

April 2024

To: Labour group Secretaries and Leaders

cc: Regional Directors and Scottish and Welsh General Secretaries for information

LABOUR GROUP DISCIPLINARY PROCEDURES

Dear Colleague

This circular provides guidance to whips and Labour groups on the procedures that should be followed in respect of disciplinary action.

We expect group officers and members to maintain high standards of conduct and behaviour, so there should be few occasions when these procedures need to be used. Good political management should minimise the potential for conduct which requires investigation and disciplinary action, as should a commitment by the group to member development, away days and regular group discussions of strategy and policy.

Please copy the procedural note to all members for information.

Kind regards,

The Governance and Legal Unit

The Labour Party

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LABOUR GROUP DISCIPLINARY PROCEDURES

Background

The Labour Party requires its representatives to uphold the highest standards of probity and integrity and they shall be guided in those standards by advice from the NEC.

(Clause 16.II.2.A.i, Labour Party Rules for local government Labour groups).

Acceptance of the rules (for local government Labour groups) as approved by the NEC is a condition of membership of the Labour group on the council. (Clause 16.XIII.1).

The rules set out some explicit requirements for Labour councillors (for example, in relation to the Registration and Declaration of Interests and the national Code of Conduct) and additional guidance is provided by the NEC from time to time e.g. model standing orders for groups.

The rules set out some minimum requirements in respect of procedures if the failure to abide by the rules by an individual councillor leads the chief whip to believe that a recommendation to withdraw the group whip is appropriate. Details on how to conduct investigations and other disciplinary and related procedures are covered in this guidance note.

The party's disciplinary procedures have now been tested in the courts of both the English and Welsh, and Scottish legal systems, and were found to be robust. In addition, the production of this guidance has been supplemented by legal advice relating to issues which have never been tested in the courts. We believe if this guidance is followed, there should be no prospect of a successful legal challenge to the procedures being used.

The chief whip of a Labour group has a joint responsibility to the group and to the party for investigating allegations of breaches of the party's rules for Labour groups, and for taking the appropriate action. In the event of the allegation being in respect of the whip's conduct, the group leader should appoint another group officer to investigate, taking advice where necessary.

Therefore, we request chief whips specifically and Labour groups in general to follow carefully the guidance contained in this note at all times. If in doubt about the appropriate action to be followed, please contact your national or regional office or the party's Governance & Legal Unit.

Introduction

The highest standards of behaviour and conduct are expected from elected representatives of the party at all times. Within the rules, the group has a specific responsibility in relation to members as councillors, not as party members in general.

However, there are occasions when a councillor's conduct in her/his private life seriously undermines her/his public credibility and standing such that a failure to act, by the party, would bring the party itself in to disrepute. In such circumstances, the whip should promptly seek advice from the national or regional office.

It is competent for Labour groups to initiate disciplinary action against group members for alleged breaches of the rules and standing orders for Labour groups.

Group discipline is primarily a matter for the group whip or whips. The chief whip has a particular and personal responsibility, both to the group locally and the party nationally, for ensuring that Labour councillors abide by the rules of the party and for taking the appropriate action in relation to any allegation or information about a breach of the rules or conduct that breaches the standing orders.

The chief whip should at all times expect the active support of the group leader and other group officers in undertaking this responsibility. The whip should also informally consult the group leadership on the problems s/he is required to address and the appropriateness of her/his intended course of action.

However, it is the chief whip's job, in the end, to determine the appropriate action, subject to any over-riding instruction or advice by the NEC or the General Secretary of the party (and normally exercised by the party's national and regional officers on his or her's behalf). The NEC and party officers retain the right to vary the following disciplinary procedures depending on the gravity of the allegation(s) and have the power to suspend the whip in such circumstances.

Therefore, any allegations or concerns about a failure to abide by the rules must be directed to the whip. The whip, in turn, should keep the leader advised of the issues - without compromising any disciplinary investigation or process - in order that the public relations implications can be handled properly.

One of the most important tasks of the chief whip, with the support of the group leadership, is to set out from the very start clear expectations of behaviour and conduct for the group collectively and Labour councillors individually. Prevention is better than cure. The whip must also ensure that all disciplinary issues are approached in an even-handed manner, with no favour granted on the basis of personal friendship or political perspective.

