

APPENDIX 26 – DISCIPLINARY PROCEDURE

PURPOSE OF THE PROCEDURE

In order to maintain the quality of service for members and users of NICVA and to provide for the wellbeing of staff, NICVA requires a number of systems and procedures. The disciplinary procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The disciplinary procedure is essential to assist NICVA in operating effectively and to create a fair, efficient and caring working environment. Every manager has a responsibility to maintain discipline by encouraging and ensuring that all employees perform responsibly and effectively at work.

Whilst it is necessary for managers to provide support and guidance to employees on a day to day basis, it is also important for NICVA to have a clear formal procedure to enable disciplinary action to be taken against an employee when necessary. The first aim of this procedure is to ensure consistency in the manner and circumstances in which managers may take such action. The second aim is to make clear the rights and responsibilities of managers and employees when such action is being taken. This procedure is intended to protect employees against unfair dismissal whilst enabling managers to carry out their responsibility to manage the services provided by NICVA in accordance with NICVA's Mission, Vision and Values. The procedure will apply to all employees of NICVA, whether full or part-time, permanent or temporary, with the principle of ensuring fair treatment for all.

OPERATION OF THE PROCEDURE

The disciplinary procedure is intended to be used in situations where an employee's work or conduct at work is unsatisfactory. In many instances, disciplinary matters can be dealt with on an informal basis by the line manager discussing the situation with the employee concerned and agreeing any necessary corrective action. Inevitably, there will be times when disciplinary matters need to be formalised. When such situations arise, it is of the utmost importance that the following disciplinary procedure is strictly followed. A list of circumstances where disciplinary action against an employee may be appropriate is given at the end of this Appendix. This list is not exhaustive.

An alleged disciplinary offence may be brought to a manager's notice in a number of ways. They may have witnessed the alleged offence, or a complaint may have been made by another member of staff or member/user of NICVA and its services. In all such circumstances, the alleged offence/complaint should be fully investigated in accordance with the agreed procedures and a decision taken as to whether formal disciplinary action is appropriate. During the course of the investigations, the investigating officer must not prejudice the situation and a full enquiry must be made as to the full facts of the alleged offence/complaint.

Initial Investigation of Complaint of Misconduct

As soon as a complaint or allegation of misconduct has been made against an employee, a Director or the employee's line manager should initiate an investigation into this complaint to form an initial judgement on the facts of the case. This investigation should be conducted by the Human Resources Officer who will inform the employee in writing of the nature of the complaint or allegation and the employee (with his/her representative) and any witnesses will be interviewed to gather any information pertaining to this.

Following a full investigation, the Human Resources Officer will compile a report to the Director giving full details of the investigation and statements from all parties interviewed. From this investigation the Director will make a decision as to whether disciplinary action is appropriate.

Suspension

In the event of a breach of the disciplinary rules constituting gross misconduct, the Chief Executive may take the decision to suspend the employee with or without pay during the initial period of investigation. The completion of the investigation will be followed by the immediate reinstatement of the employee, if it is decided that no disciplinary action is required, or by arrangement of a disciplinary interview to consider the case.

Support

Following an initial investigation, it may transpire that due to the extenuating circumstances of the case, disciplinary action against any individual employee would be inappropriate. In such cases, the line manager may need to provide support and guidance to the employee and as such this can be a positive means of resolving both disciplinary and grievance problems without the need to invoke formal procedures.

Formal Disciplinary Interview

If it becomes clear that formal disciplinary action is appropriate, a disciplinary interview should be arranged in line with the following procedure:

- (1) The employee will receive a formal letter requesting attendance at the disciplinary interview, clearly stating the nature of the complaint against him/her. The employee will be given five working days' notice of this interview and will be offered the opportunity to have representation either by a trade union or employee representative. The Human Resources Officer will be present as notetaker.
- (2) The Director conducting the disciplinary interview will explain to the employee (and his/her representative, if appropriate) the procedure for the interview, including:
 - (i) Introducing those present.
 - (ii) Reminding the employee of the nature of the complaint.

- (iii) Explaining that a decision on disciplinary action will be taken once all facts have been presented.
- (3) The nature of the complaint and any supporting evidence will then be outlined to the employee by the Director presenting the case. Any witnesses or other members of staff called will be interviewed independently to corroborate this information as appropriate.
- (4) The employee concerned will then be allowed to state his/her case and to call in any other members of staff or witnesses to attend the interview to substantiate this. The Director hearing the interview may ask questions of the employee or any other participant at the interview in order to arrive at the full facts of the matter.
- (5) If during the course of these discussions, any new facts emerge which cannot be fully substantiated during the interview, the Director hearing the interview will determine whether any further investigation is required and, if so, will adjourn the interview and reconvene when such investigations have been completed.
- (6) The Director will adjourn before reaching a decision on the appropriateness of disciplinary action.
- (7) It is the responsibility of the Director hearing the interview to decide the appropriate penalty. The options for disciplinary action are outlined below and the manager will take the following into account:
 - (i) The gravity of the offence.
 - (ii) The penalty applied in similar cases in the past.
 - (iii) The individual's disciplinary record.
 - (iv) Any mitigating circumstances.
 - (v) Whether the proposed penalty is reasonable in all the circumstances.
- (8) The disciplinary interview will then be reconvened to:
 - (i) Clearly inform the employee of the decision and disciplinary penalty if any.
 - (ii) Explain the employee's right of appeal and how it operates.
 - (iii) In the case of a warning, explain what improvement is expected, how long the warning will last and what the consequences of failure to improve may be.
- (9) The Director will then confirm the decision in writing to the employee. If an improved level of performance or conduct is expected over a particular timescale, the arrangements for monitoring and reviewing this should also be made clear to the employee.

