Union and YUSU Societies are held within Appendix E). It covers the process by which complaints may be lodged with the Union, the scope and nature of disciplinary procedures in cases of misconduct, and provisions for appeals against rulings by the disciplinary panel.

Preamble

1. This Code sets out the procedures to be followed in the case of disciplinary action against an individual member of YUSU (“the member”).
2. Disciplinary issues arise when problems of conduct are raised and YUSU seeks to address them through the agreed procedures.
3. For the purpose of this procedure, members are defined as in the Constitution and By-law (MEMBERSHIP).
4. For the avoidance of doubt, no part of this procedure shall be taken to indicate that any decision can be made to suspend or terminate any membership entitlements that are protected by law, namely:
 - 4.1. To vote in any election for major Union office
 - 4.2. To vote in any ballot concerning Union affiliations
5. This procedure also applies to non-members acting in volunteer roles in YUSU.
6. This does not include any YUSU staff, who shall be subject to an internal staff disciplinary procedure.
7. The code concerns the disciplinary rules and procedures that operate within YUSU. The Union believes that rules and procedures are necessary for promoting orderly relations as well as fairness and consistency in the treatment of individuals.
8. It is important that Members know what standards of conduct and performance is expected of them. As a result this policy shall be publicly available to members of the Union and shall be provided to members in relevant settings.

Scope

9. Disciplinary action may be taken in respect of any breach of discipline:
 - 9.1. On YUSU premises;
 - 9.2. While the member is using YUSU facilities or at a YUSU event;
 - 9.3. While a member is representing or acting on behalf of YUSU at any event of whatever kind and wherever held;
 - 9.4. In relation to actions or incidents between two or more members of YUSU in any or none of the settings above, or in relation to actions or incidents between YUSU representatives and staff or stakeholders.

Definitions

10. In this code a breach of discipline means (but is not limited to):
 - 10.1. breach of Union equal opportunities policies and principles;
 - 10.2. willful, reckless or negligent damage to, or loss of, Union property or property under the control of the Union;
 - 10.3. conduct detrimental to the reasonable enjoyment of the Union facilities by any other member(s) of the Union or their guests;
 - 10.4. threatening or violent behaviour on Union premises;
 - 10.5. imparting to the press, television or radio, or any agency thereof, any expressly confidential material about the Union or any of its members or Officers, unless prior permission has been granted by the Officer Group;
 - 10.6. breach of any of the regulations of the Union, including any rules and regulations pertaining to any club or society;
 - 10.7. illegal entry to the Union's functions or facilities;
 - 10.8. conduct tending to prejudice the external relations of the Union;
 - 10.9. conduct detrimental to the public reputation of the Union;
 - 10.10. illegal activities whilst on Union property, at Union events, or acting on behalf of the Union;

10.11. failure to discharge a debt to the Union;

10.12. incurring unauthorised expenditure on behalf of the Union and/or misappropriation of Union funds or property

Panel and Supervising Trustee

11. The Trustee Board shall annually appoint an external trustee to supervise the formal complaints procedure set out below.

12. The supervising trustee shall appoint suitable people from which to form a panel at disciplinary hearings on a case by case basis, which will always consist of:

- A student who doesn't hold an elected sabbatical position;
- A sabbatical officer of the Union;
- A Union staff member.

Formal Complaints

13. In normal circumstances complaints and grievances will be made in writing to the Supervising Trustee c/o the Chair of trustees at YUSU.

14. The written complaint should include the name and contact details of the complainant, the person to whom the complaint refers, the nature of the complaint and a preferred course of action to resolve the complaint.

15. Members and elected Officers should refer to the Trustee Board Chair or Secretary who will advise on this code.

Investigations

16. When:

- A disciplinary matter arises, or
- A complaint is made, or

the Supervising Trustee shall first determine whether this policy is appropriate for the issue(s) being raised. In making the judgement the Supervising Trustee will be careful

to ensure that matters of misconduct are handled through this procedure, but that matters of political performance are rightly referred to the appropriate accountability procedures.

