



## Student Non-Academic Misconduct Policy and Procedures

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# Student Non-Academic Misconduct Policy and Procedures

## 1 Introduction

1.1 The following Schools are Schools of the Conservatoire for Dance and Drama which is a Higher Education Institution and subscriber to the Office of the Independent Adjudicator (OIA):

- Bristol Old Vic Theatre School
- Central School of Ballet
- London Contemporary Dance School
- National Centre for Circus Arts
- Northern School of Contemporary Dance
- Rambert School of Ballet and Contemporary Dance

1.2 Students on credit-bearing Higher Education courses are registered with the School<sup>1</sup>, and the Conservatoire. Where a decision is made under this policy that the student status of a student on a credit-bearing Higher Education programme should be terminated, as set out in the School's student terms and conditions, this shall result in the termination of the student's contract and registration with the School. Termination of student registration with the School in these circumstances shall also result in termination of registration with the validating university (where applicable) and the Conservatoire.

1.3 All Schools of the Conservatoire seek to maintain an environment which is safe and conducive for all members, whether students or staff, and which supports the wellbeing of all such individuals, as well as fostering the professional development of all trainees. Each School therefore expects all students to read and be familiar with the Policy, and maintain good conduct at all times whilst on School premises, or engaged in any programme-related activities, including in external environments and outside performances. Students must comply with instructions given by the School. These rules apply during and outside term-time, throughout the whole of the student's registration at the School and the Conservatoire, and the School's jurisdiction under this policy and procedures is not limited to its own premises.

1.4 This policy and procedures (the 'Policy') shall apply to all students (individually and collectively to any group of students) registered for a programme of study who are registered students of both their School and the Conservatoire for Dance and Drama ('CDD' or 'the Conservatoire'), irrespective of their mode or place of study. This policy and procedures shall apply at all times during the student's registration with the School and the Conservatoire and are not restricted to conduct or other issues arising during term time or on the School premises, or in respect of the School itself or the School-related activities, including CDD-related activities.

1.5 This Policy sets out general definitions of non-academic misconduct, including the breach of any School Student Code of Conduct. It sets out the procedures by which concerns relating to these matters will normally be considered and the actions that may be taken. It has been drafted in accordance with the UUK's Guidance<sup>2</sup> for Higher Education Institutions on How to Handle Alleged Student Misconduct Which

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<sup>1</sup> Students of Bristol Old Vic Theatre School are also registered students of the University of the West of England (which is the validating institution for awards offered through the school)

<sup>2</sup> [UUK Guidance for HEIs Student Misconduct](#)

May Also Constitute a Criminal Offence, and the OIA's Good Practice Framework for Handling Student Complaints and Academic Appeals<sup>3</sup>.

- 1.6 The Conservatoire and its Schools recognise that many concerns regarding student conduct can and should, where appropriate, be dealt with informally by members of staff. This Policy sets out the formal processes by which matters of non-academic misconduct which cannot be dealt with informally will normally be investigated and appropriate outcomes determined.
- 1.7 As registered students of the Conservatoire, the Conservatoire expects the same standard of behaviour as the School with regard to activities or facilities provided by, or associated with, the Conservatoire. Students should refer to the Conservatoire Events Policy<sup>4</sup> and such other policies which may from time to time be in force, for information and guidance on their roles and responsibilities at Conservatoire events, including expectations of conduct. Students may be subject to action and/or penalty taken by the student's School under this Policy where the Conservatoire's policies are infringed.

