DISCIPLINARY POLICY AND PROCEDURE (MEMBERS)

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Introduction

Under the RCN’s Standing Orders, the Council may take disciplinary action against any member who is guilty of conduct unfitting of an RCN member (conduct which is referred to in this Disciplinary Policy and Procedure as “unfitting conduct”).

This Policy and Procedure stand as Regulations made by the RCN Council, in accordance with its powers under the Standing Orders, to set out what unfitting conduct covers, how allegations of unfitting conduct will be investigated and adjudicated upon, what duty there is to report it, what sanctions may be taken (including removal from RCN membership) where a member is found to be guilty of unfitting conduct, and all relevant connected matters.

The RCN aims to ensure that all members are aware of the standards of conduct and behaviour expected of them as members of the RCN, and that they meet such standards. To this end, the RCN has introduced a Dignity Charter which all members should follow at all times, and be aware that serious or repeated breach will be regarded as unfitting conduct. In addition to this, any other conduct that is in any other way unfitting of an RCN member will also be regarded as unfitting conduct.

The purpose of this Policy and Procedure is to deal with concerns specifically about a member’s conduct as an RCN member and in the context of their membership of the RCN. Issues about the competence, capability and performance of members in official RCN positions, whether elected or otherwise, will be handled under a separate policy. Where there is an overlap this policy will apply.

This Policy and Procedure applies to all RCN members whether or not they hold accredited representative and/or activist roles. It does not affect members’ statutory rights in relation to trade union membership.

The policy and procedure is not intended to deal with employment disciplinary issues. Section 5 of the Policy explains in further detail how the RCN will deal with allegations such as these, including where findings in other proceedings could also amount to unfitting conduct for RCN membership purposes.

This Disciplinary Policy and Procedure aims to ensure that members are treated fairly, promptly, impartially and consistently where there is an allegation of unfitting conduct. It is not intended to be punitive. It is intended to describe the steps to be taken to deal with each situation reasonably and, wherever appropriate, to enable informal resolution to help members to improve conduct or behaviour to reach minimum acceptable standards. Should the circumstances justify it however, the Procedure allows for more formal proceedings to be taken, and where appropriate, for disciplinary action to be taken including termination or suspension of RCN membership if unfitting conduct is found.
Specifically, the aim of this Policy and Procedure is to:

- Enable the RCN to remedy or otherwise deal with member conduct issues promptly and effectively;
- Deal with allegations of unfitting conduct lawfully, fairly and using the principles of natural justice; and
- Keep members informed of the procedures and actions they may face if they are alleged to, and/or found to fail to meet the RCN's standards of conduct.

This Policy and Procedure (these Regulations) were made by the Council on 11 July 2011, and supercede all previous disciplinary rules.
Disciplinary Policy

1.0 Principles

1.1 The RCN Dignity Charter outlines standards of conduct and behaviour that the RCN expects of all members (see Appendix 1 attached).

1.2 If a member acts in serious or repeated breach of the RCN Dignity Charter, or in any other manner that is unbecoming of an RCN member, disciplinary action may be taken.

1.3 The RCN recognises that the principles of natural justice must be followed in dealing with any allegation of unbecoming conduct against a member. Accordingly, this includes all members being:

- Kept appropriately informed of expected standards of conduct;
- Advised, in writing, of the nature and detail of any allegation of unbecoming conduct against him/her;
- Provided with a reasonable opportunity to respond to any allegation of unbecoming conduct; and
- Entitled to an unbiased hearing.

1.4 The RCN recognises that most members act in good faith. The focus will be of a corrective nature wherever appropriate, seeking to improve behaviour rather than to apportion blame or take punitive action.

1.5 Any member who is asked or required to participate in a disciplinary process (irrespective of their role within it) must make all reasonable efforts to do so and to participate fully in it. Members should be aware that failing without good reason to co-operate with the RCN in the operation of its Disciplinary Procedure may itself be viewed as unbecoming conduct.

1.6 In cases of alleged unbecoming conduct, no disciplinary action will be taken unless and until the case has been investigated thoroughly, it has been decided that there is a case to answer, and either the member has consented to a disciplinary order or the case has been properly considered by a Disciplinary Hearing Group.

1.7 The member will also have the right of appeal against any decision of a Disciplinary Hearing Group.

1.8 All investigations, disciplinary and appeal proceedings will be undertaken without unreasonable delay to avoid so far as possible long periods of uncertainty, and to minimise the anxiety of the member.

1.9 All members attending an investigation meeting, disciplinary or appeal hearing must conduct themselves at all times in a professional and
otherwise reasonable manner that enables everyone to explain their respective points of view and treat all other attendees with dignity and respect in accordance with the RCN’s Dignity Charter (see Appendix 1).

2.0 Roles and responsibilities

2.1 Chair of Council

Chair of Council is responsible to members for the appropriate implementation of this Policy and Procedure

2.2 Chief Executive & General Secretary

It is the responsibility of the Chief Executive and General Secretary, with the agreement of the Chair of Council, to:

- Acknowledge any formal complaint about an RCN member, and decide whether it falls within the scope of unfitting conduct, and whether to initiate any formal action in accordance with the RCN Disciplinary Policy and Procedure;
- Initiate the Disciplinary Procedure where he or she becomes aware of any fact or matter concerning the conduct of a member which in his or her opinion is appropriate to be dealt with under this Policy and Procedure;
- Decide whether informal resolution of the complaint is appropriate as provided for under this Policy and Procedure;
- Inform the member of an allegation when formal action is initiated under the Procedure;
- Appoint the Investigating Officer;
- Recommend to the Chair or Vice-Chair of Council whether or not to interim suspend a member from any role they may hold as an RCN office holder, accredited representative or activist (though not as an RCN member) under this Policy and Procedure;
- Refer appeals to the appropriate Hearing Group under this Policy and Procedure.

