

# Member Representation Policy

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*Nov 2019 Ver 2*



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November 2019-2016 Rev-01 02

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## BARNSELEY LOCAL GOVERNMENT BRANCH MEMBER REPRESENTATION POLICY

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## 1. PURPOSE OF POLICY

- 1.1 To establish an agreed policy for the representation and assistance of members with regards to casework that will be followed by all convenors, staff and stewards.

## 2. DEFINITIONS

- 2.1 For the purpose of the policy, 'Case Worker' means convenor, staff member or steward. 'Branch' means UNISON Barnsley Local Government Branch.

## 3. SCOPE OF REPRESENTATION

- 3.1 The branch shall seek to represent all those employed within the metropolitan borough of Barnsley in:
- Barnsley Metropolitan Borough Council and any Direct Labour Organisations or "Arm's Length" organisations
  - Further Education establishments
  - Academies, Free Schools and Trust Schools
  - Social Care
  - those areas of local government-related employment which provide services to the public, whether in the public, private or voluntary sectors of the economy.

## 4. PRINCIPLES

- 4.1 Every UNISON member has the right:
- to seek help on matters relating to their employment
  - to be treated with respect and integrity
  - to be helped by a UNISON representative who has been trained to the appropriate standard
  - to understand that no action or representation will be made on the member's behalf without that member's agreement
  - to expect confidentiality unless otherwise agreed.
- 4.2 In the workplace, every UNISON member has the right:
- to seek advice about workplace problems, and representation as appropriate
  - to receive help from UNISON to ensure their employer gives them a fair hearing.

### 4.3 Stewards and workplace representatives

Advice and representation will usually be provided by the member's elected workplace representative. It is UNISON's job to ensure that its "front line" officials are competent and confident to carry out this vital job. UNISON provides training to ensure that its representatives can carry out their legal right to represent UNISON members as Accredited Representatives, under the Employment Relations Act 1999.

- 4.4 The job of the UNISON representative is to help the member - not to act in the member's place; to empower the member to articulate their arguments; to work with the member to try to solve the problem; to give honest advice and guidance; to seek guidance when unsure how to proceed; and to represent the member on an agreed basis.

4.5 There will be occasions when members wish to complain about issues at work which UNISON cannot resolve because it is either best dealt with by collective negotiation or because it does not amount to an infringement of the member's rights.

### 4.6 If the member chooses to reject UNISON advice

Having discussed a case with their representative, a member may reject the advice given and decide to pursue a separate course of action independently, or seek help elsewhere. That is their right but in these circumstances the member should be advised of the relevant time limits to lodge a claim with the Employment Tribunal, the representative was prepared to act for them, that any legal costs will be a the member's own expense and that their independent action forfeits any further right to UNISON support in respect of this matter.

### 4.7 If the member is denied representation

This will be an exceptional step. It is for the member to decide how to proceed with the member's own case. However, if UNISON is to provide representation, then this must be on an a basis agreed between member and representative. If a member will not accept or cooperate with advice given according to this guide, then, subject to the authority of the branch, representation may be withdrawn. That is their right but in these circumstances the member should be advised of the relevant time limits to lodge a claim with the Employment Tribunal, the representative was prepared to act for them, that any legal costs will be a the member's own expense and that their independent action forfeits any further right to UNISON support in respect of this matter. Please also see Section 4.

## 5. CHECKING MEMBERSHIP

- 5.1 Before a member is provided with advice or representation, it is the responsibility of the case worker to check the membership status of the person seeking support. This should be done by checking the membership system, by contacting either the branch's administrative support, a regional member of staff, the RMS team at regional office or UNISON Direct.
- 5.2 When a request for support is received by the branch administrator, before referring the enquiry to a case worker, the administrator should ensure that the person requesting support is in current membership and that the issue for which advice/representation is requested is covered by the Four Week Rule (see Section 6).
- 5.3 If the membership is found not to be up to date or the issue does not comply with the Four Week Rule, the person making the enquiry should be informed that we are unable to represent them on the issue in question.
- 5.4 Where representation cannot be provided, confirmation of this advice can be provided in writing, on request, by the Branch Secretary.
- 5.5 A member who the branch is unable to support should be reminded that UNISON will be able to help with any new issue which occurs after the four week waiting period.

## 6. THE UNISON CASE FORM

- 6.1 Before we can give formal advice or assistance to a member on an employment matter a UNISON case form must be completed.

