

# **Non-Academic Misconduct Policy and Procedure**

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# **Non-Academic Misconduct Policy and Procedure**

## **1. Introduction**

- 1.1 The NIoT is committed to providing an environment that affirms the right of all members of the NIoT's community to be treated with dignity and respect. As a supportive community, the NIoT expects students to adhere to its rules and regulations, to show respect for persons and property and to behave in a way that does not interfere with the normal operations of the NIoT.
- 1.2 Where there is a reason to believe that the behaviour of a student falls below the expected standard and/or where rules and regulations have been broken, the Non-Academic Misconduct Procedure will be instigated.

## **2. Purpose and Scope**

- 2.1 The purpose of this Policy is to set out how the NIoT will investigate and respond to concerns regarding a student's non-academic conduct.
- 2.2 This Policy applies to an individual who is registered as a trainee or apprentice trainee of the NIoT (collectively referred to in this procedure as "student" or "students").
- 2.3 The Policy does not apply to allegations of academic misconduct (for example, plagiarism). It also does not apply to issues related to Fitness to Practise or Study. The NIoT has separate policies to cover these.
- 2.4 Where the alleged misconduct relates to academic matters, the NIoT would investigate these concerns in line with its Academic Misconduct Policy.
- 2.5 If a concern is raised which leads to professional suitability or conduct concerns, the NIoT will usually follow its Fitness to Practise Policy and Procedure to investigate, consider and determine the outcome rather than following separate Fitness to

Practise and Non-Academic Misconduct procedures. However, the NIoT reserves the right to vary the process followed, as appropriate.

2.6 There may be instances where a student states that the behaviour giving rise to a misconduct concern is related to their long-term medical/mental health condition or disability. The NIoT may consider whether to proceed with misconduct proceedings or refer the student to the Fitness to Study Policy and Procedure.

2.7 The NIoT's jurisdiction under this Policy is not limited to misconduct which occurs on its own premises. In establishing whether misconduct occurring outside of its own premises should be investigated, the NIoT will first determine if the behaviour has affected the NIoT, a student or employee of the NIoT, any visitor or employee studying at the NIoT or affects a member of the public and this would affect the NIoT's reputation in the wider community.

### **3. General Principles**

3.1 The NIoT will ensure that all cases are investigated thoroughly, promptly and with due regard to the confidentiality of all parties.

3.2 The NIoT abides by the principles of natural justice. This means that the NIoT will ensure that: a student is made fully aware of the nature of any allegation made against them, there are provided with the opportunity to reply to an allegation, where a panel hearing is required they will have a fair and unbiased hearing and that they will have the right to appeal against any outcome or penalty.

3.3 This Policy does not attempt to replace the law. The NIoT reserves the right to refer matters to the police where appropriate.

3.4 Where non-academic misconduct has occurred, the intention will be to focus on a corrective response rather than one which is solely punitive.

Where a 'supporter' is referenced within the procedure this is defined as a member of staff of the NIoT, a Tutor, a member of student support, a trade union representative, a

friend or family member of the student or a registered student of the NIOT. The supporter's role is to observe and provide moral support. They cannot ask questions or speak on the student's behalf.

- 3.5 Where a student is known to have a disability, the NIOT will make reasonable adjustments to its procedures where this is necessary with a view to avoiding any material disadvantage.
- 3.6 The NIOT will observe data protection principles and the relevant legislation relating to data protection in the handling of cases of non-academic misconduct.
- 3.7 Any reference to working days within this Policy will not include national public holidays or NIOT closure days.
- 3.8 Where possible and practical, students will be given the opportunity to attend misconduct meetings to defend themselves in person or by virtual means e.g. via Teams or Zoom. However, the NIOT reserves the right to proceed with any investigative meeting or misconduct hearing in the absence of a student, subject to the student having been properly notified of the date and time of the hearing, or in cases where criminal proceedings do not allow the student to attend in person. The NIOT will ensure that the student is given appropriate opportunity to make a written representation when they cannot attend in person. Failure to attend a meeting or to submit representations would not invalidate proceedings, and a case may be heard in a student's absence where reasonable attempts to engage them with the misconduct process may have been made.
- 3.9 The NIOT reserves the right not to proceed with any investigation into an alleged breach if it is considered that there are insufficient grounds or evidence to do so.
- 3.10 The non-academic disciplinary procedures are intended to address misconduct by students rather than to resolve disputes between individuals.
- 3.11 Where a concern is raised that relates to Harassment and Sexual misconduct this will usually be considered under Level Two or Level Three of this policy or the associated 'staff disciplinary' policy depending on the nature of the incident which is reported to the NIOT.