2.3 Investigating Officer

It is the responsibility of the appointed Investigating Officer to:

- Ensure a thorough investigation and to produce an investigation report, ensuring that all necessary steps are taken without any unreasonable delays;
- Present cases on behalf of the RCN before the Disciplinary Hearing Group; and
- Act on behalf of the RCN as Respondent to appeals before the Appeal Hearing Group.
2.4 **Disciplinary Hearing Group**

It is the responsibility of the Disciplinary Hearing Group:

- In accordance with the Disciplinary Policy and Procedure to consider the case before it, to decide whether or not it finds the member guilty of unfitting conduct, and where unfitting conduct is found to decide on whether and if so what disciplinary action to order.
- The period of any sanction will be in the discretion of the Disciplinary Hearing Group, subject to any restrictions imposed by trade union law and the constitution of the RCN.

2.5 **Appeal Hearing Group**

It is the responsibility of the Appeal Hearing Group:

- In accordance with the Disciplinary Policy and Procedure to consider a member’s appeal from a decision of the Disciplinary Hearing Group, and to decide whether to affirm, vary or rescind the decision.
- The period of any sanction will be in the discretion of the Appeal Hearing Group, subject to any restrictions imposed by trade union law and the constitution of the RCN.

2.6 **Governance Department**

It is the responsibility of the Director of Governance to:

- Advise the Chief Executive & General Secretary and the Chair and Vice-Chair of Council on any matters relating to the Royal Charter, Rules, Standing Orders and Regulations;
- Assist the Chief Executive & General Secretary in his/her duties as provided for in this Policy and Procedure;
- Support the disciplinary process, including actioning arrangements for suspension and taking notes at formal hearings, as required;
- Action the decision of the Disciplinary Hearing and Appeal Hearing Groups, including making arrangements for any training/development, or a member’s suspension or expulsion.
3.0 **Right to be accompanied and/or represented**

3.1 Members are entitled to be accompanied at all investigation meetings and disciplinary and appeal hearings by any person, including an RCN Representative, who agrees to undertake the role, who is not legally qualified (save in exceptional circumstances described in paragraphs 7.2.3 and 9.7.3 of the Disciplinary Procedure below), and who is not involved in the subject of the allegation.

3.2 The member may be represented by such person, although the representative will not be permitted to answer questions on behalf of the member.

3.3 Every reasonable effort will be made to accommodate the availability of the person whom the member wishes to accompany or represent him/her. However, where this causes the process to be unduly delayed, the member may be requested to seek an alternative companion or representative.

4.0 **Interim suspension from undertaking RCN office, duties or activities**

4.1 In exceptional circumstances, the Chief Executive & General Secretary may, with the agreement of the Chair of Council, at any stage suspend a member from undertaking any RCN office, duties or activities, as applicable, pending investigation and/or the outcome of a complaint under the Procedure. This does not mean that their RCN membership itself is suspended, and their continuity of membership will not be affected.

4.2 Suspension will only be imposed where it is considered necessary and appropriate, all other reasonable alternatives having been explored. Suspension should be for as short a period as is reasonably necessary and appropriate in the circumstances. It will be kept under review to ensure that it does not last longer than necessary and appropriate. Suspension in these circumstances is not a disciplinary action and does not involve any prejudgment of the issue in question.

4.3 Suspension may be necessary and appropriate:

- To enable a full and proper investigation to occur and
- Where it is considered there are risks to RCN property; or
- Where it is considered there are risks to the member and/or other parties; or
- Where it is considered that there is a serious risk to the reputation or proper operation of the RCN.
4.4 Terms of suspension:

In the event of suspension from any RCN office, duties or activities, the following terms should be observed:

4.4.1 Access to RCN facilities

The member will not be required or permitted to carry out any further RCN duties, work or activity whilst on suspension. It follows that during suspension the member will not be permitted to:

- Access RCN computer systems, including his/her RCN e-mail account, as applicable (the log in for which will be suspended by arrangement of the Governance Department who will instruct the Information Systems Department upon commencement of suspension accordingly). Appropriate steps will be taken to safeguard the interests of any member on whose behalf the suspended member is acting;
- Accrue any expenditure on behalf of the RCN;
- Use any RCN equipment such as mobile phone;
- Enter on to RCN premises for the purpose of carrying out duties or activities associated with the role from which they have been suspended.

4.4.2 Access to RCN Counselling Services

The member should be offered access to the RCN’s Counselling Services should they wish during this time.

4.5 Review and continuation of suspension

A suspension will be regularly reviewed, at least every two weeks, ensuring that the suspension period is kept to a minimum and lifting the suspension as soon as the case concludes, or if at any stage it appears appropriate for the matter to proceed under the Procedure without continued suspension. The member will be given the opportunity to submit written representations regarding the suspension prior to each review and will be informed of the outcome of each such review.

4.6 Return to duties following suspension

It will be the responsibility of the Director of Governance or another designated person to induct the member back into his/her RCN duties following a period of suspension.
5.0 Action in the event of criminal investigation, or other legal, professional or staff disciplinary proceedings

5.1 Criminal investigation or other legal proceedings

5.1.1 While the RCN does not in any case condone criminal behaviour on the part of a member, there may be circumstances where it does not amount to unfitting conduct for RCN purposes. The RCN may however, initiate formal action under its Disciplinary Procedure where it is aware that a member has been charged with, or convicted of a criminal offence(s) related or unrelated to their association with the RCN, that it is considered may bring the RCN into disrepute or otherwise be unfitting of an RCN member.

5.1.2 Where alleged unfitting conduct by an RCN member is the subject of a Police investigation or other legal process, the RCN may, depending on the circumstances, adjourn its own disciplinary process pending further developments in, or the outcome of, the Police investigation or other legal process. Alternatively, the RCN may if it considers appropriate, proceed with its own investigation and disciplinary proceedings.

5.1.3 The RCN will treat a criminal caution or conviction, or a finding in civil proceedings as conclusive evidence that the member is guilty of the conduct to which the caution, conviction or civil finding relates.

5.1.4 Where a member is an RCN officer holder and he/she is convicted of a criminal offence (excluding minor motoring offences) whether or not related to his or her association with the RCN, it is the member’s responsibility to inform the Director of Governance of the circumstances. Failure to do so may result in disciplinary action being taken.

5.2 Professional proceedings

5.2.1 The Nursing & Midwifery Council (NMC) has statutory responsibility to maintain the UK Register of nurses and midwives, and to ensure that they are properly qualified and competent to work in the UK.

