

NORTHERN IRELAND PUBLIC SERVICE ALLIANCE

GUIDANCE ON PROCEDURES FOR DISCIPLINING NIPSA MEMBERS

1. From 1 July 1992 the Industrial Relations (NI) Order 1992 reduced NIPSA powers to discipline its members. Branches must therefore ensure that the provisions of this Order are complied with. Guidance is given below.
2. This guidance is concerned solely with situations where the disciplinary action is initiated by a branch.
3. It is of the utmost importance that the disciplinary rules are followed scrupulously. Trade union rights have not been easily won and the trade union movement has fought vigorously over the years to defend them in the face of attacks, as in the case of GCHQ. Because we treasure trade union rights, denying them in whole or in part to any member is a most serious step. For this reason alone, it is essential that the rules are adhered to closely. Moreover in cases where disciplinary action is thoroughly deserved for outrageous behaviour, it may have to be declared null and void if the procedures have not been properly followed.

Role of General Meeting

4. A branch has powers to discipline members, subject to the Industrial Relations (NI) Order 1992.

Role of Branch Committee

5. If a suggestion arises that disciplinary action should be taken against a member, the matter should be referred to the Branch Committee. At this stage the Branch Committee's only function is to try and establish whether or not there are reasonable grounds for believing that a union disciplinary offence may have been committed and to decide what charge should be put to the member concerned. It is **not** for the Branch Committee to decide whether or not a member is guilty of a disciplinary offence as that can only be decided by a **general** meeting to which **all** members of the branch are invited. The function of the Branch Committee is to make preliminary enquiries of a fact finding nature to see if there **appear to be** reasonable grounds for a case against the member. Disciplinary action should not normally be considered if **more than 6 months have elapsed since the alleged offence took place**. It should also be remembered that if the General Council has already dealt with an offence, then the branch cannot discipline the member for the same offence.

Grounds for Disciplinary Action

6. The grounds which justify disciplinary action are threefold but a member also has the right under the Industrial Relations (NI) Order 1992 not to be 'unjustifiably disciplined'. Guidance on this is given in paragraphs 10 and 11 below.
7. The first ground for disciplinary action is where a member fails to conform to the rules of the union.
8. The second ground for disciplinary action is where a member acts deliberately in a manner inimical to the interests of NIPSA. It must be stressed that the action must be deliberate and not unintentional. "Inimical to the interests of NIPSA" is normally interpreted as being damaging to the interests of members as determined by the General Council, Executive Committee, conference, etc.
9. The third ground for disciplinary action is unfair discrimination by a member against another person. This has been specifically incorporated into our rules at the suggestion of the Irish Congress of Trade Unions. It means that disciplinary action can be taken against a member who discriminates against or intimidates another person, including other members and members of the public, because of that person's:-
 - (a) religious belief,
 - (b) political opinion,
 - (c) sex,
 - (d) age,
 - (e) marital status,
 - (f) disability,
 - (g) ethnic or national origins,
 - (h) colour,
 - (i) race, or
 - (j) sexual orientation.

Action before General Meeting

10. Under Article 34 of the 1992 Industrial Relations

Order a member has the right not to be unjustifiably disciplined by NIPSA. Unjustifiable disciplinary action is action taken for reasons connected with industrial action. Examples are disciplinary action taken:-

- (a) because a member failed to take part in or support a strike or other industrial action; or
- (b) because a member indicated opposition to or lack of support for a strike or industrial action; or
- (c) because a member is **believed** to have been engaged in conduct set out at (a) and (b) above.

11. The examples given in the preceding paragraph are by no means exhaustive but they should cover most of the circumstances which branches are likely to encounter. The strike or industrial action referred to in the preceding paragraph covers not only action by NIPSA but also by other unions. A member cannot therefore be disciplined because s/he failed to take action in support of industrial action by another union or expressed opposition to such action. If a branch is in any doubt about the application of this paragraph and paragraph 10 above, the branch secretary should contact the NIPSA Headquarters official for his or her branch.

12. If a Branch Committee comes to the conclusion that there appears to be a case to be answered it should formulate the charge to be put to the member. This must state precisely what the member is accused of and must not be in general terms, which would make it difficult for the member to prepare his or her response. All members, irrespective of grade, group, etc must be treated even-handedly.

13. Once a charge in writing has been formulated it should be put to the member concerned and s/he should be given at least 10 days to prepare a response if s/he so wishes. This letter should also deal with the points covered in paragraph 15 below. At the same time or at a later date, all members of the branch should receive at least 10 days notice of the date, time and place of the general meeting at which the disciplinary cases are to be considered. The notice for this meeting must include the names of those being threatened with disciplinary action and indicate clearly that the meeting will be deciding whether or not to take disciplinary action.