17. If this procedure is used, the Supervising Trustee will appoint an impartial YUSU staff member or other person who will not be a student to investigate the matter. The investigation is to establish the facts and where appropriate obtain statements from any available witnesses. Having carried out an investigation, the investigator will make a report to the Supervising Trustee. The Supervising Trustee will then decide whether to close the matter, arrange informal coaching, advice or counselling, or to arrange for the matter to be dealt with under the formal disciplinary procedure.
18. At the start of the investigation, the complainant and any respondent will receive a letter of formal notification detailing the complaint being investigated and the name and contact details of the person dealing with the investigation.
19. Respondents are encouraged to submit a written statement in response to the complaint. The deadline for doing so is 5 working days after the date of formal notification of the investigation. The statement should attach copies of any other documents on which the respondent wishes to rely.
20. Should the respondent not respond to communications or refuse to engage with the investigation process, s/he will be deemed to have nothing to add to the investigation.
21. The investigator will consider statements and any other documents received from the complainant and respondent as soon as practicable. YUSU aims to confirm the outcome of its investigation to the complainant, the respondent, and other interested parties within 10 working days of the date of the formal notification of the investigation, subject to having been able to contact all relevant parties within this time and access any/all critical information. If it is not practicable to comply with these deadlines, for example due to relevant parties being on holiday, they may be extended by discretion and the complainant will be advised.
22. It should be recognised that being the subject of a complaint can be a difficult time for an individual, and so YUSU will undertake the investigation with appropriate discretion, care and consideration. YUSU will endeavor to ensure all steps in the process remain fair and in line with equal opportunities policy and procedures.
23. No member involved in a matter covered by this code should comment publicly on the incident. Failure to observe this requirement may result in disciplinary action being taken under this code.

Informal Procedures

24. Minor cases of misconduct and poor performance are best dealt with informally. It may be necessary to issue an informal warning, but the Supervising Trustee will ensure that these areas are discussed with the objective of helping the member to make appropriate improvements. At this stage the member will be made fully aware of what steps need to be taken to address the conduct issue.
25. Members will be informed of what action will be taken if they fail to improve either their performance or conduct (see below). Informal warnings and/or counselling are not part of the formal disciplinary procedure and members should be made aware of this.

Stages of Disciplinary Action

26. If the Supervising Trustee decides that the infraction is serious enough to be dealt with under the Formal Disciplinary Procedure, then the following processes will be followed.
27. There are different types of action that can be taken that vary in their severity. The disciplinary hearing will decide the severity of the misconduct and the appropriate action.
28. These are:
 - 28.1. Formal Verbal warning
 - 28.1.1. This will occur in cases of minor infringements and can be given by a member of the Panel. A note of the warning will be kept on file for six months but then disregarded for disciplinary purposes. The warning will be given in the presence of the panel and the member will be entitled to have a colleague or representative present when the warning is given.
 - 28.2. Formal written warning
 - 28.2.1. This will occur when the infringement is more serious or is a failure to improve behaviour during the currency of the previous warning and can be given by the Panel. A copy of the written warning will be kept on file for twelve months but then disregarded for disciplinary purposes.
 - 28.3. Termination or suspension of all membership entitlements (excluding those listed in Clause 4) or some act of partial suspension, which in the case of

employed elected officers could result in contract termination.

28.3.1. This will occur when the infringement is even more serious, or if a member's conduct still fails to improve, then the final stage may be:

28.3.1.1. Temporary disciplinary suspension of some or all membership entitlements.

28.3.1.2. Where a person, in a paid role, is suspended pending a hearing or whilst an investigation is carried out they will continue to be paid by the organisation.

28.4. Submission of a resolution to the next meeting of the Trustee Board for which the individual(s) concerned can reasonably be given 10 working days' clear 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 13.4 of the Constitution.

Disciplinary Hearings

29. Before a decision is reached or any disciplinary action taken there will be a disciplinary hearing at which the member will have an opportunity to state their case and answer the allegations that have been made. The appointed investigator will present their findings at the disciplinary hearing.

30. The Panel will hear the case. The member will be notified of a disciplinary hearing in advance and will be provided copies of statements given by any witnesses or other written evidence to be used. Hearings will be arranged as far as possible at a mutually convenient time and place and the member will have the right to be accompanied by a colleague or representative of their choice.

31. During a disciplinary hearing, the case against the member will be presented in detail by the appointed investigator. If the member challenges the substance of the witness statements, then both sides are able to call witnesses to the hearing where the member or their representative will have the opportunity to ask them questions.