## **2 Scope and Definitions of Student Misconduct**

- 2.1 This sub-section of these procedures sets out key definitions relating to student non-academic misconduct. Non-academic misconduct may relate to any other aspect of a student's conduct which is relevant to his or her relationship with the School and/or the Conservatoire.
- 2.2 There is a distinction between non-academic matters (for example, misconduct involving damage to the School or CDD'S property or reputation) and academic matters (for example, allegations of plagiarism). Academic matters in relation to misconduct are subject to the Academic Misconduct Policy<sup>5,6</sup>.
- 2.3 In the event that a concern may relate to both the academic and non-academic conduct of a student, the student's School Principal or their nominee, in consultation with the validating university and CDD as appropriate, shall determine the appropriate procedure or procedures for its investigation and consideration. In some cases, it may be necessary for separate procedures to be followed simultaneously in handling allegations relating to both academic and non-academic misconduct regarding the same student.
- 2.4 Misconduct may also include the contravention of expected standards of professionalism in the performing arts, as set out in the Schools' Student Codes of Conduct.
- 2.5 Where a student appears to demonstrate misconduct such as is described in this policy whilst undertaking School and/or Conservatoire activities off-campus, the matter, including any resulting reports and/or supporting evidence, will be referred to the School (see 'Preliminary Enquiry').

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<sup>3</sup> <http://www.oiahe.org.uk/media/96361/oia-good-practice-framework.pdf>

<sup>4</sup> <http://www.cdd.ac.uk/about-us/how-we-work/resources-and-policies/>

<sup>5</sup> <https://www.kent.ac.uk/ai/academicpolicies.html>

<sup>6</sup> <http://www1.uwe.ac.uk/about/departmentsandservices/professionalservices/academic/services/regulationsandquality/regulationsandprocedures.aspx>

### **Non-academic misconduct definitions**

2.6 In general terms, the Conservatoire and Schools define student non-academic misconduct in the following ways:

- **Physical misconduct;**
- **Sexual misconduct;**
- **Harassment/Abusive behaviour/Related behaviours;**
- **Damage to property;**
- **Unauthorised taking or use of property;**
- **Causing a health and/or safety concern;**
- **Operational obstruction** (improper interference, in the broadest sense, with the proper functioning or activities of the School/Conservatoire, and/or with those who work or study in the School/Conservatoire);
- **Reputational damage** (action which damages, or brings the School and/or Conservatoire into disrepute);
- **Action which deviates from accepted institutional, professional, academic or ethical standards.**

**(See also 'Misconduct which is also a criminal offence' 2.20-2.24.)**

2.7 Students are subject to all their School's rules, policies and procedures and the information contained in the School's handbooks from time to time in force, including but not limited to those policies listed in section 2.9 of this Policy. Infringements of such policies or rules may render the student liable to action and/or penalty under this Policy. In appropriate cases, students may also be liable to action and/or penalty set down elsewhere in the School and the Conservatoire policies. Students are required to familiarise themselves with this Policy and its procedures, and allied regulations, policies and procedures. The following Conservatoire policies either apply to, or are linked with, this Policy and procedures, and should be read in conjunction with them:

- Conservatoire Events Policy
- External Speakers Policy
- Code of Practice on Freedom of Speech

All of the above policies can be found at [www.cdd.ac.uk](http://www.cdd.ac.uk).

2.8 The following is a non-exhaustive list of examples of 'non-academic' misconduct which would fall under one or more of the definitions above. Where explanations are included to illustrate the definition, these are not exhaustive. In the definitions below, the term 'Conservatoire' is used to mean collectively any School of the Conservatoire and Shared Services.

2.9 No student shall engage in conduct either on or off School premises which:

- a) is in breach of any rule, regulation, code of conduct/practice or policy which the Schools make for their students from time to time, or which are established by the Conservatoire and the validating university which are applicable to students' studies at the Schools. Examples of such policies include, but are not limited to, the following:

- Student Codes of Conduct

- School Attendance Policy
  - Emergency Powers of Exclusion or Suspension of a Student
  - Support Through Studies Policy
  - IT Policy
  - Policy on Sexual Misconduct, Harassment and Related Behaviours
  - Criminal Records Policy
  - Student Complaints Procedure.
- b) constitutes sexual misconduct, harassment or related behaviours as defined in the Conservatoire Policy on Sexual Misconduct, Harassment and Related Behaviours;
- c) causes physical harm, or is intended to cause physical harm, to another individual or individuals;
- d) causes psychological harm or distress, or is intended to cause psychological harm or distress to another individual or individuals;
- e) threatens, harasses, intimidates, discriminates, abuses or constitutes an assault or attempted assault of any kind (including sexual harassment and sexual assault) on another member, or employee, or student of the Schools or Conservatoire, or a visitor to the Schools or Conservatoire;
- f) constitutes hostile, threatening or intimidating behaviour (including inappropriate language, and repeatedly contacting another person by phone, email, text or on social networking sites against the wishes of the recipient of the contact);
- g) prevents, or is intended to prevent, any person exercising or intending to exercise his or her right to freedom of speech or freedom of belief within the law on School or Conservatoire premises;
- h) constitutes acts, omissions or statements intended to deceive the Conservatoire and/or its Schools;
- i) causes damage to School and/or Conservatoire property, or the property of students, employees or visitors to the School and/or Conservatoire;
- j) misuses, wilfully damages, defaces, steals or converts to improper use of property of the School or Conservatoire (including IT, specialist and non-specialist equipment);
- k) constitutes taking property belonging to another individual without permission;
- l) does not follow safe practice or is otherwise in breach of the School's health and safety policy, or other Conservatoire health and safety policy;
- m) constitutes anti-social behaviour, including but not limited to anti-social behaviour as a result of intoxication through alcohol or drugs;
- n) involves the unlawful possession, use or supply of drugs or weapons;

- o) is at variance with appropriate standards of conduct or published codes governing conduct whilst engaged in professional practice or training or employment, or whilst on placement forming part of his/her programme of study;
- p) constitutes unauthorised entry onto School and/or Conservatoire property;
- q) disrupts, obstructs or interferes with the activities of the Schools and/or the Conservatoire (including training, administrative or social activities) on School and/or Conservatoire premises or elsewhere, or any attempt to disrupt, obstruct or interfere in this regard;
- r) disrupts, obstructs or interferes with the functions, duties or activities of any student or employee of the Schools and/or Conservatoire, or any visitor to the Schools and/or Conservatoire, or any attempt to disrupt, obstruct or interfere in this regard;
- s) causes damage, or could cause damage, to the reputation of the School and/or the Conservatoire;
- t) failure to disclose relevant criminal convictions or, where directed to do so, cautions or other warnings or sanctions imposed by the police or other law enforcement agencies, in accordance with the relevant School policies and guidance, including criminal convictions obtained subsequent to registering with the School.

2.10 Any reported/alleged behaviour such as is described above will be investigated in accordance with this Policy and procedures, to determine whether misconduct has occurred, (and any appropriate resulting action by the School subject to whether the misconduct is deemed to be 'minor' or 'major'<sup>7</sup>). This also includes:

- Misconduct committed by any means or medium including via the internet (including via social media);
- Any offence against the Criminal Law committed by a student whilst on the School premises or whilst engaged in School/programme-related activity.

2.11 The internal disciplinary process is a civil matter. It is based upon an allegation that a student has breached the School's Policy and Rules. The allegation has to be proven 'on the balance of probabilities'<sup>8</sup>, and the most serious sanction that can be applied is permanent expulsion from the School and the Conservatoire.

2.12 The criminal process is an external procedure and deals with allegations that a student has committed a criminal act. The allegation has to be proven in external courts 'beyond reasonable doubt' and the most serious sanction that can be applied is imprisonment. The School or Conservatoire cannot make a finding of a criminal offence, however it can consider whether a breach of discipline appears to have occurred and, if so, refer the matter for consideration under this Policy.

### **Professional Conduct**

2.13 All students in the Conservatoire Schools embark on a course to train to a professional standard in their given discipline. Professional conduct is concerned with the standards of behaviour, which may include

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<sup>7</sup> See 'Suspected Misconduct and/or Professional Conduct Concerns: Preliminary Enquiry'

<sup>8</sup> See also 'Burden of proof'.

standards of attendance, required to be attained and demonstrated by an individual at any given stage in order to practise safely and effectively in their respective profession. The School makes a distinction between academic and professional competence on the one hand, and professional conduct on the other. Competence (both academic and professional) is a matter for the normal assessment system of the programme, overseen by the Board of Examiners. Expectations regarding a student's professional conduct are set out in each School's Student Code of Conduct and may be subject to action under this Policy.