14. Members against whom disciplinary action is being considered should receive individual written notice of the meeting, but other members may be informed by way of notice boards, circulars, etc, provided reasonable steps are taken to ensure that all members will receive at least 10 days notice of the meeting.

15. A member against whom disciplinary action is being considered has the opportunity of stating his or her case in writing and orally. A written case may be submitted at any time up to and including the general meeting. If it is submitted in advance, the Branch Committee can, with the agreement of the member concerned, circulate it to all members, if it so wishes.

16. In advance of the general meeting of the branch, the Branch Committee should meet to decide:-

- (a) the precise terms of the disciplinary offence which in its opinion the member has committed;
- (b) the penalty that it considers appropriate;
- (c) on the wording of the proposal which is to be put to the general meeting and which reflects the Committee's views on (a) and (b) above; and
- (d) which members of the Branch Committee should propose and second the motion referred to at (c) above.

Penalties

17. With regard to 16(b) the penalties that can be imposed by the branch are set out below and that branches **cannot** add other penalties:-

- (a) A member can be removed from any office that s/he may be holding, but this cannot include an office for which the rules on removal of the occupant are contained in the NIPSA Rule Book, eg membership of an Executive Committee. The removal cannot be for an indefinite period. The period of removal must start from a date not earlier than the date of the general meeting and must end on a specific date.
- (b) A member can be debarred from holding any office in future, but the debarment cannot be for an indefinite period. Once again the period of debarment must start from a date not earlier than the date of the general meeting and end on a specific date
- (c) A member can be debarred from enjoying certain benefits, rights or privileges of membership, but the member cannot be debarred from **all** benefits, rights and privileges. For example a member might be debarred from the benefits of NIPSA legal schemes or the right to be represented by NIPSA in a situation where s/he is aggrieved over the treatment that s/he is receiving from

his or her employer. Again debarment from any benefit must be for a specified period of time starting not earlier than the date of the general meeting.

- (d) A member can be totally expelled from membership for an indefinite period of time, but from a date not earlier than the date of the general meeting.

- 18. In deciding which of the penalties set out in paragraph 17 to advocate at the general meeting, the Branch Committee must consider carefully the nature of the offence. Any penalty must be commensurate with the gravity of the offence committed. For example in the case of a member who has been charged with a disciplinary offence for the first time, it would not normally be justifiable to impose the same penalty as for a member who has repeatedly broken union discipline. It **must be emphasised** that expulsion from membership should be imposed only in the most grave circumstances. Suspension from membership is not a penalty that is available in disciplinary cases.

Debate at General Meeting

- 19. With regard to 16(d) the Branch Chairperson should not be involved in proposing or seconding the motion on disciplinary action.
- 20. At the general meeting, immediately after the motion on disciplinary action has been proposed, seconded and the speeches of the proposer and seconder have been concluded, the member being threatened with disciplinary action should be invited to speak. This right to speak exists regardless of whether or not s/he has made a written submission, but if the member chooses not to exercise the right to speak his or her wishes should be respected. The proposal should then be

open to any member to debate. Throughout the debate the Branch Chairperson should as usual act in an impartial manner. At the conclusion of the debate the Branch Chairperson should invite the member under threat of discipline to reply to any points made in the debate and then invite the member of the Branch Committee who proposed the disciplinary action to exercise his or her right of reply. As soon as this right of reply has been exercised or waived, the vote should be taken and the result declared.

Action after General Meeting

- 21. If disciplinary action is decided upon the member must be notified **no later than one month** after the general meeting of the full details of the action in writing by the Branch Secretary, regardless of whether or not s/he was at the branch general meeting. The letter must also inform the member that s/he can appeal against the action to the General Council, but s/he must give notice both to the branch and to the General Secretary that s/he is exercising this right of appeal within one month of receiving the letter. It should also be explained that the General Council can extend this time limit when it considers that the circumstances justify it.
- 22. At the same time as the branch notifies the member of the disciplinary action, it must also notify the General Secretary. In many cases this can best be done by copying the letter to the member to the General Secretary with an appropriate covering note.
- 23. Once an appeal is lodged, the branch and the member will be advised by the General Secretary on the procedure which will be followed in dealing with the appeal, but the disciplinary action comes into effect on the date specified by the branch even though an appeal has been lodged.