The need to consider if disciplinary action is required usually arises from a breach of clause 16.XI of the rules for Labour groups which deals with action by individual members in relation to group policy or decisions. It also may be taken in relation to clause 16.II which relates to declarations of interest and the national Code of Conduct, and with the general standing orders and procedures of the party.

In situations where a Labour councillor is informed s/he has been reported to the relevant standards body then s/he should inform the chief whip immediately. The procedure for dealing with such cases is provided by the relevant standards body and the councillor should seek guidance from the chief whip in the first instance and if further advice is necessary then from the party's Governance & Legal Unit.

This raises questions of how the Labour group should react both while an investigation is underway and if disciplinary action has been taken against a Labour councillor, either by the relevant standards body or the local standards committee. If a councillor is under investigation for a minor breach of the Code of Conduct or another minor complaint, then no action should be taken by the Labour group until the relevant standards body or committee has decided what action to take. However, if the complaint relates to either financial impropriety, allegations relating to the misuse of council resources such as the downloading of pornography from the internet, or charges relating to criminal activity being pursued by the police, then the chief whip should report the councillor concerned to the Governance & Legal Unit of the party.

In such serious cases, once the local standards committee, police or any other authority has reported on their decisions and the councillor concerned is found guilty, s/he will remain under (or be placed under) an 'administrative suspension' until the party's internal disciplinary procedures are concluded. This action overrides any appeal mechanism, but obviously if the councillor concerned is successful at the appeal stage, then the councillor's suspension will be lifted and s/he will be re-admitted.

Similarly, with the emphasis placed upon quality public services and continuous improvement, the whip will need to be aware of the potential for disciplinary action in the event of serious failures in political management or councillor competencies. Abuse of office or position to cover mismanagement or incompetence will not be tolerated and will be considered a serious breach of rule and subject to direct intervention by the NEC.

Finally, the modernisation of local government introduced scrutiny functions and a separation of responsibilities of the executive from the non-executive members. This has implications for the application of the group whip, which in turn affects the sanctions that are applicable and the need for clear policy development within the group. An executive cannot apply the whip to a group's scrutiny members when they are considering items

at scrutiny committees. Similarly, scrutiny members cannot argue that they are not subject to the Labour whip on an item at full council when they have considered it beforehand at scrutiny. Any dispensation from voting must be sought from the whip and the group.

Investigation Procedure

Whilst the group whip should seek to play a preventative role by using firm group management techniques and effective member development to encourage sociable behaviour within the group, to enable political development and to promote high standards of public life, there will be times when the whip will need to undertake disciplinary action.

A chief whip, alert to the functioning of the group and the performance of individual councillors, can act quickly and informally to prevent breaches of the rules and the need for formal action.

However, when the whip receives information or an allegation suggesting a breach of the rules, it is in no-one's interest for investigations and, where appropriate, disciplinary action to be delayed. The chief whip should always act promptly to investigate the matter; always having first given careful thought as to the sensitive and appropriate way to proceed.

If the allegation relates to conduct of a criminal nature (e.g. fraud, assault) the whip should always seek external advice through the party's constitutional officer before acting.

In normal circumstances:

- The whip should seek to establish, as accurately as possible, the nature and extent of the allegations of breaches of the rules and to identify and secure any evidence supporting the allegations
- The whip should request the individual to meet her/him at a mutually convenient time within the next (say) seven days. If the individual prevaricates, it is important to establish that the individual understands clearly that the whip is following the obligations placed upon her/him in accordance with the party's rules; that the individual is expected to comply with the proper procedures; and that, if there is a failure to cooperate, the procedures will be followed regardless
- The request to arrange a mutually convenient time should preferably be done by personal contact (meeting, phone), followed by a confirmatory letter. If there is a

failure to establish personal contact, then a written invitation should be sent as soon as possible by special delivery to the member(s) home address(es)