5.2.2 Allegations concerning a nurse’s fitness to practise are dealt with by the NMC. A nurse whose fitness to practise is found by the NMC to be impaired, may be suspended or removed from the NMC Register preventing them for the relevant period of time from any employment that requires NMC registration. Or they may be permitted to continue to
practise but have a caution or conditions imposed on their NMC registration. The NMC may view a nurse’s fitness to practise as impaired on grounds of misconduct, lack of competence, a criminal conviction or caution, physical or mental ill health, or a finding by another regulator that their fitness to practise is impaired.

5.2.3 A member who is removed from the NMC Register will automatically cease to be a full member of the RCN.

5.2.4 If a complaint is made to the RCN on the basis of a finding by the NMC (or other relevant regulatory or professional body) that a member’s fitness to practise is impaired, or if such finding otherwise comes to the attention of the RCN, and in either case the member remains an RCN member notwithstanding the finding, the RCN may initiate formal action against the member under the RCN Disciplinary Procedure in respect of the finding if it is in relation to conduct which in the circumstances may be unfitting conduct on the part of an RCN member under this Disciplinary Policy and Procedure.

5.2.5 Where the NMC (or other relevant regulatory or professional body) is considering an allegation that an RCN member’s fitness to practise is impaired, the RCN will usually await the outcome of such other procedure before deciding how, if at all, to deal with the matter under the RCN Disciplinary Procedure.

5.2.6 The RCN will treat a finding by the NMC (or other relevant regulatory or professional body) in respect of a member’s fitness to practise as conclusive evidence that the member was (or was not) guilty of the conduct to which the finding related. It will be for the RCN to decide in accordance with its Disciplinary Procedure whether any conduct (which is taken as proven under this provision) is unfitting conduct for the purposes of RCN membership.

5.3 Staff disciplinary proceedings

5.3.1 Where there is an allegation of unfitting conduct against an RCN member who is also employed by the RCN as a member of staff, and the matter is being, or is to be, or may be considered under the RCN staff disciplinary procedure, the RCN will usually await the outcome of the staff disciplinary procedure before deciding how, if at all, to deal with the matter under the Members' Disciplinary Policy and Procedure.

5.3.2 The RCN will treat a finding under its staff disciplinary procedure as conclusive evidence that the member was (or was not) guilty of the conduct to which the finding related. It will be a matter for consideration under the membership Disciplinary Policy and Procedure whether any conduct (which is taken as proven under this provision) is unfitting conduct for the purposes of RCN membership.
6.0 Education and Training

6.1 In order to ensure that the Disciplinary Procedure operates effectively, Investigating Officers, and members of Disciplinary and Appeal Panels will be appropriately trained by RCN.

7.0 Confidentiality

7.1 The confidential nature of a disciplinary process must be respected by all involved in and/or aware of it. Any matter which is the subject of a disciplinary process, and any information relating to or obtained during that process, must not be disclosed or discussed save in so far as is reasonably necessary for the purposes of the administration, investigation, adjudication and publication of matters within this Policy and Procedure.

8.0 Record keeping

8.1 A record will be kept by the RCN Governance Department on a member's personal file of:

(i) Any matter resolved informally without taking formal action under the Disciplinary Procedure.

(ii) Any disciplinary order made (by consent or otherwise) following formal action under the Disciplinary Procedure including the date of the order, the nature of the unfitting conduct, the nature and duration of any disciplinary action taken, and if appropriate any follow-up action.

8.2 Such record is to be treated by the RCN as strictly confidential, save in so far as provided for at section 7 above.

8.3 Such record will be kept until either the time limited sanction expires or, in the absence of any such limitation, a period of 12 months, save that where a member has been removed from membership, the record will be kept indefinitely, or for a period of five years after any reinstatement of membership.

9.0 Monitoring and Reporting

9.1 Diversity and equality outcomes are measured, monitored and evaluated as standard business performance. The RCN Governance Department will monitor activity and outcomes of the Disciplinary Policy and Procedure for fairness and consistency; and assess the effectiveness of its practices in improving the behaviour of members, taking action as appropriate.
9.2 As part of the RCN performance reports, the Executive Team and RCN Council will be provided with (appropriately anonymised) information from the Governance Department monitoring process on an annual basis.

10.0 Policy Review

It is the responsibility of the Director of Governance to monitor and review this Policy and the Procedure, and to present any recommended changes, to the RCN Council.
DISCIPLINARY PROCEDURE

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Disciplinary Procedure

1.0 Complaints

1.1 A member of the RCN or any other person may make a formal complaint in writing to the RCN concerning the conduct of a member.

1.2 The Chief Executive & General Secretary (or his/her nominee) shall acknowledge a formal complaint made under section 1.1 above, if possible, within seven days of receipt.

1.3 If the Chief Executive & General Secretary (or his/her nominee) considers, with the agreement of the Chair of Council, that the complaint falls, or appears to fall, within the scope of unfitting conduct as defined at section 2 below, that it has been raised within a reasonable time from when the matter arose, and that it is appropriate for formal action to be initiated, the matter will proceed to be dealt with under step 1 of this Procedure (section 4 below).

1.4 For the avoidance of doubt, it will be at the discretion of the Chief Executive & General Secretary (or his/her nominee), with the agreement of the Chair of Council, to decide whether or not a complaint may be dealt with under this Procedure where a complainant does not consent to his/her identity being made known to the member.

1.5 The RCN can itself initiate a complaint where the Chief Executive & General Secretary becomes aware of any fact or matter concerning the conduct of a member which in his/her opinion, with the agreement of the Chair of Council, is appropriate to be dealt with under this Procedure.

2.0 Grounds for Disciplinary Action – Unfitting conduct

2.1 It shall be a ground for disciplinary action if a member is guilty of unfitting conduct. This is defined as a member having acted:

(i) In serious or repeated breach of the RCN Dignity Charter; or
(ii) In any other manner unfitting of a member of the RCN.

