

# 1 LETTER to Branches

## Communication Workers Union URGENT INFORMATION FOR CWU MEMBERS

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No. 109/02

Ref NDC.Main

Date: 4<sup>th</sup> March 2002

### TO ALL BRANCHES

Dear Colleague,

### NATIONAL DISCIPLINE AND INDEPENDENT REVIEW BODY

During 2001, the NEC undertook a review of National Discipline and the Independent Review Body. The purpose of the Review was to ensure that the procedures complied with the Human Rights Act and natural justice. In addition, the Rules and Bye-laws need to be robust enough to withstand any possible challenges to the Certification Officer. Although we have not yet lost any referrals to the Certification Officer regarding discipline, the change to old Rule 14.3 (now proposed to be 14.4) is a prudent response to a ruling. The Bye-laws were amended at last year's Conference and the Rule amendment reflects that change.

Attached at Appendix 1 is the National Discipline Committee Bye-laws, agreed by the NEC. These changes are effective immediately, but the NEC will be tabling a Motion seeking ratification of the changes at General Conference. For ease, the changes are highlighted in bold, and are largely to tidy up the running of the discipline process. Please note that if the NEC's rule changes are agreed by Conference, there will be two consequential amendments to the Bye-Laws to ensure that the correct cross-references to Rule 14 apply.

Appendix 2 details in bold type the proposed Rule changes which will be tabled by the NEC to General Conference. As well as renumbering the Rules to allow for a more logical progression and the clarification on right of appeal, the most significant change is to the composition of the Independent Review Body. The NEC has taken the view that a body elected by Conference is a more open and democratic way of conducting appeals. It is still intended that there will be an Independent Chair.

Clearly, these Rule changes can only take effect when they have been agreed by General Conference.

Appendix 3 lays out the Bye-laws for the Independent Review Body. These reflect the changes agreed by the NEC which are not subject to a Rule change. If Rule changes are agreed by General Conference, then these Bye-laws will need to be further amended to reflect those changes. Again, the changes are mainly to ensure the smooth running of the appeals process. The amendments are highlighted in bold type and are effective immediately.

The NEC also considered the issue of disciplinary action by Branches and agreed that further Rule amendments may be necessary to clarify what actions may be taken by Branches to discipline their members. The NEC agreed to refer this issue to the Structure and Rules Committee with a view to putting an amendment to the Rules Revision Conference in 2003.

**The NEC is confident that the attached amendments and proposed Rule changes will ensure that we retain a robust, open and fair discipline process.**

Yours sincerely,

GRACE MITCHELL  
Assistant Secretary

### **NATIONAL DISCIPLINE COMMITTEE – BYE-LAWS**

#### **A. GENERAL**

1. These Bye-laws are made by the National Executive Council (NEC) pursuant to Rule 14, Section 4, paragraph 3 of the Union's Rules and may be amended or rescinded at any time by resolution of the NEC.
2. At its first meeting after Annual Conference, the NEC shall appoint three of its members to constitute a Disciplinary Committee, with full authority to deal with and determine all matters calling for disciplinary action under Rule 14, Section 1, paragraph 2.
  - (a) There shall be three named substitutes to replace any or all members of the National Discipline Committee if they are not available.
  - (b) A member of the NEC who has any direct personal interest in the outcome of the proceedings shall not be permitted to participate in any such case.
  - (c) It shall not be necessary for the NDC members deciding matters in respect of Bye-law 3(c) to be the same members as those who subsequently hear the case in full.
  - (d) No member of the NDC hearing a case shall participate in the decision on that case unless they have been present throughout the Hearing.
3. Upon receipt of the notification of a charge against a member, the General Secretary shall ensure that the charge is put to the individual and their Branch without delay.
  - (a) A charged member shall be supplied **with full details of the charge itself, the name of the person or Branch bringing the charge, together with a**

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**copy of submissions made in relation to it, the available evidence**, a copy of these Bye-laws, Rule 14 and such other rules as may be appropriate. **The charged member will also be invited to make any written submissions in relation to the charge made and to be received by the Officer to the NDC within the appropriate time limit and will be notified of the date of the NDC meeting convened under Bye-law 3(c).**

- (b) **The charged member must notify the Officer to the NDC, no later than 7 days prior to the NDC meeting, as notified under Section 3(a), if he/she intends to defend the charge or not, and if so, provide written submissions.**
- (c) The Officer to the NDC shall convene a meeting of the Committee, without delay, to consider the charges, supporting evidence **and submissions made**, and **the Committee will** determine whether or not a “prima facie” case has been made.
- (d) At such meeting the NDC must consider any **written** submissions made by the charged member.