6.2 The UNISON case form provides a means to:

- ensure we have all the key facts and information we will need at the outset
- monitor our casework and the kind of cases being raised by our members
- look for problem areas - particular employers, departments or managers where there appear to be a concentration of problems which we may need to address separately; or where there are particular issues that keep coming up and which may point to an organising, campaigning or bargaining issue.
- ensure the member understands the obligation on them when UNISON gives assistance. Reminds the member of the need to be proactive and to provide the representative with all the relevant information to make out their case.

## 7. CASES WHERE WE CANNOT PROVIDE REPRESENTATION

7.1 There may be occasions when we cannot provide representation to a member. These occasions will be few and exceptional:

- Where the issue for which the member seeks assistance occurred or first became apparent before the member joined the Union [see also Section 6 The Four Week Rule, and the exception to the above in the case of collective equal pay claims].
- Where the member will not accept our advice.
- Where the member refuses to cooperate fully with us [for example the case worker finds that the member has not been honest and frank in telling them the facts of the case].
- The representation being sought is outside the services provided by UNISON rule.
- Where the member has also asked someone else to make representations to the employer. This is to avoid there being two representatives in a case, or, to avoid a member bringing a case to us when another representative has already made representations to the employer and possibly compromised any representations we might otherwise have made.
- A member who has instructed a private solicitor to act as representative either prior to or during Employment Tribunal proceedings cannot also request the support of a Union Solicitor. However, if a member who is represented by a private solicitor requests information from UNISON to assist with an Employment Tribunal claim, and this information is ordinarily provided to members who are represented by the Union, then this information should also be provided to the privately represented member as long as this is legally permissible and appropriate and subject to the union's obligations under data protection legislation. The branch would always seek advice from the Region in these circumstances
- A member appearing as a witness. Requests for UNISON representation for members who are called as a management witness will normally be refused. It is management's job to reassure their witness. There may be exceptional circumstances where representation may be provided. For example, a witness may be directly implicated in the issue and might want a witness to observe and record the proceedings in the event of future action against the witness; they may want to be advised of any question that might compromise the witness's own position. There may also be occasions where the witness might experience particular distress or fear reprisal, for example in a harassment or bullying case. The branch will seek the advice of the Region before agreeing to provide representation to a management witness.

- In a grievance hearing, a member who is the manager whose decision gave rise to the grievance [Managers cannot expect representation when they simply carry out their functions as a manager. However, managers who themselves have a grievance or face disciplinary proceedings are, of course, entitled to assistance on the same basis as any other member].
- In an appeal hearing, a member who has been found to have perpetrated bullying or harassment will not be entitled to UNISON assistance because such conduct, having been found to have taken place, is contrary to the conditions of behaviour set out in our Rule Book. Advice should be sought from the Region in this circumstance.

## 8. MEMBER APPEALING DECISION NOT TO ADVISE OR REPRESENT

- 8.1 If a member wishes to appeal a decision a case worker has made not to advise or represent them, they should provide details of their appeal in writing to the branch secretary either by email or letter within 10 working days of being notified of the decision. The branch secretary will review the appeal within 10 working days of receiving the details and then inform the member of their decision within a reasonable time frame. The decision of the branch secretary will be final.
- 8.2 If it is the branch secretary who has made the decision not to advise or represent the member in the first instance, the case will be reviewed by the branch chairperson. A decision by the chairperson in this scenario will be final.
- 8.3 If the member's matter is urgent then this should be drawn to the attention of the branch secretary. If the branch secretary is unable to review the appeal, for whatever reason, the review will be carried out by the branch chairperson. A decision by the chairperson in this scenario will be final.

## 9. THE FOUR WEEK RULE

- 9.1 A member is entitled to receive free advice, representation or legal assistance providing they have been in membership of the Union for at least four weeks prior to the incident or occurrence that leads to them seeking assistance from the Union. For the purpose of administering this rule, membership starts on the date details of membership are entered into the membership records system.
- 9.2 The branch will not provide representative support in respect of issues that occur within the first four weeks of membership; or which pre-date the member joining.
- 9.3 The only exception to this rule is in respect of members who join and bring an equal pay claim as part of UNISON's mass litigation process for which the NEC has waived the qualifying period. The Four Week Rule will continue to apply to these members for all other services.

## 10. SUPPORT WITH FUTURE ISSUES

- 10.1 A member is entitled to receive support and representation from the branch in relation to a new issue which occurs after the four week waiting period regardless of length of membership.