3.0 Informal Resolution

3.1 If it appears to the Chief Executive & General Secretary (or his/her nominee), with the agreement of the Chair of Council, that the complaint relates to a breach of the Dignity Charter which is not serious or repeated, or other conduct which may fall within the scope of unfitting conduct but does not appear at this stage to be sufficiently serious to warrant formal action under this Procedure, he/she may seek to resolve the matter informally.
3.2 In such a case, the Chief Executive & General Secretary (or his/her nominee) may at his/her discretion decide:

(i) to inform the member of the matter, advising him/her where appropriate of any steps he/she should take to rectify the situation and/or if appropriate to prevent a reoccurrence, and/or

(ii) Explore the possibility of resolving the matter by counselling, conciliation or any other appropriate means.

3.3 Where a matter is, in the opinion of the Chief Executive & General Secretary (or his/her nominee), successfully informally resolved, it is not part of the formal Disciplinary Procedure outlined below. Copies of all communications between the RCN and the member in relation to the matter will, however, be kept on the member's personal file in the RCN Governance Department and may be taken account of in future cases either in determining whether a member is guilty of unfitting conduct or as part of his/her history in determining the appropriate disciplinary sanction for unfitting conduct subject to the time limits set out in section 8 of the Policy above.

3.4 Where a matter is, in the opinion of the Chief Executive & General Secretary (or his/her nominee), not successfully informally resolved, he/she may decide, with the agreement of the Chair of Council, that it is appropriate for formal action to be initiated under this Procedure below.

4.0 **STEP 1: Initiating Formal Action**

**Informing the member**

4.1 Where a complaint has been made in accordance with section 1.0 and formal action is to be initiated, the Chief Executive & General Secretary (or his/her nominee), will inform the member concerned of the allegation(s) in writing, advising him/her that the matter has been, or will be, referred for action under step 2.

4.2 The identity of the complainant shall be made known to the member unless the Chief Executive & General Secretary, with the agreement of the Chair of Council, determines that there are compelling reasons why the complainant should not be identified, taking into account, amongst other things, the need for the member to fully understand the nature of the complaint against him/her.

4.3 The member shall also be informed in writing of his/her right to be accompanied or represented at all investigation meetings and at any disciplinary or appeal hearings as provided for at section 3 of the Policy.
4.4 Interim suspension from undertaking RCN office, duties or activities

4.4.1 In exceptional circumstances, the Chair or Vice-Chair of Council on the recommendation of the Chief Executive & General Secretary may (subject to the member’s statutory rights) at any stage and by reference to the Disciplinary Policy, suspend a member from undertaking any RCN office, duties or activities if he/she considers it necessary and appropriate pending investigation and/or the outcome of the complaint under this Procedure (see section 4.0 of the Disciplinary Policy).

4.4.2 In this event, the Chief Executive & General Secretary must as soon as practicable inform the member in writing:

- Of the office, duties or activities from which he/she is suspended, the reason and likely duration of the suspension;
- Of the terms of suspension (see section 4.1 of the RCN Disciplinary Policy);
- Of the allegation(s) and that the matter has been, or will be referred for action under step 2 of the Procedure (if such notification has not already been given under section 4.1 above);
- That the suspension will be regularly reviewed, at least every two weeks, and that the member may submit written representations regarding the suspension prior to each review;
- Of the date for the first review, inviting the member to submit written representations regarding the suspension for the purposes of the first review;
- Of the arrangements to be made to safeguard the interests of members for whom the suspended member is acting (if appropriate).

4.4.3 The Chief Executive & General Secretary must also:

- Regularly review the suspension, at least every two weeks, ensuring that the suspension period is kept to a minimum and lifting the suspension as soon as the case concludes, or if at any stage it appears appropriate for the matter to proceed under this Procedure without continued suspension;
- Inform the member in advance of each review date, inviting him/her on each occasion to submit written representations regarding the suspension;
- Inform the member in writing of the outcome of each such review.
5.0 STEP 2: Appoint Investigating Officer

5.1 Where formal action has been initiated, an Investigating Officer will be appointed who has no interest in the matter to be investigated.

5.2 The Investigating Officer should if possible be appointed within 5 working days from the date of notification to the member under section 4.1 (or 4.4.2) above. If there are problems in meeting this timescale, this should be communicated to the member concerned.

5.3 Following the appointment of the Investigating Officer, the member shall be informed of his/her identity.

5.5 If the member has genuine concerns about the objectivity or appropriateness of the appointed Investigating Officer, these should be raised prior to the commencement of the investigation wherever possible.

6.0 STEP 3: Disciplinary Investigation

6.1 Duties and Powers of the Investigating Officer

6.1.1 It is for the Investigating Officer to undertake a full and proper investigation to establish all the relevant facts so that an informed decision can be made as to whether or not there is a case to be answered.

6.1.2 In conducting the investigation, the Investigating Officer shall make such inquiries as he/she considers necessary and by whatever means he/she considers appropriate.

6.1.3 In any event, the member shall be requested to respond to the allegation(s) either in writing (within a specified period of not less than 10 working days) and/or at the discretion of the Investigating Officer at an investigation meeting.

6.1.4 The member shall be informed, upon the raising of any questions with him/her, that such questions are asked in connection with possible disciplinary proceedings.

6.1.5 Any third party from whom a statement or information is obtained should be informed that it may be made available to the member against whom the allegation(s) have been made.
6.1.6 **Investigation Meetings**

6.1.6.1 The Investigating Officer should if possible give the member at least 5 working days notice of an investigation meeting.

6.1.6.2 If the member and/or his representative is unable to attend on the proposed date, an alternative time and date may be agreed so long as in the opinion of the Investigating Officer, it does not cause unreasonable delay.

6.1.6.3 Following an investigation meeting, the member will be sent a copy of the Investigating Officer’s record of the meeting. The member will be asked to validate and sign the record of the meeting as accurate, and to return the record signed, with or without amendment, within 10 working days of the date on which it was sent. If without good reason, the Investigating Officer does not receive the record signed by the member within this timescale, he/she may proceed on the basis that the record sent to the member is an accurate record of the meeting.

6.1.6.4 Should the member fail to attend an investigation meeting and/or to provide a written response to the allegation(s), the Investigating Officer may at his/her discretion decide to complete the investigation report in the absence of an interview record and/or written response from the member if satisfied that he/she has been given a reasonable opportunity to respond but has failed without good reason to do so.

