

NEC Advice Note

How to carry out an investigation into a breach of rule by a member

1. Introduction

Investigations are carried out at many different levels within the party. The practices and procedures advised within this paper relate to allegations and complaints that, if found by the National Constitutional Committee (NCC) to be substantiated on the balance of probabilities, will lead to formal disciplinary action in respect of the membership rights of an individual member.

2. Who has the authority to carry out an investigation?

Investigations may be carried out at many levels within the party. However, allegations and complaints that a member is in breach of a Labour Party rule, which may require disciplinary action, can only be progressed to the NCC by the NEC (Labour Party Rules Chapter 6.I.) or a CLP (Chapter 6.II.). The rules for CLP investigations, outlined in section 6.II. of the Rule Book must be strictly adhered to at each stage.

Before commencing an investigation, CLP investigators should familiarise themselves with the procedural guidelines of the NCC which can be found at Appendix 6 of the Party's rule book, entitled "Procedural guidelines in disciplinary cases brought before the NCC". This provides an insight into the workings of the NCC and how it is expected that a disciplinary case will be presented.

3. Commencing an investigation

The investigators have a duty to act fairly and without bias, but otherwise, Labour's rules state that investigations can be conducted as the investigators see fit; including interviewing and receiving documentary evidence from the complainant, the member complained against (the respondent) and others.

Unless the complaint or allegations being investigated are about intimidation by the respondent, the respondent should be notified of the investigation and the nature of the complaints or allegations at an early stage. However, investigators are not required to disclose details of the complainant, copies of the complaints or evidence gathered during the investigation. If at the end of the investigation it is decided that there is a case for the respondent to answer and charges are presented to the NCC, the respondent will at that stage be entitled to see all of the evidence being submitted in support of the charges.

4. Witnesses

Investigators should interview the complainant, respondent and any other members who it is thought may have relevant information about the subject of the allegation(s), irrespective of which side they appear to be on. When complainants or other witnesses to the alleged breach of rule are interviewed a statement of their evidence should be written, agreed with and signed by them.

Investigators should ask the respondent whether there are any particular members that they would like the investigators to interview. The investigators may request written statements in advance from such witnesses, to determine whether they have relevant evidence to offer before arranging to interview them. Investigators may decide not to interview witnesses providing evidence purely as to the respondent's character; they may prefer to receive written statements from them instead. Character witnesses should be kept to a minimum.

5. Interviewing the respondent

The respondent can be invited to be interviewed whenever the investigators feel it appropriate and can be invited to attend more than one interview. In cases where the evidence is based solely on a decision by a court or other quasi-judicial body (which the NCC accepts the findings of without question) it may be helpful to interview the respondent at the outset to get an early understanding of their position and then again later in the investigation. But in many cases the investigators will choose to test the evidence that has been accumulated by interviewing the respondent after meeting with all the other witnesses. Where there is genuine concern of intimidation, the investigators may decide not to interview the respondent at all.

When the investigation team is at the stage of wanting to interview the respondent, they should make a reasonable effort to contact the respondent and agree a mutually suitable time and date for the interview. The initial invitation should be in writing (by letter or email).

If the invitation includes details of a time and date for the interview at least seven days' notice should be given and more where practical. Alternatively the respondent can be asked to contact the investigators to arrange a mutually suitable time and date. If the respondent fails to respond to the invitation or attend the interview, he/she should be written to again and given another opportunity to meet with the investigators but also advised that if they continue to fail to co-operate and attend an interview with the investigators, the investigators can complete their investigation in their absence and proceed to present charges against them to the NCC.

The respondent should be informed in the invitation to be interviewed that they can be accompanied at the investigation by a silent friend, who must be a Labour Party member. The silent friend should not speak during the interview unless specifically invited by the investigators to do so, but may speak and provide advice to the respondent. If the respondent asks for legal representation, the investigators should consider the request seriously, giving regard to the nature of the allegations, and always err on the side of the respondent when deciding whether to agree.

If the investigation is being carried out by only one investigator e.g. a party officer on behalf of the NEC, the investigator should be accompanied by another member when interviewing the respondent. Comprehensive notes should be taken of the interview with the respondent giving details of the questions asked and the answers provided.