## 11. FULL MEMBERSHIP

- 11.1 Full members shall be eligible for full rights and benefits. Membership shall extend to persons who are currently:
  - On unpaid maternity, paternity, adoption, medically approved compassionate leave or other unpaid leave from their employment
  - On strike or locked out from their employment

## 12. UNEMPLOYED MEMBERSHIP

12.1 Members dismissed, made redundant, having accepted a compromise agreement or having resigned as an alternative to dismissal from employment within the meaning of Section 3 who notify the branch secretary in writing within six months of their loss of employment may achieve unemployed membership for two years from the date of dismissal, redundancy, agreement or resignation. This entitles them to retain benefits for up to two years after they leave, provided they remain unemployed. Members will pay £4 per year.

## 13. RETIRED MEMBERSHIP

13.1 A member may apply at any time for retired membership if they have had at least two years' continuous membership immediately prior to their retirement from employment within those areas of work set out in Section 3 and who are retired. Retired Members will pay £15 life membership.

13.2 Retired members who return to paid employment, which falls within the scope of Section 3 will be obliged to pay the appropriate subscription rate to remain in UNISON membership. Such members will be able to resume retired member status, when they cease paid employment.

13.3 Retired members who return to paid employment, which falls outside the scope of Section 3 will cease holding retired member status. Such members may apply to resume retired member status, when they cease paid employment.

13.4 Retired members who have an ongoing legal case will pay the retired members' subscription. Please see Section 13.

## 14. MEMBERS' BENEFITS

14.1 A member is eligible for benefits in accordance with their category of membership, provided that they paid the contributions required of them under the UNISON Rule Book.

## 15. ARREARS OF SUBSCRIPTIONS

15.1 Any person owing more than three months' subscriptions shall cease to be a member of the Union (unless the National Executive Council decides otherwise) and shall forfeit all that they have paid to the Union. Such a person may rejoin the Union. The National Executive Council shall require a person to pay outstanding subscriptions or such other amount it may determine.

## 16. PERIODICALLY CONFIRMING MEMBERSHIP STATUS

16.1 If a member lapses membership before a case is concluded then the case worker should, immediately upon discovery of the lapse in membership, inform the member that if they do not reinstate membership and pay any arrears owing then UNISON will be unable to continue with their case. Work on the member's case should cease until membership has been duly reinstated.

16.2 If a member wishes to appeal a decision of the case worker not to continue to advise or represent the member then an appeal can be made in accordance with Section 8.

## 17. ALLOCATION OF CASE WORKER AND APPROPRIATE REPRESENTATION

- 17.1 The branch has a responsibility to ensure that representation is provided to members in an orderly and democratic way by those who have been elected to do so (usually the workplace steward). The branch is also mindful of the need for appropriate emotional and moral support to be provided to the member during the case. The final decision on representation will rest with the branch.
- 17.2 The key representative for a member is the directly elected workplace steward. Whether the member first contacts the branch office or UNISON Direct, the case will first be referred to the local representative (steward). To do otherwise can compromise the steward in the eyes of fellow members or the management.
- 17.3 In workplaces where there is no steward, the case may be referred to a steward from a different department or workplace, a convenor (full-time steward) or staff member. Decisions on representation will be made by the branch secretary or, in their absence, the branch chairperson.
- 17.4 There may be occasions when the representative decides to seek advice from a more experienced representative or a member of the regional organising team. Occasionally it may be necessary to reallocate the case to another representative and the member will be informed of any such decision.
- 17.5 If a member is dissatisfied with the representation they are receiving, they are encouraged to discuss this directly with their representative in the first instance. Members are asked to be mindful that most representatives are doing a voluntary job in their own time. If the issue is not resolved, the member should contact the branch secretary.
- 17.6 In all instances, UNISON will determine the most appropriate representative for the case.

## 18. LEGAL REPRESENTATION

- 18.1 The occasions when UNISON will provide a solicitor to represent a member are specific and are covered by UNISON rule:
- personal injury cases
  - representation in criminal proceedings arising from matters in connection with a member's employment
- 18.2 On employment law matters, the first stage in any case is to raise the complaint with the employer in writing. Any case which eventually finds its way to the employment tribunal should first have been considered by the employer in a grievance or disciplinary hearing. In fact, the tribunals expect the cases they hear to have completed to any internal appeal - even though UNISON may not wait for that that happen before making an application to the tribunal because of the strict time limits for doing so.
- 18.3 The point of contact for any member on employment matters is their workplace representative. If a representative feels that they need further advice, they can obtain this from the branch secretary or regional organiser, who have access to advice from UNISON's solicitors, should this be necessary.
- 18.4 **Criminal Law advice and representaion**  
If a member is arrested or given notice to attend a police interview on a work-related matter; or in special circumstances attend an inquest on a work-related matter; they can access UNISON's criminal law scheme by contacting UNISON Direct on 0800 0857857.