3.12 Misconduct offences which are deemed to be serious in nature as outlined in this Policy may be referred to a Student Misconduct Panel.

## **4. Non-Academic Misconduct Offences**

4.1 In general terms, misconduct under this Policy are actions which cause:

- actual or potential distress or harm to others;
- actions which cause actual or potential damage to property of others;
- actions which disrupt the normal operations, and/or safe use of, the NIoT including where applicable, reputational damage to the NIoT; and,
- actions which impede or interfere with the pursuance of work/ study of NIoT members, or impact on normal operations of the NIoT.

4.2 Examples of misconduct include (but are not limited to) the following:

- a) violent, indecent, disorderly, threatening, or discriminatory behaviour or language;
- b) action likely to cause injury or impair safety;
- c) behaviour likely to cause fear, distress or harm to others;
- d) behaviour which may also constitute a criminal offence (criminal offences under this Policy are those which would have been required to be disclosed on admission to the Institute or where they would make the student ineligible to continue on their programme);
- e) harassment and sexual misconduct (including sexual assault, sexual violence and sexual harassment) as outlined in the harassment and sexual misconduct policy;
- f) publishing of any matter (verbal, written or other) which is threatening, abusive or insulting or constitutes harassment or makes others fear violence. This includes the misuse of social media and other online content;

- g) internet access abuse, such as visiting inappropriate websites, uploading/downloading inappropriate content, which may bring the NIoT into disrepute or constitute a criminal offence;
- h) anti-social behaviour which brings the NIoT into disrepute;
- i) damage to the NIoT's (or any relevant partner or placement provider of the NIoT) property or abuse of its facilities;
- j) behaviour which breaches NIoT policies, including rules on health and safety, freedom of speech, and equality and diversity;
- k) bullying or intimidation;
- l) harassment or discrimination against any student, member of staff or visitor to the NIoT on the grounds of protected characteristics;
- m) theft, misappropriation, misuse, fraud, deceit, deception, or dishonesty;
- n) repeated or serious failure(s) to follow NIoT regulations or instructions;
- o) conduct which, by whatever means, interferes with the normal operation of the NIoT's business or which is likely to bring the NIoT into disrepute;
- p) supplying the NIoT with forged, falsified or fraudulent documentation, and other forms of deception that are intended to gain an advantage; and,
- q) failure to comply with a previously imposed disciplinary penalty.

## **5. Harassment and sexual misconduct**

5.1 The NIoT has a duty to make a significant and credible difference in protecting students from harassment and sexual misconduct and reducing the likelihood of it taking place. The NIoT recognises that incidents of harassment and sexual misconduct may occur within its community and will not tolerate students engaging in behaviours which include forms of unwanted sexual contact, coercive and controlling behaviour, stalking and conduct that is likely to violate a trainee's dignity, or that creates an intimidating, hostile, degrading, humiliating or offensive environment. If you have experienced

behaviour of this kind the details of how to report this and the NIoT's definitions of Harassment and Sexual Misconduct are outlined in the Harassment and Sexual Misconduct Policy. Reports of Harassment and Sexual Misconduct by students will be considered under this policy in conjunction with the Harassment and Sexual Misconduct Policy. Full details on how to report a concern can be found at the NIoT ['Make a report'](#) webpage.