- It is a requirement that the individual be given an indication of the nature (but not the details) of the complaint or incident about which the whip wishes to see the individual
- The whip should ask another member (e.g. an assistant whip or another group officer but not someone who has an involvement in the complaint) to be present to take a note of the interview. A verbatim note is obviously the most useful, but is not a requirement. It is, however, essential to make an accurate note of the key questions and answers
- The individual should be advised that s/he is entitled to have a friend present. It is not advisable for that friend to have been a “witness” to the relevant events, or someone who is subject to disciplinary proceedings arising from the same issues.
- In advance of the meeting, the whip should identify the questions that need to be answered and the information that needs to be established, and determine whether s/he needs to see any other individual or secure any written documentation
- The task of the meeting is to establish:
 1. the facts
 2. whether there has been a breach of the party’s rules
 3. whether there are any mitigating circumstances.
- The notes of the meeting should be written up and, if necessary, the individual asked to sign them as an accurate summary of the interview.
- After the interview, the whip should analyse the information and write a brief report which again sets out the facts, identifies the breach(es) to the party’s rules and notes any mitigating circumstances, and then, where appropriate, come to a view about the nature of the disciplinary action to be followed (see below).
- In certain circumstances, it may be appropriate to make another group officer (e.g. the group leader) aware of the findings, and seek her/his views on the course of disciplinary action to be taken. But the responsibility for determining the nature of the disciplinary action rests with the whip.
- In coming to her/his judgement about the appropriate action to be taken, the whip should take into account the previous disciplinary record of the individual.

- It would normally be appropriate to arrange to see the individual again to advise her/him of the disciplinary action proposed; the timing of this may be dependent upon the nature of the action to be taken.
- It is important that all the relevant documentation, copies of correspondence, the notes of interviews and the whip's summary report and analysis are kept together and filed in a secure place.

Disciplinary Procedure

If some form of disciplinary action is considered to be appropriate or necessary then the following procedures should be adopted.

1. Warning

If a warning as to the behaviour and future conduct of the councillor concerned is appropriate, this may be issued by the chief whip.

The warning could be a verbal warning ("You've broken the rules; don't do it again"), or it could be a written warning. Either could be linked to a requirement to provide written assurances to abide by the rules in future, for example, or to apologise to the group for the breach of rule, or if appropriate, apologise to the council or another body.

The decision as to whether such warnings are reported to the Labour group or not is a matter for discretion. If not automatically reported, the whip should respond accurately to questions from group members about the action taken following a particular event or complaint.

A record of the warning should be kept and may be used as evidence in future disciplinary proceedings should the improper behaviour recur, or taken into account in assessing the appropriate action to be taken in future disciplinary proceedings in relation to other matters.

Information should be made available to the local constituency party when information is sought in the chief whip's report prior to the next set of selections involving the sitting councillor, should s/he seek to stand again.

2. Removal from positions within the province of the group

Where it is felt that some action should be taken by the group which would remove a councillor from positions s/he holds which are in the determination of the group or the council via the group by virtue of the 1989 Local Government and Housing Act (e.g. membership of committees, chairs and vice-chairs of committees) and the 2000

Local Government Act (e.g. executive and scrutiny posts) this must be dealt with by the full group.

The group whip should report to a full meeting of the group and make the proposed action a notified agenda item. The normal standing orders of the group would apply to such a meeting except that no vote should be taken until the councillor/s concerned have had the opportunity to make a case to the meeting in response to any charges. A straight vote should be taken on the whip's proposal and any amendments moved. All members of the group are entitled to vote and any decision takes immediate effect, subject to any procedures required by the council.

There is no appeal against such decisions which are in the province of the group (they are, in effect, questions of no confidence in the office holder). No decision, however, may be taken which would prevent a councillor seeking re-election to such posts when they come up for election in the normal manner.

Legal issues

There are some important legal issues to be taken into account when implementing disciplinary action which involves removals from positions within the province of the Labour Group. These arise from the 1989 Local Government and Housing Act.

The 1990 Regulations 8,10(d) and 13, which give effect to the Act, give the responsibility to the appropriate political group to choose who should be their representatives on council committees etc.

However, you must always bear in mind the following:

- a. A political group is itself capable of being challenged as a public law body for the purposes of judicial review. Therefore, the rules of natural justice must be satisfied, and the councillor must know the reasons why s/he is being removed from office and given the opportunity to make her/his own representations in an appropriate fashion. If you have followed the procedures set out above, this test should be satisfied.*
- b. Only the council can give effect to the instructions of the group to change the composition of committees. Your group decision has to be enacted through the council before it legally takes effect. Therefore, when the group has made a decision to remove a member from a/all committee(s), the group will also have to decide on the replacement member(s), and the secretary and whip will need to table an appropriate resolution at the next council meeting to give effect to the group decision if so required by the council constitution or inform the appropriate council officer.*

c. *Some authorities still have standing orders which say words to the effect of “each councillor will sit on x committees”. Where there are registered political groups, in accordance with the legislation, such standing orders are effectively over-ridden by the 1989 Act. There is no entitlement of an individual councillor to sit on any or any particular number of committees or executive portfolios; that decision is entirely within the gift of the political group as long as it follows the procedures set out above.*

3. Removal from positions within the province of the council

If the chief whip believes that the appropriate disciplinary action would include removing the individual from outside bodies to which s/he has been appointed by the council, then the whip should seek legal advice from the council’s solicitor and/or from the party’s Governance & Legal Unit before seeking to implement any such recommendation, as this can only be done by the council itself and it may be legally required to undertake its own investigation of the matters which have been the subject of complaint first.