32. Where disciplinary action is necessary the member will be informed of the decision. This will be in writing and will state:

32.1. Detail of the misconduct that has resulted in the disciplinary action;

32.2. The level of disciplinary action;

- 32.3. Any recommendations/action required to prevent future disciplinary action;
 - 32.4. The consequence of failure;
 - 32.5. Details of the appeal mechanism;
 - 32.6. If appropriate the length of time the warning will last before it is disregarded.
33. The member will be informed as soon as is reasonably practicable, of the following:
- 33.1. the decision and the reasons for the termination or suspension of entitlements,
 - 33.2. the date on which the agreement between YUSU and the member will terminate,
 - 33.3. information on the right of appeal including how to make the appeal and to whom.
34. The decision to suspend or terminate entitlements shall be confirmed in writing.
35. At any of the above stages the panel may resolve to:
- 35.1. recommend that the member should undergo training;
 - 35.2. exclude the member from some or all future YUSU events.

Summary Termination of Entitlements

36. In rare circumstances a member's entitlements may be terminated 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.
37. Acts that may constitute gross misconduct include, but are not limited to:
- 37.1. Theft, fraud and deliberate falsification of records.
 - 37.2. Physical violence or threats
 - 37.3. Deliberate damage to organisational or personal property
 - 37.4. Serious incapability whilst representing YUSU brought about through alcohol or illegal drugs
 - 37.5. Misuse of organisations property or name

- 37.6. Bringing the organisation into serious disrepute
 - 37.7. Serious infringement of health and safety rules
 - 37.8. Serious bullying or harassment
 - 37.9. Sexual misconduct
 - 37.10. Serious infringement of equal opportunities, safe space, no platform, safeguarding or staff protocol policy
38. Because the ability to hold elected office in YUSU 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.

Suspension

39. In certain circumstances for example cases involving gross misconduct, where relationships have broken down or where it is considered there are risks to property or the Union's responsibilities to other parties, consideration should be given to a period of suspension of membership rights with or without entitlements whilst an unhindered investigation is conducted.
40. Such a suspension should only be imposed after careful consideration and should be reviewed regularly to ensure that it is not unnecessarily protracted. Excluding a member from participation in YUSU activities is not in itself a form of disciplinary action whilst the investigation is progressing. The member will be entitled to seek advice, for example legal advice, the cost of which will be met by the member.
41. Because the ability to hold elected office in YUSU 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.

Appeals

42. A member will notify the Panel of their intention to appeal against disciplinary action within 5 working days of receipt of the confirmation letter. The appeal should be made in writing stating the grounds upon which the appeal is to be made and must be received by the Panel within a further 10 working days.
43. An appeal hearing will normally be held within ten working days of receipt of the letter of appeal. An appeal will be heard by a panel (see below), who have previously had no

involvement in the case. The panel shall be made of the following:

- 43.1. A Student Trustee
 - 43.2. An external Trustee
 - 43.3. A member of YUSU senior staff.
44. A member will have the right to be accompanied by a colleague or a representative of their choice. The member will be notified of the results of the appeal in writing within 5 working days of the hearing.
45. Members should note that an appeal is designed to remedy any defects in the disciplinary process rather than repeat the investigation of the disciplinary process. Therefore grounds for appeal are:
- 45.1. Unfairness of judgement
 - 45.2. The severity of the penalty
 - 45.3. New evidence coming to light
 - 45.4. Procedural irregularities
 - 45.5. Extenuating circumstances
 - 45.6. Bias of disciplining officer
 - 45.7. Unfairness of the interview
46. Possible outcomes of an appeal
- 46.1. The appeal is upheld and the disciplinary sanction reduced or removed
 - 46.2. The appeal is upheld and there is a request for a re-investigation or rehearing
 - 46.3. The appeal is denied and the original decision is upheld

Recording Discipline

47. Accurate records will be kept detailing:
- 47.1. any breach of disciplinary rules or unsatisfactory performance,
 - 47.2. the Member's defence, including any mitigation,

47.3. the action taken and the reasons for it,

47.4. Whether an appeal was lodged, its outcome and any subsequent developments.

48. These records are to be kept confidential and retained in line with the above disciplinary procedure and the Data Protection Act 1998. Copies of any meeting records will normally be given to the individual concerned (in certain circumstances information shall be withheld, for example to protect a witness).