6. Complaints to CLP – investigators' report to the General Meeting

At the conclusion of the investigation the investigators have to determine whether, in their opinion, there is a prima facie case that the respondent has breached the Party's rules for the respondent to answer. When the investigation has been undertaken by investigators for a CLP, the investigators are required to put a written report to the CLP General Meeting. If that report concludes that in the opinion of the investigators there is a case for the respondent to answer, the report should also include draft charges that the investigators recommend are presented against the respondent to the NCC. The CLP General meeting should then vote on whether to accept the decision of the investigators and if so whether the draft charges should be presented on its behalf to the NCC.

The investigators must always bear in mind that they that they do not determine the outcome of disciplinary action, but that their job is merely to seek out the facts and present a balanced report and recommendation based on their findings.

7. Preparing a case for the NCC

Once it has been agreed by the CLP that charges should be presented against the respondent to the NCC, the investigators will have to decide which of them is to be the presenter of the case before the NCC. The presenter, with the help of the other investigators, will prepare the written case to go before the NCC. This will include a charge sheet and a bundle of supporting evidence i.e. witness statements and documentary evidence. The charge sheet (see model charge sheet below) will detail one or more charges and state which statements and/or documents within the bundle are submitted in support of each charge. Individual statements and/or documents may be submitted in support of more than one charge on the charge sheet.

The charge sheet should also state the names of witnesses who are prepared to attend an NCC hearing and give evidence. A statement for each such witness must be included in the bundle. The NCC may refuse to hear a witness for whom a written statement is not included in the bundle of evidence. The NCC procedures state that only six witnesses to each side will usually be allowed to appear at a hearing, but further witness statements from witnesses not attending the hearing can be included in the presenter's bundle to add weight to the evidence. By including the statements of anyone you could call as a witness in the bundle and by referring to them in the charge sheet, you can, prior to the hearing, change who you intend to call if a witness becomes unavailable to attend the hearing. It should be noted that in normal circumstances the NCC will give greater weight to the evidence of a witness who appears before the panel at the hearing and has their evidence tested by questioning.

A lot of documents may have been collected during an investigation that will not form part of the case against the respondent. However, if those documents will enable the NCC to get a more rounded view of the nature of the case, they could be included in your bundle. This may also avoid the respondent having to request release of such documents for their own submission.

When the charge sheet and bundle are complete, the presenter will forward them to the NCC, which will determine how and when the matter is dealt with, in accordance with the Party's rules and the procedural guidelines of the NCC.

Model Charge Sheet

Charge Sheet for Mr A. Member (Membership Number), Anytown CLP

The charge is that Mr A. Member is in breach of rule 2.1.8 regarding the following:

Charge 1

That on 18 January 2013 during the AGM of Littletown Branch, and subsequent Littletown Branch meetings on 7 March and 4 April 2013 and also a CLP General Meeting meeting on 26 February 2013, Donald Duck behaved in an intimidating, threatening and/or uncomradely manner towards other members present and/or encouraged other members of the ward to behave in an uncomradely fashion.

See:	Page
• Letter from Ms Ann Complainant, 10.4.13	1
• Statement of Ms Ann Complainant	2 - 3
• Statement of Mr Andrew Witness	4
• Various emails between Mr A. Member and CLP Chair 26.3.13- 10.4.13	6 - 12

Witnesses at the hearing will be called from the above.

Charge 2

That on or about 18 January 2013 Mr A. Member threatened Cllr X & Cllr Y with reprisals if they failed to support a personal claim for compensation which Mr A. Member was pursuing against Smallville MBC.

See:	Page
• Statement of Cllr X	13 - 14
• Statement of Y	15 – 17
• Email from Mr A. Member to Cllr X, 12.3.13	18

Witnesses at the hearing will be called from the above.

Charge 3

That in or about 20012 Donald Duck made unfounded and/or malicious complaints to the Labour Party and the Smallville MBC Standards Committee against Cllr X & Cllr Y.

See:	Page
• Statement of Cllr X	13 - 14
• Statement of Cllr Y	15 – 17
• Email from Mr A. Member to CLP Secretary, 12.3.13	19

Witnesses at the hearing will be called from the above.