Legal issues

If the Labour group determines to remove an individual from outside bodies, in general terms the legal issues are as follows:

- a. *It is entirely possible that some nominations to external bodies are covered by the 1989 Act, but it would be prudent to treat them all in the same way at this time.*
- b. *Appointments to outside bodies are in the gift of, and have been determined by, the council, even though they may have been made on the nomination of the group.*
- c. *Any changes would have to be made by the full council, satisfy its standing orders, and then the council would need to satisfy itself that it had acted lawfully (see issues on natural justice, above).*
- d. *The council would have to consider how far it is reasonable to go in eliminating the particular councillor’s roles completely – there would have to be a balanced judgement reached, relating the “misdemeanour” to the action being taken.*
- e. *In addition, the council would again need to satisfy itself that it was following the rules of natural justice to avoid challenge by way of judicial review.*

The appropriate way by which the group/council will have to proceed in order to remove a councillor from an outside body is outlined below:

The chief whip's recommendation and the group's decision would need to say "and agrees to request the council's standards' committee to consider whether, in the light of particular information, it is appropriate for councillor X to remain as the council's representative on outside bodies or whether s/he should be removed or replaced." As this is a quasi-judicial committee, it would be inappropriate for the Labour group's representative(s) to be required to act in a particular way; those members should keep an open mind on the issues under consideration. Simply because those representatives would have been involved in the decision to remove the councillor from committees or outside bodies (i.e. the group decision), does not mean that they are legally prejudiced in any way and unable to take part in the standards committee. In the Labour group they were being asked to address a particular question having been presented with particular information. In the standards committee, they are being asked to address different questions and will need to retain open minds and not fetter their judgements in respect of assessing those matters.

There are political, legal and media implications of proceeding. Therefore, chief whips and Labour groups will need to give careful consideration to these matters before making recommendations or reaching decisions.

4. Withdrawal of the whip (i.e. full membership of the group):

Where it is felt that some action should be taken which might lead to withdrawal of the whip for a fixed period or indefinitely, the group whip needs to ensure that the following procedures are carried out.

At the earliest opportunity, the whip should convene a meeting of the group officers (as specified in the rules) and the relevant officers of the Local Campaign Forum/Local Government Committee (chair and secretary) and advise them:

1. briefly, of the nature of the disciplinary investigation that has taken place; this report should be confined to an outline of the complaint/incident which led to the investigation, and a report that the whip has established a prima facie case of a breach of the rules.
2. that s/he has concluded that the appropriate disciplinary action requires the withdrawal of the whip.
3. that a special meeting of the Labour group and executive of the Local Campaign Forum/Local Government Committee is being convened to determine the matter (see below).

4. that these matters are not discussed in any group or party meeting pending the outcome of the hearing, in accordance with the party's rules. This is to ensure natural justice and prevent the proceedings being prejudiced.
5. At the earliest opportunity, the whip should advise the regional, Scottish or Welsh party office of the circumstances of the investigation and proposal to convene a Clause XII meeting, as described above, so that the regional/national secretary can, if necessary, enable a party officer to attend and/or anticipate the need for requisitioning a meeting of the Regional Appeals Committee (see below).
 - a. The whip should, with the assistance of the group and Local Government Committee (LGC) secretaries, convene a special meeting of all members of the group and all members of the LGC executive committee. [Where no executive committee has been appointed it will be deemed to consist of the officers of the LGC and the elected party representatives who form the group observers - in this case all these will be entitled to vote; otherwise, group observers are not entitled to vote unless they are elected members of the LGC's executive committee. Where there is no separate LGC, it shall be the executive committee of the constituency party/ies in the local authority area].
 - b. The meeting should be convened with seven days (except in exceptional circumstances), and written notice must be sent to all who are entitled to attend with information about the business to be conducted clearly indicated. In regard to the individual(s) who the chief whip has deemed to have breached the rules then their notice(s) should be posted by special delivery to their home address(es). This is a special meeting called to make a determination on questions for which due notice has been given. Normal standing orders therefore do not apply, no quorum is required, there need be no fixed time constraints and only those who have been present throughout the discussion on an item may vote on the matter. The group chair should preside and has a responsibility to ensure that the issues are heard and dealt with properly and that the meeting is seen to be conducted in a fair and impartial manner.
 - c. The whip may report to the full group that such a meeting is to take place but there must be no discussion on the issues to be determined, at the group or at any other party meeting prior to the joint meeting that deals with the matter. This is to avoid any question of prejudice and there is a responsibility on party officers to ensure that such discussions do not occur.
 - d. The procedure to be followed is as follows:
 - i. the whip presents her/his report and recommendations which should include a proposal to withdraw the whip, either for a specified time or an unlimited time.
 - ii. if there is more than one councillor recommended for disciplinary action, the cases must be dealt with separately from this point on.