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- 4. (a) Where the NDC determines that a prima facie case does not exist, the Officer to the NDC shall ensure that all parties are so advised without delay.
  - (b) Where the NDC determines that a prima facie case does exist, the parties to the case shall be summoned to a meeting of the NDC, where the full case will be heard, **unless the charged member indicates their intention not to defend the case.**
5. A **Hearing** of the NDC, convened under Bye-law 4(b), shall take place at such time, date and place as the NDC shall determine is fair and reasonable in all the circumstances.
- (a) Not less than 28 calendar days’ notice of the **Hearing** shall be given to all parties.
  - (b) Where the charged person’s own Branch has not brought the charge, **any Branch of the members involved with the case** shall have a right to be **informed of the charge, the name of the members involved, the date of the Hearing and the outcome.**
  - (c) The National Discipline Committee **will** ensure that all cases are heard and decided upon within 6 months of the charge being laid, except in exceptional circumstances.
6. The charged member must notify the Officer to the NDC, within 14 days of receipt of the notice under 5(b), if **he/she** intends to defend the case or not.
- (a) Such notice must confirm whether an oral Hearing is requested or not.
  - (b) Where an oral Hearing is not requested, **any further** written submissions must be received by the Officer to the NDC not less than 14 calendar days before the date of the Hearing.

- (c) If the charged member fails to notify their intention **and/or fails to attend the meeting of the NDC, then** the NDC shall hear the case in their absence and may **make** such decision as it sees fit.
- 7. Any Branch presenting a charge against a member shall nominate a senior elected Branch Officer to represent it at the Hearing and no other member shall be permitted to represent the Branch at the Hearing. A Branch of the Union may, if it so desires, present a charge and any supporting evidence in writing.
- 8. A member of the Union who presents a charge against any other member, shall be given the opportunity to present the charge at the Hearing. A member who presents a charge may, if they so desire, present the charge and any supporting evidence in writing.

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- 9. Any individual member presenting a charge, or any charged member, may be represented by another member of the CWU.
  - (a) No party to a charge or anyone with an interest in a charge may be represented by a Solicitor, Counsel or any other person who is not a member of the Union.
  - (b) If a member is to be represented, then they must notify the Officer to the NDC of the name of their representative not less than 14 calendar days before the Hearing.**
  - (c) For the purpose of these Bye-laws, the notified representative of a party shall be recognised as that party.
- 10. All relevant documents upon which either party intends to rely must be provided to the "Officer of the NDC" not less than 14 calendar days before the date of Hearing.
- 11. The NDC may, at any stage **prior to and at the Hearing**, ask for reports, written statements or **summon certain witnesses to attend**, as it sees fit in relation to any charge before it.
  - (a) Any direction made by the NDC to any member of the Union shall have the status of decision of the NEC.
  - (b) If necessary, the NDC will adjourn the Hearing to allow for circulation and consideration of new evidence.
- 12. An indexed bundle comprising all documents submitted by both sides shall be circulated to the NDC and the parties not less than 7 calendar days before the date of the Hearing.

- (a) In the event that inclusion of any document is challenged on any grounds by either party, the NDC shall determine which documents may be admitted.
  - (b) The Committee's decision to admit a document or not shall be final.
13. It will be the responsibility of the parties to notify the Officer to the National Discipline Committee of the names, addresses and telephone numbers of all the witnesses they intend to call, not less than 14 calendar days prior to the date of the Hearing.
- (a) The Officer to the NDC shall notify all witnesses of the date, time and place of the Hearing not less than 10 days prior to the Hearing.
  - (b) **It is the responsibility of the parties to ensure that their witnesses are in attendance at the Hearing.**
14. Any witness called by either party to a charge **must** be a member **or employee** of the Union. **An employee may only be called where they are the sole or a key witness. Employees cannot be compelled to attend as a witness.**

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15. The NDC may authorise payment of actual incurred expenses in full or part from Head Office funds for parties, witnesses or others, at its own absolute discretion.
16. If the NDC finds a charge against a member proven to its reasonable satisfaction on the available evidence, it may impose such penalty as provided for under Rule 14.4.5 as it is reasonably satisfied is just in all the circumstances.
17. **An Appeal against a decision of the National Discipline Committee can be made to an Independent Review Body, but can only be brought by the charged member.**

