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## Procedure for Investigating Cases of Alleged Misconduct

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### 1. Purpose

- 1.1 The purpose of this policy is to set out the procedure to be followed in cases of alleged misconduct.

### 2. Sensitive cases

- 2.1 The investigation of misconduct involving party members, meetings or events can be highly sensitive for those involved. This is most likely to be the case when investigating incidents of violence, abuse, harassment, discrimination, intoxication, bullying, sexual harassment and sexual harm, but could include other types of misconduct (“sensitive cases”).
- 2.2 The sensitive nature of these incidents for those involved (on both sides) means that special care must be taken when conducting the investigation.

### 3. Principles

- 3.1 When conducting the investigation and deciding whether to take disciplinary action, the Party must adhere to the following principles:
- 3.2 take misconduct seriously and act on it in a timely way;
  - 3.3 maintain confidentiality;
  - 3.4 at the appropriate time, inform the respondent of the allegations against them;
  - 3.5 give the respondent the opportunity to respond to the allegation;
  - 3.6 keep both parties informed about progress of an investigation;
  - 3.7 ensure the parties' safety and wellbeing is protected during an investigation, including protection from retaliation or victimisation;
  - 3.8 give both parties a full opportunity to read/see and respond to all evidence collected in an investigation before a decision is made;
  - 3.9 consider all the evidence and weigh it carefully before deciding whether there is substance to the alleged misconduct;
  - 3.10 provide both parties with a copy of the decision and the reasons for the decision; and
  - 3.11 ensure any disciplinary action is proportionate to the level of behaviour involved.

### 4. Notice

- 4.1 Notice of any alleged misconduct should be given to Fraser House, which is responsible for facilitating appropriate support for the person who has experienced alleged misconduct.
- 4.2 Party members and constituent bodies are encouraged to disclose relevant information to Fraser House, but cannot be compelled to do so.
- 4.3 A person may disclose alleged misconduct without seeking a formal investigation.
- 4.4 If anonymous information alleging misconduct is received, no formal investigation shall take place.

### **5. Confidentiality**

- 5.1 Any information disclosed to the Party is confidential. Those who share information cannot be compelled to identify themselves to the person who is alleged to have engaged in misconduct (the “respondent”).
- 5.2 Note that, in most cases it is not possible to undertake a fair process without giving the respondent information that enables them to identify the complainant. Accordingly, before a formal investigation can be commenced, those who have shared information must confirm in writing whether they are willing to disclose that information and their identity to the respondent.
- 5.3 If the complainant does not provide sufficient detail or evidence of a complaint (where necessary including their identity) to enable the alleged conduct to be properly investigated, no formal investigation may commence and the Party will be unable to take disciplinary action against the respondent.

### **6. Decision to investigate**

- 6.1 Council determines whether to undertake a formal investigation on the recommendation of Fraser House.
- 6.2 To do so, Council appoints a sub-committee (the “Committee”) to consider whether misconduct has occurred and, if so, what disciplinary action (if any) the Committee recommends.
- 6.3 The Committee is responsible for conducting the investigation.

### **7. Membership of the Committee**

- 7.1 The Committee must be composed of three members of Council, who should not reside in the same region as the respondent, nor have close ties with the parties involved. The Committee members must be selected to avoid both actual bias and the appearance of bias, either for or against the respondent. However, it is recognised that in a well-connected community such as the Labour Party it may be difficult to select Council members who have never met all of the parties to an investigation.
- 7.2 When selecting the Committee members, Council considers the balance of skills and experience needed, including matters of race, gender, gender identity, ethnicity, sexuality, age or disability.
- 7.3 Council must ensure that the Committee is made up of members appropriately qualified, either from training or experience, to investigate sensitive cases. Council will provide training to members to ensure they are suited to investigate this type of complaint.
- 7.4 Council may also appoint a person to advise the Committee (an “adviser”). The adviser should have experience with conducting investigations in sensitive cases (e.g. a lawyer) and need not be a member of Council. The adviser has no decision-making rights and the Committee has the discretion to choose to what extent the adviser participates in the investigation.

### **8. Formal investigation**

- 8.1 All those involved in the investigation will be asked to keep the fact of the investigation and what is disclosed to them during it confidential.
- 8.2 Fraser House will offer to fund counselling for both parties to assist them address any issues arising from the investigation or the circumstances leading to it.
- 8.3 The Committee may interview anyone involved, although no person can be compelled to speak to the Committee. Unless the parties agree in advance to meet together in front of the Committee, interviews must take place separately.