6.2 **Investigation Report**

6.2.1 The Investigating Officer shall seek to complete the investigation if possible within 28 working days of the matter being referred to him/her. In the event of any delay, the Investigating Officer should inform the Director of Governance and the Chief Executive & General Secretary, and the member should be kept informed of the revised timescales.

6.2.2 On completing the investigation, the Investigating Officer will produce a report with a recommendation of whether or not in his/her opinion there is a case to answer and what, if any, disciplinary action he/she recommends in accordance with section 7.4 below. This will be sent to the Director of Governance who, with the Chief Executive & General Secretary
and Chair (or in his/her absence, the Vice-Chair) of Council will reach one of the following decisions:

(i) That there is no case to answer, in which event the matter will proceed as set out in section 6.3 below; or
(ii) That there is a case to answer, in which event (subject to the member’s statutory rights) the matter will proceed as set out in section 6.4 below.

6.3 No case to answer

6.3.1 If it is decided under 6.2.2 (i) above that there is no case to answer, the member must be informed as soon as possible with brief written reasons for the decision.

6.3.2 Notwithstanding the decision that there is no case to answer, the Chief Executive & General Secretary may provide the member with advice as to his/her future conduct, and may recommend steps to be taken by way of informal resolution with a complainant, if appropriate.

6.3.3 The complainant (if applicable) shall also be informed of the outcome with brief written reasons.

6.3.4 There is no right to review of a decision that there is no case to answer.

6.4 Case to answer - offer of consent order

6.4.1 If it is decided under 6.2.2 (ii) above that there is a case to answer, the RCN may with the agreement of the member and without a disciplinary hearing make a disciplinary order including any one or more of the courses of disciplinary action that a Disciplinary Hearing Group may order as outlined at section 7.4 below.

6.4.2 Before making a disciplinary order under section 6.4.1 above, the member shall be provided with written detail of the case against him/her (including copies of any relevant statements or documents), and informed of the decision and any recommended disciplinary action (the proposed disciplinary order). The member shall be invited to notify the RCN of his/her written consent to the proposed disciplinary order within a fixed period of not less than 10 working days.

6.4.3 If within the period fixed, the member gives his/her written consent, the RCN shall proceed to make the disciplinary order proposed, and agreed to by the member, by consent.
6.4.4 If the member either refuses his/her consent, or does not respond within the period fixed, the case shall proceed as set out at section 6.5 below.

6.4.5 The complainant shall be informed of steps taken under this section and the outcome of such steps, with brief written reason for any disciplinary order made.

6.5 Case to answer - disciplinary hearing

6.5.1 If it is decided under 6.2.2 (ii) above that there is a case to answer, and a consent order is not made under section 6.4.3 above, the case will be referred to the Chair of the Disciplinary Committee to be dealt with under Step 4 below.

7.0 STEP 4: Disciplinary Hearing

7.1 Composition of the Disciplinary Hearing Group

7.1.1 Upon receiving a referral under section 6.5.1 above, the Chair of the Disciplinary Committee shall appoint a Disciplinary Hearing Group comprising him/herself (to act as Chair) and two members of the Disciplinary Committee at least one of whom must be a Council member.

7.1.2 Instead of appointing him/herself as a member of the Disciplinary Hearing Group, the chair of the Disciplinary Committee may appoint another member of the Disciplinary Committee in his/her place (who will also act as Chair of the Disciplinary Hearing Group), so long as at least two members of the Disciplinary Hearing Group are Council members.

7.2 The Parties

7.2.1 The Investigating Officer shall, acting on the instruction of the Director of Governance, present the case before the Disciplinary Hearing Group, and for this purpose may instruct a representative, subject to section 7.2.3 below.

7.2.2 The member shall be entitled to be represented by any person not involved in the subject of the allegation subject to section 7.2.3 below.
7.2.3 Save in the most exceptional circumstances and in the sole discretion of the Chair of the Disciplinary Hearing Group, neither party shall be entitled to be legally represented at the hearing.

7.3 Procedure of the Disciplinary Hearing Group

7.3.1 The hearing of the case shall be conducted in accordance with Appendix 2 of this Procedure except where to do so would be unjust or inconvenient when the Chair of the Disciplinary Hearing Group may modify the procedure to the extent that he/she deems necessary, provided that the result is fair to the member under complaint.

7.3.2 The proceedings before the Disciplinary Hearing Group shall be recorded and a transcript shall afterwards be provided to the member within 14 days of a written request by him/her.

7.4 Disciplinary action

7.4.1 Following a finding of unfitting conduct, any one or more of the following courses of disciplinary action may (subject to any statutory rights of the member) be ordered by the Disciplinary Hearing Group (or recommended for the purposes of a consent order under section 6.4 above) as is considered appropriate (and on such terms and conditions and for such period as is considered appropriate) having regard to the nature and seriousness of the unfitting conduct, the member’s character and past record and to any other relevant circumstances:

(i) a written warning not to repeat or engage in specified conduct; and/or
(ii) a written reprimand; and/or
(iii) a requirement for the member to give a written undertaking as to future conduct; and/or
(iv) a requirement for the member to undertake specific training and/or to report regularly to or to seek guidance from a senior colleague; and/or
(v) withdrawal of specified benefits; and/or
(vi) removal or suspension from any elected office or other position within the RCN; and/or
(vii) suspension from membership; and/or
(viii) removal from membership.

7.4.2 The Disciplinary Hearing Group may determine notwithstanding a finding that the member is guilty of unfitting conduct, that in all the circumstances, no action should be taken.
7.4.3 The Disciplinary Hearing Group may also, wherever it considers appropriate and whether or not it decides to order any disciplinary action, communicate to the member its advice as to his or her future conduct.

8.0 STEP 5: Notification of Outcome

8.1 Notification of Decision

8.1.1 The RCN shall serve on the member written notice of the decision of the Disciplinary Hearing Group with brief written reasons as promptly as is practicable after the conclusion of the hearing and whether or not the member attended the hearing.

8.1.2 If there is a finding of unfitting conduct, the notice referred to in section 8.1.1 above must include the disciplinary order made which shall:

- State the precise nature of any unfitting conduct found; and
- Specify any disciplinary action ordered and where applicable any terms and conditions, and how long such disciplinary action will last.