## **6. Levels of Misconduct Offences**

6.1 The NIoT has three levels for managing alleged student misconduct. These levels are as follows:

- Level One: Local Resolution
- Level Two: Disciplinary Action
- Level Three: Student Misconduct Panel Hearing

6.2 Misconduct at Level One is usually defined as an offence or issue which is less serious in nature and where the offence is a contained incident.

Examples of misconduct which will usually be considered at this level include (but are not limited to):

- behaviour which breaches rules on health and safety;
- anti-social behaviour; and,
- minor misuse of social media and other online content.

6.3 Misconduct at Level Two is usually defined as an offence or issue which is serious in nature but where the offence is a contained incident. Other offences considered at this level may also be persistent incidents of misconduct at Level One.

Examples of misconduct which will usually be considered at this level include (but are not limited to):

- repeated failure(s) to follow NIoT regulations or instructions;



- bullying, harassment or intimidation;
- publishing of any matter (verbal, written or other) which is threatening, abusive or insulting or constitutes harassment or makes others fear violence. This includes the misuse of social media and other online content;
- damage to the NIoT's (or any relevant partner or placement provider of the NIoT) property or abuse of its facilities;
- acts which bring or threaten to bring the NIoT's reputation into disrepute; and,
- persistent failure to comply with sanctions imposed at Level One of this procedure.

6.4 Misconduct at Level Three is usually defined as an offence or issue which is serious in nature and/or persistent serious incidents of misconduct. These offenses will be considered at a formal Student Misconduct Panel.

Examples of misconduct which will usually be considered at this level include (but are not limited to):

- sexual misconduct, including sexual violence and abuse;
- serious sexual harassment;
- harassment or discrimination against any student, member of staff or visitor to the NIoT on the grounds of protected characteristics;
- the committal or suspected committal of a criminal offence; and,
- persistent failure to comply with sanctions imposed under Level Two of this procedure.

## **7. Penalties and Sanctions**

7.1 Where the NIoT has sufficient evidence to establish, on the reasonable balance of probabilities, that misconduct has occurred, it will usually determine an appropriate sanction for the student(s) involved.

7.2 In determining the penalty and sanction to be imposed, the circumstances and

context of each case will be carefully considered.

7.3 The following table (Sanctions by Level) provides a framework for staff investigating reports of misconduct at each Level and highlights typical sanctions which could be applied at each level where misconduct is proven. The table is intended to be illustrative and not exhaustive, and the NIoT anticipates that there will be circumstances when alternative sanctions may be appropriate. The most serious sanctions can only be imposed following a Student Misconduct Panel at the appropriate level.

#### 7.4 Sanctions by Level

<b>Level One: Local Resolution</b>
<p>The NIoT will seek to address the incident or issue as quickly as possible with decisions taken at this level.</p> <p>Typical sanctions or penalties may include:</p> <ul style="list-style-type: none"> <li>• Verbal warning from a senior member of NIoT staff</li> <li>• A formal written warning</li> <li>• A requirement for a formal apology</li> <li>• Other such action appropriate to the circumstances</li> </ul>

<p><b>Level Two: Disciplinary Action</b></p> <p>The NIoT, following a full investigation of the misconduct, will provide the findings to the Director of Registry Services (or appropriate nominee) to determine a penalty or sanctions.</p> <p>Typical sanctions or penalties may include:</p> <ul style="list-style-type: none"> <li>• Any sanction at Level One</li> <li>• Referral to the Police or other external authority</li> <li>• Restitution of any damage caused.</li> <li>• Exclusion from specified NIoT facilities or activities for a specified period of time (no longer than one term)</li> </ul>
<p><b>Level Three: Student Misconduct Panel Hearing</b></p> <p>The NIoT, following a full investigation of the misconduct and consideration by the Student Misconduct Panel, will determine a penalty or sanctions.</p> <p>Typical sanctions or penalties may include:</p> <ul style="list-style-type: none"> <li>• Any sanction at Level One and/or Level Two</li> <li>• Suspension from the NIoT, and/or exclusion from parts of a NIoT or other NIoT delivery location, for a given period of time</li> <li>• Permanent expulsion from the NIoT</li> </ul>

## 8. Procedure for Non-Academic Misconduct

### Level One: Local Resolution

8.1 Anyone with a concern about a potential breach of discipline may find it useful to first raise the matter informally with a member of NIoT staff in the interests of pursuing a swift resolution.