**B. HEARING**

1. The Chair shall invite the party presenting the charge(s) to make an opening statement and to state the grounds for the charge(s).
2. The Chair shall then ask the charged member whether they admit the charge(s). If the member admits the charge(s), the Chair shall invite a statement of mitigating circumstances. Once any such statement has been made, the Committee shall proceed to consider the penalty (if any) to be imposed.
3. **In the event that** the member not admit the charge(s), the Chair **will** invite the party presenting the charge to **call** any evidence **in support, whether by way of witnesses in person or written statements**. Evidence from witnesses shall not be taken on oath.
4. After the **evidence in support of the charge has been completed**, the charged member **or his representative will** have the right to make a statement and to present any evidence to the NDC and to call witnesses in answer to the charge.
5. At any stage in the proceedings, the Chair and/or members of the NDC, the parties and/or their representatives may with leave of the Chair, ask any questions of a witness or a party to the proceedings. Normally, such questions shall be directed at the party or witness whose evidence is being heard. However, previous witnesses and/or parties may be questioned if the Chair so directs.
6. Where the charged member's Branch is represented, the Chair may permit such persons to make a statement to the NDC or question witnesses.
7. The Chair shall conduct the proceedings fairly and ensure that both parties are able to present their respective cases effectively and fully without undue pressure of time.
8. After the conclusion of the **evidence called** in defence of the charged member, the Chair **will** invite both parties to make a short final submission in support of their respective cases.
9. **The Committee will then consider the evidence heard and submissions made by both parties, in private. Their decision will be given, in writing, as soon as possible after the Hearing.**

## Appendix 2

### RULE 14 – DISCIPLINE

#### 14.1 General

1. Matters of a disciplinary nature affecting an individual member or members of the Union shall only be dealt with in accordance with the provisions of this Rule.
2. A member shall be liable to disciplinary action in respect of the following matters:
  - (a) Behaving in a manner contrary to the interests of the Union.
  - (b) Failing to carry out the lawful and reasonable instructions of a Branch, the National Executive Council, or Annual or Special Conference.
  - (c) Acting in breach of the Rules of the Union.
  - (d) Being a member of a union or association of employees, the interests of which conflict with those of the Union, or speaking or circulating literature on behalf of any such union or association.
3. **No member of the Union, should sit on the National Discipline Committee or Independent Review Body, if the matter is one in which he/she has had a prior involvement.**

#### 14.2 National Discipline Committee

1. All matters calling for disciplinary action shall be determined by a National Discipline Committee which shall consist of three members appointed by the National Executive Council. There shall be three named substitutes to replace any or all of the members of the National Discipline Committee if they are not available.
2. The Committee shall be served by an Officer appointed by the General Secretary. The National Discipline Committee has the powers set out in Rule 14.3.

#### 14.3 National Discipline Committee Powers and Procedures

1. All matters requiring consideration under the authority of Rule 14.1 shall be referred to the General Secretary and by the General Secretary to the National Discipline Committee. Such matters may be referred to the General Secretary from either a member or a Branch.
2. The National Executive Committee has the power to require the attendance of witnesses who are members of the Union and require production of written evidence. In the event of non-attendance **by either of the parties involved**, or production of written evidence, the Committee has the right to take a decision in their absence.
3. The National Executive Council shall prescribe Bye-laws regulating the procedure for the conduct of all cases before the National Discipline Committee and may amend such Bye-laws from time to time. These amendments shall be subject to endorsement at the next Annual Conference.

4. The National Discipline Committee shall consider the General Secretary's reference as presented and conclude whether or not a prima facie case has been made out. If so, **it will proceed to a full Hearing of the National Discipline Committee.**
5. Following the **full** Hearing of a complaint, the National Discipline Committee may exercise any one or more of the following powers:
  - (a) to censure the member concerned;
  - (b) to fine the member such sum as the National Discipline Committee shall consider fair and reasonable, having regard to the circumstances;
  - (c) to suspend the member from membership or from all or any benefits of membership for such time as may be determined;
  - (d) to remove the member from any office the member may hold in or on behalf of the Union;
  - (e) to disqualify the member from holding such office for such period of time as the National Discipline Committee may determine;
  - (f) to expel the member from the Union; and
  - (g) to impose a suspended sentence for so long as the National Discipline Committee shall consider just and reasonable.
6. If a fine imposed by the National Discipline Committee shall not be paid within twenty-one days of the date of a demand in writing addressed by the General Secretary to the member at their last known address, the member shall thereupon be automatically expelled from membership of the Union.

#### **14.4 Independent Review Body**

1. There shall be the right of appeal against decisions of the National Discipline Committee to an Independent Review Body. In all cases of Appeal, the decision appealed against shall be suspended pending the hearing of the Appeal. **An appeal against a decision of the National Discipline Committee can only be brought by a charged member.**
2. **The Independent Review Body shall consist of three members and an Independent Chair. There shall also be three named substitutes to replace the appropriate member of the Independent Review Body if they are not available.**
3. **The Committee shall be served by a Senior Officer appointed by the General Secretary.**
4. **The members of the Independent Review Body shall comprise one member elected by and from the Postal, Operator and Ancillary Constituency; one member elected by and from the Engineering and Postal Technical Services Constituency; and one member elected by and from the Clerical Constituency. The elections will be by the card vote procedure at Annual Conference.**

5. **The period of office of each member and substitute member of the Independent Review Body shall be 3 years.**
6. The decision of the Independent Review Body shall be final and binding on the appellant and the Union.
7. The NEC shall prescribe Bye-laws regulating the procedure for the conduct of all cases before the Independent Review Body and may amend such Bye-laws from time to time.