8.1.3 If there is a finding of unfitting conduct, the notice referred to in section 8.1.1 must also:

- Refer to any previous disciplinary orders still current;
- Inform the member of his/her right of appeal, how it should be made and to whom;
- Confirm that a copy of the notification and disciplinary order will be placed on the member’s personal file.

8.1.4 The RCN shall also inform the complainant in broad terms of the outcome of the hearing, including the terms of any disciplinary order made.
9.0 STEP 5: Right of Appeal

9.1 A member may appeal against a finding of the Disciplinary Hearing Group that he/she is guilty of unfitting conduct and/or against any disciplinary action ordered by the Disciplinary Hearing Group.

9.2 There is no right of appeal by a complainant against any other aspect of a decision by the Disciplinary Hearing Group.

9.3 Notice of Intention to Appeal

9.3.1 Notice of intention to appeal shall be lodged with the Chief Executive & General Secretary in writing within 10 working days of service of the Disciplinary Hearing Group’s decision.

9.3.2 If notice of intention to appeal is lodged within the time permitted, the order of the Disciplinary Hearing Group shall not take effect until the determination of the matter on appeal.

9.4 Grounds of Appeal

9.4.1 The member shall be permitted a further 10 working days to submit a written statement setting out the grounds upon which the appeal is brought and any facts and matters relied upon by him/her including where applicable, a description of any fresh evidence upon which the member intends to rely with an explanation of why it was previously unavailable.

9.4.2 An appeal may be made on any grounds.

9.4.3 The RCN shall inform the complainant (where applicable) where a notice of intention to appeal/grounds of appeal are lodged by the member.

9.4.4 The Director of Governance shall be provided with the member’s Notice of Intention to Appeal and any Grounds of Appeal.

9.5 Referral to the Appeals Committee

9.5.1 Following receipt of the member’s notice of intention to appeal, the Chief Executive & General Secretary shall refer the appeal to the Chair of the Appeals Committee.
9.6 Composition of the Appeal Hearing Group

9.6.1 Upon receiving a referral under section 9.3.1 above, the Chair of the Appeals Committee shall appoint an Appeal Hearing Group comprising him/herself (to act as Chair) and two members of the Appeals Committee, at least one of whom must be a Council member.

9.6.2 Instead of appointing him/herself as a member of the Appeal Hearing Group, the chair of the Appeals Committee may appoint another member of the Appeals Committee in his/her place (who will also act as Chair of the Appeal Hearing Group), so long as at least two members of the Appeal Hearing Group are Council members.

9.7 The parties on appeal

9.7.1 The member shall be the Appellant at this stage and he/she shall be entitled to be represented by any person not involved in the subject of the Appeal, subject to section 9.7.3 below.

9.7.2 The Investigating Officer shall, acting on the instruction of the Director of Governance, act as respondent to the Appeal and for this purpose may instruct a representative subject to section 9.7.3 below.

9.7.3 Save in the most exceptional circumstances and in the sole discretion of the Chair of the Appeal Hearing Group, neither party shall be entitled to be legally represented at the hearing.

9.8 Procedure before the Appeal Hearing Group

9.8.1 On an appeal, the Appeal Hearing Group shall consider the record of the hearing before the Disciplinary Hearing Group, together with the documents, statements and other evidence produced to the Disciplinary Hearing Group and may at its sole discretion re-hear any witness called before the Disciplinary Hearing Group and/or receive any fresh evidence which for good reason was previously unavailable.

9.8.2 The hearing of an appeal before the Appeal Hearing Group shall be conducted in accordance with Appendix 3 to this Procedure except where to do so would be inconvenient or unjust, when the Chair of the Appeal Hearing Group may modify the procedure to the extent that he/she deems necessary provided the result is fair to the member.
9.8.3 The proceedings before the Appeal Hearing Group shall be recorded and a transcript shall be provided thereafter to the member within 14 days of a written request by him/her.

9.9 **Powers of the Appeal Hearing Group**

9.9.1 Having considered the appeal in accordance with this Procedure, the Appeal Hearing Group may affirm, vary or rescind any finding or order of the Disciplinary Hearing Group and may substitute any other finding or order (on such terms and conditions, if any) as it considers appropriate which the Disciplinary Hearing Group might have made.

9.10 **Notification of decision by Appeal Hearing Group**

9.10.1 The RCN shall serve on the member written notice of the decision of the Appeal Hearing Group (with brief written reasons) as promptly as is practicable after the conclusion of the hearing and, whether or not the member attended the hearing.

9.10.2 The RCN shall also inform the complainant in broad terms of the outcome of the hearing including the terms of any disciplinary order made.

9.11 **Final Decision**

9.11.1 The decision of the Appeal Hearing Group will be final.

10.0 **GENERAL PROVISIONS**

10.1 **Publication of disciplinary orders**

10.1.1 Disciplinary orders shall be published as provided for in this Policy and Procedure and otherwise in such form and manner as the Chief Executive & General Secretary, with the agreement of the Chair of Council, shall deem appropriate, as follows:

- As soon as practicable where a disciplinary order has been made by consent under section 6.4.3 above or pursuant to a decision of an Appeal Hearing Group under section 9.11.1 above, or
- As soon as practicable after the expiry of the period permitted for lodging a notice of intention to appeal, where a disciplinary order is made by a Disciplinary Hearing Group under section 7 above and no notice of intention to appeal has been lodged within the permitted period.
10.2 Service of notices/documents

10.2.1 Any notice or information to be given, sent or supplied to a Member in writing under this Policy or Procedure may be given, sent or supplied in Hard Copy Form or Electronic Form provided that such notice or information may only be given, sent or supplied in Electronic Form if the Member has agreed generally or specifically that written notices and information under this Policy and Procedure may be given, sent or supplied to him/her in that manner.

10.2.2 Any notice or information sent to a Member shall be sent to the Member’s postal address as shown on the Roll or (in the case of notices or information sent by Electronic means) to an Address specified for the purpose by the Member, provided that a Member whose registered address is not within the United Kingdom and who gives to the RCN an address within the United Kingdom at which written notices or information may be given to him/her, or an Address to which notices or information may be sent by Electronic means, shall be entitled to have notices or information sent to him/her at that Address.