18.5 In the case of non work-related criminal matters, the member will be offered 30 minutes of free legal advice from a solicitor appointed by UNISON. If the member wants a solicitor on a private basis, this may be arranged at that time.

18.6 The provision of legal advice and representation does not extend to:

- Drink driving offences
- Road traffic offences, unless the member's job is at risk.
- Assistance and representation for criminal proceedings where the member's role is solely as a witness.
- Representation is at the discretion of the NEC. The NEC can decide to refuse representation where a member is pleading guilty.

### 18.7 Personal Injury

UNISON provides free legal cover for members injured at work. This includes cases of physical injury, disease and psychological injury including stress. Successful claims will be those which are able to demonstrate that the employer (or other third party) has caused the injury through act or omission - something which the employer has either a statutory duty to do (eg keeping workplaces clean and providing and maintaining safety apparatus) or which the employer could reasonably be expected to do (eg responding to initial indications of stress).

18.8 Members can also receive legal assistance where they have suffered an assault at work to assess whether they can pursue a claim through the state Criminal Injuries Compensation Scheme.

18.9 Free legal cover is available for members and their families for accidents (including Road Traffic Accidents) outside of work. This can cover accidents abroad in certain circumstances if they can be pursued through the UK Courts. UNISON also offers a free initial legal screening service for members and their families who have been affected by medical negligence.

18.10 Access to legal services for Personal Injury can be obtained via UNISON Direct on 0800 0857857.

### 18.11 Employment Tribunals

Employment Tribunals deal with legal hearings between workers and employers to resolve disputes about employment rights. This means that disputes involving, for example, equal pay, redundancy payments, unfair dismissal, and discrimination (on grounds of race, sex, disability, age, sexual orientation and religion or belief) can be taken to an Employment Tribunal to be resolved. Employment tribunals are not as formal as court hearings, but decisions made by an Employment Tribunal are legally binding.

18.12 If you feel you have grounds to take a case to an Employment Tribunal, make sure you have contacted your UNISON representative to find out what options are available to you. Your rep will be able to advise you on trying to resolve the dispute before making an Employment Tribunal claim. It is preferable to try to resolve the issue without an Employment Tribunal claim if possible.

18.13 It is important to contact your rep quickly because there are strict time limits and procedural steps in order to bring an Employment Tribunal claim. You must normally lodge a claim with the Employment Tribunal within three months less one day of the last day of your employment or the incident you are complaining about taking place

18.14 As of 6 May 2014, it has been necessary to contact Acas and notify them of the dispute, to help see if there is a possibility of resolving the dispute without making a claim. An extension of time may be provided to try to resolve the dispute through early conciliation. You should contact your UNISON rep to find out more at the earliest opportunity.

18.15 Only issues which cannot be resolved by the branch or via the ACAS Early Conciliation Scheme will be referred to Region for a formal merits assessment, after a discussion with an Organiser.

18.16 A case will normally only be given legal assistance where it is considered by the Union Solicitors to have a reasonable prospect of success.

- 18.17 Once a decision to refer the case to the Union's Solicitors for a full merits assessment has been made, the member will be informed that the referral has happened, but is still subject to a legal assessment. Until the member has been notified that Legal Assistance has been granted they are responsible for their own claim.
- 18.18 If the Solicitors have assessed that a case has merits, they will contact the member and Organiser giving details of the next steps.
- 18.19 If the Solicitors take the view that the case has insufficient merits to justify issuing an Employment Tribunal claim, the matter will be discussed with the appropriate Organiser and/or Regional Manager who will pass on this information to the member.
- 18.20 For cases where a member instructs a private Solicitor, please see Section 4.

### 18.21 **Ongoing Legal Cases**

Retired members who have an ongoing legal case will pay the retired members' subscription.

- 18.22 Ex-members who are in employment outside of UNISON's sphere of organising must continue to pay subscription band A in accordance with UNISON's Rule K where UNISON is providing representation in an ongoing legal case. In cases where an award is gained full back subscriptions must be paid to the union at the appropriate rate.