- 8.2 If the informal process is not appropriate or does not resolve the matter, any allegation of non-academic misconduct should be sent to the Director of Registry Services by email to: [registry@niot.org.uk](mailto:registry@niot.org.uk)
- 8.3 On receipt of an allegation of misconduct the Director of Registry Services (or their nominee) will review the information and determine if the incident can be classified as a Level One offence.
- 8.4 If the Director of Registry Services (or their nominee) determines that this can be considered at Level One, they will appoint a staff member as a 'responsible person' to investigate the matter. This staff member will normally be a Head of Faculty, Head of Programme or an NIOT staff member in a management position.
- 8.5 The responsible person will gather relevant evidence. They will also meet with the student alleged to have committed the misconduct offence. The student alleged to have committed the offence will be given at least five working days' notice of the date and time of the meeting, details of the nature of the incident, a copy of this procedure and be informed of who will be present at the meeting. They can be supported at the meeting by a supporter (as defined in section 3.5 above).
- 8.6 The purpose of the meeting is to hear from the student their response to the allegations. The responsible person will determine whether, on the balance of probabilities, the alleged misconduct is founded and, if so, decide upon an appropriate sanction. Possible sanctions at Level One are detailed in section 7.4 above.
- 8.7 The responsible person will provide the Director of Registry Services (or their nominee) with a written outcome of the investigation and the Director of Registry Services (or their nominee) will normally notify the student within five working days of the meeting of the responsible persons' decision, with reasons, and any actions to be taken. The student will be informed of the procedure to appeal against the decision and any sanction.

- 8.8 If the case is proven, the outcome will be recorded on the student's record but will be removed after the completion of the student's programme provided that there are no further instances of misconduct.
- 8.9 If the student is found guilty of misconduct on a subsequent occasion, a previous formal warning (and any other previous penalty) can be taken into account when deciding on the Level under which the misconduct will be investigated and any sanction imposed.
- 8.10 If the student is not satisfied with the outcome of the Level One procedure they may submit an appeal as set out in Section 10 below.
- 8.11 Where a student denies an allegation made against them, or where it is felt that the matter is of such seriousness that it should be dealt with at a higher level, the responsible person will explain in writing the grounds for this and refer to the Director of Registry Services (or their nominee) for consideration at Level Two/Level Three of the misconduct procedure.

## **9. Level Two and Level Three**

### **Level Two: Disciplinary Action**

- 9.1 On receipt of an allegation of misconduct, if the Director of Registry Services (or their nominee) deems it to be serious or persistent misconduct at Level Two or Level Three, they will appoint an Investigating Officer. This staff member will be an NIoT employee who is in a senior leadership position.
- 9.2 The Investigating Officer will arrange for an investigation into the allegation(s) of misconduct to take place and a report to be written. The person who has been alleged to have committed the misconduct will receive information about the allegations made against them, how long the investigation is likely to take and the procedure which will be followed in dealing with the allegation(s).
- 9.3 The Investigating Officer will not have had any prior involvement with the matter.

9.4 The Investigating Officer will review the evidence and make any further enquiries they deem necessary, including meeting with the person who reported the alleged misconduct, where appropriate.

9.5 As part of any investigation, the Investigating Officer will:

- review any action already taken under Level One;
- ask for the individual who reported the misconduct to provide a written statement and any evidence of the allegations, including identifying witnesses and be invited to attend a meeting with the Investigating Officer;
- gather evidence from other sources as appropriate, for instance relevant information from NIoT staff, postings on social media, etc;
- inform the student accused of the misconduct of the allegations and the supporting evidence in writing and invite them to attend a meeting with the Investigating Officer to gather facts about the alleged misconduct.