10.2.3 Where any notice or information is sent to a Member under this Policy or Procedure by post, service or delivery shall be deemed to be effected 48 hours after the envelope containing it was posted. In proving such service or delivery, it shall be sufficient to prove that such envelope was properly addressed and posted.

10.2.4 Where the notice or information is sent by Electronic means to an Address specified for the purpose by the Member, service or delivery shall be deemed to be effected on the same day on which it was sent. In proving such service, it shall be sufficient to prove that it was properly addressed.

10.2.5 A Member may agree with the RCN that notices or information sent to that Member in a particular way are deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

10.2.6 Where any notice or information has been sent by the RCN by Electronic Means, and the RCN receives notice that the message is undeliverable, the RCN shall send a Hard Copy of the document, information or notice to the Member’s postal address as shown on the Roll.
Appendix 1

RCN Dignity Charter

Dignity has been a core theme for the RCN for some time.

Members and staff should treat each other with dignity and respect, care and consideration, as well as valuing the rich diversity that everyone brings to the RCN.

This charter sets out the rights and responsibilities of all RCN members in relation to their interaction with each other and with RCN staff. It also includes some specific rights and responsibilities of all RCN activists – for example stewards, safety and learning representatives, branch officers, board and forum committee members – and replaces the RCN Code of Conduct.

Failure to respect this charter may lead to further sanctions under the RCN’s disciplinary policy.

RCN members have the right to:

- be communicated with in an open, honest and transparent manner
- be spoken to politely, in a courteous and respectful manner
- not be stereotyped, labelled or subjected to discrimination
- be treated equitably and fairly
- have their confidentiality respected and preserved
- have their individuality recognised and their contribution acknowledged
- be given feedback in a supportive and respectful manner
- not be attacked personally (verbally or non-verbally) or insulted
- express their views and have those views listened to.

RCN members have the responsibility to:

- communicate in an honest, polite, courteous and respectful manner
- not stereotype, label or subject people to discrimination
- value and respect other members and staff in all their diversity
- respect and preserve confidentiality
- acknowledge the contribution of others
- provide feedback in a supportive and respectful manner
- not attack anyone personally (verbally or non-verbally) or insult them
- respect and abide by organisational decisions and procedures.

In addition RCN activists have the right to:

- be empowered to make appropriate decisions in line with their responsibilities
- be supported with appropriate learning and development
- have a clearly defined role and responsibilities
- expect loyalty from the RCN
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- carry out their RCN role in an environment that is safe and supportive
- be given the opportunity to influence and contribute to the direction and development of the RCN

_and the responsibility to:

- be accountable, take responsibility for their actions and meet the obligations of their role, including developing required skills and knowledge
- be loyal and act in the best interests of the RCN, support corporate decisions and directions publicly, and respect and abide by organisational procedures
- engage with and participate in discussions and decision-making whilst considering the impact on other people and parts of the organisation; be open about their actions and decisions and about their part in reaching collective decisions
- ensure that where matters are held to be confidential, the reasons are within the RCN policy and that confidentiality is maintained
- not use their position to gain financial or other benefits, for example awards and honours, for themselves, family or friends
- declare personal interests, and not put themselves under obligations that may influence or affect their performance in the role – for example accepting gifts or hospitality that could influence their judgment
- when in a governance role, act and/or vote on the basis of their own judgment – taking into consideration members’ views
- promote and support these principles by leadership and example.
Appendix 2

Disciplinary Hearing Procedure

Notice of hearing and exchange of information

1. Following the appointment of the Disciplinary Hearing Group, the member shall be given at least 15 working days' written notice of the date, time and place of the hearing.
2. The notice referred to at section 1 above shall include:
   (i) particulars of the conduct or circumstances alleged to amount to unfitting conduct;
   (ii) a summary of the facts and matters relied upon, including copies of any written interview record, statement and/or other document that it is proposed to put before the Disciplinary Hearing Group;
   (iii) the names of any witnesses whom the Investigating Officer intends to call in person and an outline of what each witness is expected to say;
   (iv) an invitation to the member to attend the hearing and/or to submit written representations for consideration by the Disciplinary Hearing Group;
   (v) notification of the member's right to be represented at the hearing; and
   (vi) a copy of the RCN's Disciplinary Policy and Procedure
3. At least five working days prior to the date of the hearing, the member shall:
   (i) confirm whether or not he/she intends to attend the hearing and, if so, the name of any person who will be accompanying or representing him or her.
   (ii) submit:
      (a) brief particulars of any defence intended to be made;
      (b) a summary of the facts and matters that will be relied upon in that defence, including copies of any written statement and other document that he/she intends to refer to; and
      (c) the names of any witnesses whom he/she intends to call in person and an outline of what each witness is expected to say.
4. Neither party shall, without the consent of the other or the permission of the Disciplinary Hearing Group rely on any record, statement or document or call any witness other than those provided or identified under paragraphs 2 and 3 above.
Adjournment

5. At the request of either party or at his or her own volition, the Chair of the Disciplinary Hearing Group may, at any time, adjourn the hearing if satisfied that it is in the interests of justice so to do. An application for the adjournment of a hearing that has not begun may be agreed between the parties.

6. In the event that any member of the Disciplinary Hearing Group (sitting at the hearing of a case) is unwilling or unable to hear an entire case and the matter cannot be dealt with by adjournment of the hearing, then the Chair of the Disciplinary Committee shall appoint a new Disciplinary Hearing Group and the case shall be re-heard. Members of the Disciplinary Hearing Group who sat previously and were not the member unable or unwilling to continue shall be eligible to be appointed to the new Disciplinary Hearing Group.

The absence of the member

7. If at the hearing the member is not present in person or represented, the Disciplinary Hearing Group may proceed to consider the matter in the member’s absence if it is satisfied that notice was properly served upon him or her in accordance with paragraphs 1 and 2 above.

Joinder of cases

8. The Disciplinary Hearing Group may hear two or more complaints against a member at the same time.

Joinder of members

9. The Disciplinary Hearing Group may also hear complaints against two or more members at the same time if it considers it convenient and just to do so.