**14.5            Functions of the General Secretary and the Discipline Officer in Relation to Disciplinary Matters**

1. The General Secretary shall appoint a Convening Officer of the National Discipline Committee who shall notify members and Officers of the decisions of the National Discipline Committee.
2. The Discipline Officer shall be responsible for the documentation of matters requiring consideration by the National Discipline Committee and for recording the proceedings of the Committee.
3. The Discipline Officer shall notify the General Secretary, who shall notify a member of their rights under these Rules and of the consequences of failure to comply with any direction made or issued, or any penalty imposed by the National Discipline Committee.

## Appendix 3

### BYE-LAWS GOVERNING THE CONDUCT OF THE INDEPENDENT REVIEW BODY

1. These are the **Bye-laws** made by the **National Executive Council (NEC)** pursuant to **Rule 14, Section 3, paragraph 4** of the Union's Rules and may be amended or rescinded at any time by resolution of the NEC.
2. An Appeal against a decision of the National Discipline Committee can only be brought by the charged member. **The request for such an Appeal must be made in writing to the General Secretary within 21 days of the date of that decision, setting out the reasons for the Appeal.**
3. **The Chair of the Independent Review Body will be independent and impartial. The General Secretary will draw up a list of suitable people with knowledge and experience of the Trade Union movement which will be agreed by the NEC. This list will be reviewed every 3 years.**
4. **On receipt of the Appeal, the Officer to the Review Body shall write to the appellant without delay, seeking the appellant's choice of Review Body member. The Chair shall be selected by a random ballot from the list already agreed by the NEC.**
5. No member of the Union should sit on the Review Body if the matter is one in which he/she has had a prior involvement.
6. The appellant shall have 14 days in which to respond, following which a Hearing **will** be convened within six weeks **of the selection of the Chair. Notice of that Hearing will be given, not only to the appellant, but also to the party who originally brought the complaint to the National Discipline Committee.**
7. The National Discipline Committee **will** be asked to submit its written reasons for the decision that is being appealed against, together with the Minutes of the NDC Hearing and the documents that were before **it at the Hearing**. The Officer to the Review Body must receive these documents no less than **twenty-one** days before the date of the Hearing, **and copies sent to the parties involved.**
8. The appellant **will, at the time that Notice of the Hearing is given, be asked to submit in writing any further reasons and/or representations in relation to the Appeal, together with copies of any documents that the appellant intends to refer to and** to be received by the Officer to the Review Body no less than 14 days before the date of the Hearing, with confirmation of whether or not the appellant intends to attend the Hearing.
9. The appellant, **who may be represented by another member of the Union and the party who originally made the complaint**, will have the right to be present at the Hearing. **If the appellant decides not to attend the Hearing, a decision may be made by the Review Body in the absence of the appellant.**
10. The National Discipline Committee **will** not be represented at the Appeal Hearing unless **it is considered appropriate** by the Review Body, **in which case the Officer or Chair to the NDC shall be called.**

11. The Review Body shall have the right to interview any witnesses **that it considers to be necessary in order to reach its decision.**
12. The Review Body **will** review the case, and **having considered the representations of the parties and** the evidence available, **decide** whether the NDC was reasonable in reaching the decision it did and whether the penalty was appropriate.
13. **In the event of** the Review Body **deciding that** the decision of the National Discipline Committee was **unreasonable** or the penalty inappropriate, the Review Body may set aside the decision, **or order a re-hearing of the case**, or vary the penalty accordingly.
14. The Review Body will give its decision in writing as soon as possible after the Hearing.
15. The Officer to the Review Body will, in all circumstances, advise the General Secretary, the NEC, the appellant's Branch, **and the original complainant**, of the decision of the Review Body.
16. **The Review Body shall ensure that all Appeals are heard and decided upon within 6 months of the Appeal being made, except in exceptional circumstances.**
17. **If the Review Body orders a re-hearing of the case, it will provide written reasons for that decision which must be taken account of by the National Discipline Committee. Any re-hearing will be carried out by the substitute members of the National Discipline Committee.**
18. **The Review Body has discretion to extend any time limits for compliance with the procedures set out in these Bye-laws, should it not be reasonably practicable to comply.**