Stages in the Disciplinary Procedure

Following a disciplinary interview and consideration of all the relevant facts, the following courses of action are open to the Director concerned. Depending on the seriousness of the offence, action can be taken at any of these stages at an initial disciplinary hearing:

(1) No disciplinary action

The Director considers the complaints against the employee are false or unproven or of an exceedingly minor nature and that no disciplinary action should be taken. All reference to the investigation will be removed from the employee's personnel file. The employee will receive a letter within five working days confirming that no disciplinary action has been taken. The line manager will arrange for informal support sessions where appropriate.

(2) Verbal warning

The Director considers that, either on the employee's own admission or, on account of the facts presented during the course of the investigation and disciplinary interview, the complaints against the employee are upheld but the nature of this misconduct is of a sufficiently minor nature that a verbal warning is most appropriate. The employee will receive a plan for improving their work conduct or performance. This will be communicated to the employee within five working days and all reference to the warning will be removed from the personnel file after six months, provided the employee's conduct and performance have improved. The employee will be informed of their right of appeal.

(3) Written warning

A written warning should be given if:

- (i) The employee's conduct or performance remains unsatisfactory during the period that the record of a verbal warning remains on their personnel file.
- (ii) The misconduct or poor performance of which the employee is guilty is of a more serious nature.

Such a warning will be confirmed in writing to the employee within five working days of the disciplinary interview, and will detail the complaints against the employee, the improvements required and the expected timescale. It will also indicate that further disciplinary action may be taken if the employee fails to improve his/her performance/conduct. A copy of the written warning should remain on the employee's file but will be disregarded for disciplinary purposes after twelve months, subject to satisfactory conduct/performance during this time. The employee will be informed of his/her right of appeal.

(4) Final written warning

A final written warning may be given to an employee who persists with conduct or performance for which they have previously been given a written warning or for conduct of a more serious nature regardless of whether previous warnings have been issued. A final written warning should be confirmed in writing to the employee within five working days of the disciplinary interview. This must detail the complaint and the improvements in performance/conduct required and advise the employee that if such improvement is not forthcoming, further disciplinary action, including dismissal, may take place. A copy of this warning will remain on the employee's file but will normally be disregarded for disciplinary purposes after two years. The employee will be informed of their right of appeal.

(5) Dismissal

If all previous warnings produce no improvement in an employee's conduct/performance, the decision may be taken to dismiss the employee. The decision to dismiss an employee rests ultimately with the Chief Executive who will ensure that the full circumstances of the case are investigated by the Human Resources Officer.

Within five working days following a disciplinary interview at which a decision to dismiss an employee has been taken, the employee should receive a letter confirming the reasons for the dismissal, the effective date of the dismissal and the employee's right of appeal. Employees may receive either notice in accordance with their contract of employment or, if more appropriate, payment in lieu of notice.

Summary Dismissal

Where a disciplinary hearing finds that an employee has committed an act of gross misconduct (Appendix 28), they may be dismissed by the Chief Executive without notice. The employee will be informed of their right of appeal.

Appeals

At any stage in the disciplinary process an employee may appeal against any of the above disciplinary decisions. If an employee wishes to exercise the right of appeal, they must do so in writing within five working days of receiving confirmation of disciplinary action. At stages one, two and three this would be to the Chief Executive and thereafter to the Resources Committee.

On no occasion will an appeal be heard by the original disciplining Director. In a form similar to the original disciplinary interview, the Director, employee's line manager and the employee (and/or representative) will present their version of the facts and each may call witnesses to substantiate their case. The Human Resources Officer will be present as notetaker.

The employee (and/or representative) should be asked to state why he/she is appealing against the disciplinary penalty. The Chief Executive/Committee hearing the appeal may ask questions of the Director, employee's line manager or the employee or any

witness in order to arrive at a full understanding of the facts of the matter. If any further evidence concerning the employee's conduct/performance has arisen in the period between the original interview and the appeal, it can only be considered at the appeal hearing if it is relevant to the original complaint(s).

The disciplinary penalty originally imposed will be reviewed by the Chief Executive/Committee hearing the appeal but may not be increased.

Where an employee successfully appeals against dismissal, they should be reinstated to their original (or at least comparable) position within the organisation. If the original disciplinary action is upheld following an appeal, the Director/Committee hearing the appeal must inform the appellant of their decision within five working days of the appeal hearing.