- iii. the councillor concerned should be asked if s/he wishes to comment on the whip's report at this stage (s/he will have a further opportunity later)
 - iv. members should be asked if they wish to put specific questions to the whip and s/he should be allowed to respond
 - v. the councillor who is subject to the disciplinary recommendation should then be asked to speak, either by way of rebutting the particular findings of the chief whip or in mitigation
 - vi. members should be asked if they wish to put specific questions to the councillor and s/he should be allowed to respond
 - vii. members should be permitted to comment on the whip's recommendations and to move amendments if they are seconded
 - viii. before the chair moves to a vote, first the whip and then the councillor concerned should be allowed to briefly restate their case and address any amendments (by way of mitigation if appropriate)
 - ix. all members of the group and executive present throughout the discussion (including the councillor concerned) may take part in the vote which should be by secret ballot.
 - x. Once the vote is taken any disciplinary action agreed is effective from the end of the meeting. A decision to withdraw the whip (with or without a time limit) is subject to appeal (see below) but remains in force pending that appeal being heard. A decision to impose lesser disciplinary action such as a reprimand or removal from positions within the province of the group is not subject to appeal.
 - xi. Any member of the Labour group who has had the whip removed, whether for a fixed period or indefinitely, must be informed of their right to appeal to the regional or Welsh/Scottish executive committee. Such appeal must be made in writing to the Regional Director/General Secretary at the regional office of the party within 14 days of the decision. The Regional Director/General Secretary will arrange for a panel of the regional executive to meet to hear the appeal within 14 days of receiving it.
- f. Where the whip has been withdrawn without a time limit being set, the councillor concerned shall be eligible to apply to the Labour group for re-admission after a period of six months. The Labour group will consider the application for re-admission as it sees fit and may interview the councillor concerned if they wish. The group alone will be responsible for taking a decision on a vote on the restoration of the whip, providing the conditions of membership of the group have continued to be met (registration as a member of the group, payment of party membership at the standard rate by continuous authority and payment of the subscription to the Association of Labour Councillors).

- g. Conditions of membership of the group include registration as a member of the Labour group with the chief executive of the council under the provisions of the Local Government and Housing Act. Withdrawal of the whip means that the councillor concerned cannot participate in the decision-making processes of the Labour group itself. However, it does not mean that the member concerned should cease to register as a group member as far as the council's procedures are concerned. A councillor who wishes to reapply for group membership at any stage must have maintained this registration. Clause 16.A.1(b)(iii) of the rules states "Members of the Labour group must also register as members of the Labour group under the provisions of the Local Government (Committees and Political Groups) Regulations 1990. Failure to do so within 14 days of a written request from an officer of the group shall automatically render that person outside the group for all purposes and ineligible to be or remain a party member (subject to the provisions of 6A.2 of the party's disciplinary rules)."
- h. Despite the withdrawal of the whip, the individual is still required to abide by group decisions, in accordance with the rules of the party. The individual will need to make appropriate arrangements with the whip to ensure compliance. The whip will need to monitor the individual's compliance, as any further failings may need to be investigated and acted on at the end of the period of withdrawal of the whip, or before the group considers an application to re-join (where an indefinite withdrawal period had been agreed).
- i. The whip should ensure that these requirements are brought to the attention of the individual, both verbally and in writing.

If you have any questions about procedures and practices to be followed, please contact your regional, Scottish, or Welsh office or, if necessary, the Governance and Legal Unit.