9.6 The person alleged to have committed the offence will normally be invited to attend a meeting with the Investigating Officer to allow them to explain their version of events and put forward any evidence they wish to provide. The student may bring a supporter (as defined in section 3.5 above) to this meeting. If the student does not attend, the Investigating Officer may still make a decision on whether misconduct took place and may recommend a penalty within their report.

9.7 The Investigating Officer will create a formal record of any meetings that take place with the person alleged to have committed the offence, any witnesses or the individual who reported the misconduct.

9.8 Following the investigation, the Investigating Officer will provide a report for the Director of Registry Services (or their nominee) to review. The report should be provided within 10 working days of the conclusion of the investigation. The report and evidence will also be shared with the person alleged to have committed the misconduct. This report will include recommendations to the Director of Registry Services.

9.9 The recommendations should outline whether the Investigating Officer considers that the matter should be concluded at Level Two under the Policy and the possible sanctions or should be escalated to Level Three.

9.10 The Director of Registry Services (or their nominee) will consider the report, evidence and recommendations. They may decide to meet the individual accused of the misconduct to explore further matters raised in the investigation and may seek additional advice. They will determine whether the matter can be concluded at Level Two or needs to be considered at Level Three.

9.11 If the matter can be concluded at Level Two, the Director of Registry Services may:

- dismiss the allegation;
- find that misconduct did occur, but take no further action;
- decide to issue a further warning to the student; or,
- find that misconduct did occur and impose an appropriate sanction (possible sanctions at Level Two are detailed in section 7.4 above).

9.12 The Director of Registry Services (or their nominee) will normally notify the individual accused of the misconduct of the outcome within five working days of the investigation report being provided to them, with reasons, and any actions to be taken. The student will be informed of the procedure to appeal against the decision.

9.13 If the case is proven, the outcome will be recorded on the student's record but will be removed after the completion of the student's programme provided that there are no further instances of misconduct.

### **Level Three: Student Misconduct Panel**

9.14 The NIoT Student Misconduct Panel has a responsibility for considering a matter that cannot be concluded appropriately at Level Two or allegations of serious

misconduct referred to it by the Director of Registry Services. It will normally aim to hear such a case within 20 working days of notification.

9.15 The Student Misconduct Panel is convened by the Director of Registry Services

9.16 The membership of the Student Misconduct Panel is as follows:

- the Executive Director of Programmes (Chair); and,
- two members of NIoT staff, at the invitation of the Chair, who are members of a recognised sub-committee of the NIoT's Academic Board.

9.17 A member of Registry or Faculty staff will attend the meeting of the Panel to take notes.

9.18 Panel members will be independent and impartial.

#### **Student Misconduct Panel – proceedings**

9.19 Students subject to a hearing by the Student Misconduct Panel under this Policy, will be notified in writing of the following:

- a clear description of the nature of the misconduct against them; if the matter applies to harassment or sexual misconduct, they will receive a copy of the formal reporting form with the contact details of the reporting party fully redacted and any evidence.
- the time, date and place fixed for the meeting which they are expected to attend (they will normally be given no less than ten working days' notice of the meeting);
- the right to be accompanied by a supporter;
- the right to call witnesses on their behalf, to question these and other witnesses and to submit documentary evidence. Advance notification of witnesses attending any meeting must be made to the Director of Registry Services and any evidence provided must be submitted by the deadlines outlined in the correspondence sent to the student; and,



the content of any documentation which the Panel intends to refer to or make use of during the meeting.

9.20 The Investigating Officer who undertook the investigation will normally present the case to the Student Misconduct Panel. The Director of Registry Services (or their nominee) will ensure that the information collected during the investigation is made available to the Panel members and the student, at least five working days prior to the hearing.

9.21 The student accused of misconduct may provide a written statement and evidence in response to the allegations to the Director of Registry Services at least four working days prior to the hearing. The Director of Registry Services (or their nominee) will arrange for this information to be provided to the Panel.