- 8.4 Wherever possible, those willing to share information should be interviewed, preferably in person. When attending any interview, the person sharing information may be accompanied by a support person. Council will ensure that each person is appropriately resourced to have a support person assist them through the process.
  - 8.5 The respondent must be given sufficient information about the alleged misconduct to be able to identify the relevant incident(s) and respond appropriately.
  - 8.6 The respondent must be given the opportunity to attend an interview to discuss the alleged misconduct, but cannot be compelled to do so. When attending any interview, the respondent may be accompanied by a support person. In some cases, more than one interview may be needed.
  - 8.7 If the respondent wishes to speak to the Committee, the Committee must hear him/her and must consider any further written submissions the respondent wishes to make, so long as they are made in a reasonable timeframe set by the Committee.
  - 8.8 If the respondent speaks to the Committee and/or makes further submissions, then the same opportunity must be given to the other parties involved, should they wish to do so.
  - 8.9 The Committee keeps a record of the interviews, which it must share with both parties. The Committee gives each party an opportunity to respond to the information disclosed.
- 9. Mediation**
- 9.1 Where appropriate (e.g. at the request of one of the parties, or on the recommendation of the adviser), the Committee may invite the parties to engage in mediation or some other form of alternative dispute resolution. Both parties must agree to join in the proposed process and to the rules or conditions that apply to the conduct of that process.
  - 9.2 If the parties cannot agree, they cannot be compelled to participate.
- 10. Draft determination**
- 10.1 In cases where the Committee considers that misconduct is likely to have occurred, the Committee prepares a draft written report that describes the investigation and the alleged misconduct.
  - 10.2 The draft report must consider all the relevant information, identify any inconsistencies between the various accounts, and weigh the information carefully.
  - 10.3 The draft report must assess whether, on the balance of probabilities, there is substance to the alleged misconduct and, if so, what disciplinary action the Committee proposes to recommend, together with the reasons for these conclusions.
  - 10.4 The Committee submits the draft report with its assessment to both the respondent and to the other parties involved and sets a timeframe for any response.
  - 10.5 The respondent and other parties may provide written submissions to the Committee in response to the draft report. Adequate time must be provided for them to do so.
- 11. Committee's final assessment**
- 11.1 The Committee must consider any further information and submissions that it receives and weigh them carefully before making its final assessment as to whether, on the balance of probabilities, misconduct did occur and, if so, what disciplinary action to recommend.
  - 11.2 The Committee issues its final assessment in writing with supporting reasons. The assessment must be unanimous.

- 11.3 If the members of the Committee cannot agree, the President can re-open the matter by recommending that Council appoint a new Committee.
- 11.4 The Committee supplies a copy of its assessment to both the respondent and to the other parties involved and reports its assessment and any disciplinary recommendation to Council:
- 11.5 If the Committee has determined to recommend disciplinary action, then the report to Council identifies the respondent, describes the nature of the misconduct in general terms, and notes the disciplinary action the Committee is recommending. None of the other parties are identified.
- 11.6 If the Committee has determined not to recommend disciplinary action, then no written report is required. The Committee merely notes to Council that the Committee has concluded its investigation and is satisfied that no further action needs to be taken.
- 12. Disciplinary decision**
- 12.1 If the Committee concludes that misconduct did occur, Council determines whether to endorse that assessment and (if so) what form of discipline to apply from among the choices in the Constitution.
- 12.2 Council must consider the Committee's recommendation and give that recommendation appropriate weight to recognise the fact the Committee heard directly from all the parties. But the Committee's recommendation regarding disciplinary action has no force unless and until it is adopted by Council; and, for the avoidance of doubt, Council has the discretion to apply a different form of discipline than that recommended by the Committee if it so wishes.
- 12.3 Council must consider the Committee's recommendation as soon as possible, including by teleconference in advance of one of its regularly scheduled meetings. When Council meets to consider its disciplinary decision, the respondent must be given the opportunity to state his or her case before the Council, if he/she wishes to do so.
- 12.4 Council's decision regarding any disciplinary action can be appealed as provided in the Constitution.

This policy should be read in conjunction with the Labour Party constitution, other policies and employment agreements.

**Dates:**

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