Proof and Evidence

10.(i) The burden of proving the alleged unfitting conduct shall lie upon the Investigating Officer.

(ii) The unfitting conduct shall be proved by the Investigating Officer on a balance of probabilities.

(iii) The Disciplinary Hearing Group shall not be bound by strict rules of evidence.

Private Hearing
11. The hearing shall be conducted in private unless the member requests otherwise save that the complainant (where applicable) shall be permitted to attend unless the Chair of the Disciplinary Hearing Group decides otherwise at his/her sole discretion.

12. For the avoidance of doubt, the Director of Governance, the Chief Executive & General Secretary of the RCN or his/her nominee and such other persons as are reasonably required by the RCN for secretarial/recording purposes may also be in attendance at the hearing.

Order of proceedings

13. The order of proceedings for the hearing, unless the Chair of the Disciplinary Hearing Group otherwise directs, will be as follows:

(i) Submissions by the Investigating Officer;

(ii) Hearing of any witnesses called by the Investigating Officer followed by cross-examination of such witnesses by the member;

(iii) Submissions by the member;

(iv) Hearing of any witnesses called by the member followed by cross-examination of such witnesses by the Investigating Officer;

(v) Closing submissions by the Investigating Officer;

(vi) Closing submissions by the member;

(vii) After retiring as necessary, the Disciplinary Hearing Group shall advise the parties whether or not it finds any allegation of unfitting conduct proven.

14. Members of the Disciplinary Hearing Group may themselves at any stage question witnesses, parties or representatives as they think fit.

Order of proceedings following a finding of unfitting conduct

15. The Investigating Officer shall, following a finding of unfitting conduct, inform the Disciplinary Hearing Group of any further circumstances known to the RCN whether favourable or adverse to the member, that might be relevant to any course of action which the Disciplinary Hearing Group might take.

16. The member shall then be entitled to address the Disciplinary Hearing Group in mitigation on the matter of disciplinary action.

Decision

17. The Disciplinary Hearing Group may, following a finding of unfitting conduct,
order any one or more courses of disciplinary action in accordance with section 7.4 of the Disciplinary Procedure.
Appendix 3

Appeal Hearing Procedure

Notification and exchange of information

1. Following the formation of an Appeal Hearing Group and receipt of the member’s grounds of appeal under section 9.4 of the Disciplinary Procedure, the Appellant shall be given at least 15 working days’ written notice of the date, time and place of the appeal hearing.

2. At least 10 working days prior to the date of the hearing, the Appellant shall:

(i) confirm whether or not he/she intends to attend the hearing and, if so, the name of any person who will be accompanying or representing him or her;

(ii) if he/she wishes to rely upon fresh evidence or to call any witness (including a witness previously called before the Disciplinary Hearing Group), submit:

(a) any such fresh evidence that he/she wishes to rely upon with an explanation as to why it was previously unavailable;

(b) the names of any witnesses whom he/she wishes to call in person, and an outline of what each witness is expected to say.

3. At least 5 working days prior to the date of the hearing, the Respondent shall provide the Appellant with any further evidence which it wishes to rely upon, together with the names of any witnesses which it wishes to call in person and an outline of what each witness is expected to say.

Adjournment

4. At the request of a party or at his or her own volition, the Chair of the Appeal Hearing Group may at any time adjourn the Appeal hearing if satisfied that it is in the interests of justice to do so. An application for the adjournment of an Appeal hearing that has not begun may be agreed between the parties.

5. In the event that any member of the Appeal Hearing Group is unwilling or unable to hear an entire appeal and the matter cannot be dealt with by adjournment of the hearing, then the Chair of the Appeals Committee shall appoint a new Appeal Hearing Group and the appeal shall be re-heard. Members of the Appeal Hearing Group who sat previously and were not the member unable or unwilling to continue shall be eligible to be appointed to the new Appeal Hearing Group.
The absence of the Appellant

6. If at the Appeal hearing, the Appellant is not present in person or represented, the Appeal Hearing Group may proceed to consider the matter in the Appellant’s absence if it is satisfied that notice was properly served upon him or her in accordance with paragraph 1 above.

Private Hearing

7. The hearing shall be conducted in private unless the Appellant requests otherwise save that the complainant (where applicable) shall be permitted to attend unless the Chair of the Appeal Hearing Group decides otherwise at his/her sole discretion.

8. For the avoidance of doubt, the Director of Governance, the Chief Executive & General Secretary of the RCN or his/her nominee and such other persons as are reasonably required by the RCN for secretarial/recording purposes may also be in attendance at the hearing.

Order of proceedings

9. The order of proceedings for the Appeal hearing, unless the Chair otherwise directs, will be as follows:

(i) The Appellant shall outline the grounds of his/her appeal, presenting (with the agreement of the Appeal Hearing Group) any fresh evidence;

(ii) Hearing of any witnesses called by the Appellant (with the agreement of the Appeal Hearing Group) followed by a cross-examination of such witnesses by the Respondent;

(iii) Response by the Respondent;

(iv) Hearing of any witnesses called by the Respondent (with the agreement of the Appeal Hearing Group) followed by a cross-examination of such witnesses by the Appellant;

(v) Closing submissions by the Appellant.

10. If the appeal is against only the disciplinary action ordered by the Disciplinary Hearing Group (but not any finding of unfitting conduct), the procedure shall be as follows:

(i) The Respondent shall outline the facts, informing the Appeal Hearing Group of any circumstances known to it, whether favourable or adverse to the Appellant, that might be relevant to any order which the Appeal Hearing Group might make;

(ii) The Appellant shall be entitled to respond in mitigation on the matter of disciplinary action.
11. Members of the Appeal Hearing Group may themselves at any stage question witnesses, parties or representatives as they think fit.

**Decision**

12. Following a decision by the Appeal Hearing Group to affirm the Disciplinary Hearing Group's finding of unfitting conduct, the procedure set out at paragraph 12 above shall apply.

13. The Appeal Hearing Group may affirm, vary or rescind any finding or order of the Disciplinary Hearing Group and may substitute any other finding or order (on such terms and conditions, if any) as it considers appropriate which the Disciplinary Hearing Group might have made.