9.22 Notice of any witnesses to be called by the student and/or the Investigating Officer at the hearing must be given in writing to the Director of Registry Services at least three working days in advance of the date of the hearing, together with a written statement of the contribution that each witness is expected to make. The Director of Registry Services (or their nominee) will arrange for this information to be provided to the Panel.

9.23 If a student chooses, without good reason, not to present a response to the allegations for consideration by the Panel and/or not to attend a Student Misconduct Panel, the Panel may decide to continue with the hearing and to reach a finding in their absence.

9.24 The Student Misconduct Panel determines its findings and reaches a decision in the matter. It may make one of the following decisions:

- the allegation of misconduct is unfounded;
- the allegation of misconduct is unfounded, however an alternative charge of misconduct is founded;
- the allegation of misconduct is founded but to take no further action;

- the allegation of misconduct is founded and to impose an appropriate sanction;  
or
- the allegation of misconduct is founded and to recommend that the student be suspended, excluded or expelled.

9.25 Possible sanctions at Level Three are detailed in paragraph 7 above.

9.26 The Director of Registry Services (or their nominee) will normally notify the student within five working days of the Student Misconduct Panel of the decision, with reasons, and any actions to be taken. The student will be informed of the procedure to appeal against the decision.

9.27 The NIoT may notify any external organisations of any investigation and/or outcome where it has an obligation to do so, such as Student Finance England or the DBS.

9.28 If the case is proven, the outcome will be recorded on the student's record.

## 10. **Appeals**

10.1 Following a finding of misconduct, the student will have the right of appeal against both the finding and any penalty imposed by the NIoT as a consequence on one or more of the following grounds:

- procedural irregularity or administrative error;
- availability of new evidence which the student was unable, for valid reasons, to provide earlier in the process
- the perceived disproportionate/unfair nature of the imposed penalty.

10.2 The student must submit their appeal in writing, stating the grounds for the appeal, no later than ten days after they receive the formal written outcome of any stage.

- 10.3 Appeals (except those against a penalty of expulsion) will be heard by a member of the NIoT Academic Board (or appropriate nominee) who will be nominated as the “Appeal Reviewer”. This individual will not have been involved previously in the non-academic misconduct process against the student.
- 10.4 Appeals against expulsion from the NIoT will be reviewed by the Chair of the Academic Board (or their nominee) and they will be nominated as the “Appeal Reviewer”, provided that they have not been involved previously in the particular non-academic misconduct process against the student.
- 10.5 In making the decision the Appeal Reviewer will:
- a) review the procedures followed;
  - b) establish whether any new evidence has been presented in the appeal that could not have reasonably been expected to be presented earlier in the process
  - c) review the penalty imposed.
- 10.6 The Appeal Reviewer will first review whether they believe the grounds for appeal are satisfied, if they do not believe they have been satisfied they will reject the request for an appeal. The decision of the Appeal Reviewer is final and a decision letter and a ‘Completion of Procedures’ letter will be issued at this point.
- 10.7 If the Appeal Reviewer believes the appeal is eligible they will review and either reject or uphold the appeal. The student will be notified by the Director of Registry Services of the decision within 10 working days. The decision of the Appeal Reviewer is final and a decision letter and a ‘Completion of Procedures’ letter will be issued.
- 10.8 The Appeal Review may recommend referral of the case back for consideration at an earlier Level or by a newly constituted Student Misconduct Panel.

## **11. The Office of the Independent Adjudicator (OIA)**

11.1 The outcome of the appeal is final and you will be issued with a Completion of Procedures Letter as outlined in Section 10 enabling you to submit a complaint to the Office of the Independent Adjudicator (OIA).

11.2 The OIA provides a free and independent scheme for the review of student complaints. Upon receipt of a Completion of Procedures Letter, you can make an application to the OIA to review your complaint within 12 months of the date of the letter. More information about the OIA can be accessed at <http://www.oiahe.org.uk/>.