#### **Misconduct relating to admissions**

- 2.14 Registered students who are alleged to have gained or facilitated admission to the School by making false or misleading or incomplete statements or representations or producing falsified documents as applicants shall normally be subject to investigation and action under these procedures. This shall include any student found to have concealed or misrepresented offences, or to have deliberately provided misleading, incomplete or inaccurate information to the Disclosure and Barring Service (DBS).
- 2.15 Where an applicant to the School (who is not a registered student) is suspected to have made false or misleading or incomplete statements or representations, or produced falsified documents, either in pursuit of an offer of a place, or as a means of having gained, or facilitating an offer of a place to the School, such cases will be handled under the procedures as outlined in the School Admissions Policy and, where applicable, the Criminal Records policy.

#### **Misconduct which is also a criminal offence**

- 2.16 Where the alleged misconduct could also constitute an offence under the Criminal Law, special provisions will apply and the School's own misconduct investigations or proceedings may be delayed until such time as the police and/or courts have completed their investigations and proceedings. In such circumstances, the Principal of the School will determine whether:
- any action under this Policy and procedures should commence or proceed, including consideration by the Convictions Consideration Panel<sup>9</sup> (see Criminal Records Policy), or
  - whether the matter should be held in abeyance pending the completion of police and/or court investigations and proceedings, or
  - whether any action already underway under this Policy and procedures should be deferred/suspended, and subsequently reviewed.
- 2.17 In determining whether to commence or proceed with any action or process under this Policy, the School and Conservatoire are not bound by the outcome of any police or criminal investigation or prosecution.
- 2.18 Where a current registered student obtains a criminal conviction, the matter will normally be immediately referred to the Convictions Consideration Panel for consideration under its procedures<sup>10</sup>, unless in the view of the School there is justifiable cause not to refer this matter immediately or to follow an alternative process (eg Support Through Studies).
- 2.19 Where a student is the subject of a criminal investigation, the School will not take any internal disciplinary action against the student in relation to the matter which is the subject of the criminal

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<sup>9</sup> See Criminal Records Policy Appendix 2

<sup>10</sup> See Criminal Records Policy and Procedures



investigation. However, the School may take any action deemed necessary for safeguarding, as outlined above (2.13). The School may also commence disciplinary action in relation to any matter which is not part of the criminal investigation (e.g. drug use).

- 2.20 In exceptional circumstances, the Principal of the School will refer concerns to the police where they consider it appropriate (e.g. where there is a perceived legitimate risk), or where the School is legally obliged to do so, and will co-operate with the police in their investigation of an alleged breach of the law or of any matter that may involve a student of the School. Where a student alleges they are the victim of a crime to the School, only in exceptional circumstances will the alleged crime be reported to the Police contrary to the wishes of the victim.

#### **Absence and withdrawal/non-engagement relating to this process**

- 2.21 None of the proceedings outlined in this Policy will be invalidated or postponed by reason of the absence of the student who is required to attend a Preliminary Enquiry interview or a Misconduct Panel hearing, or an Misconduct Appeal hearing, provided that the student has been given written notice of the interview or hearing within the timescale laid down in this Policy, and provided that those conducting the hearing believe that sufficient and reasonable evidence and representations are before it. In the event that a student has indicated they will attend but then cannot do so for good reason (eg ill-health, bereavement) an adjournment would generally be considered.
- 2.22 The School may commence or proceed with any action or process under this Policy in the absence of the student, if the student withdraws from the School and/or if the student does not engage with the process. Where there is good cause to do so, the School may place the consideration of a case in abeyance at any stage.

#### **Misconduct and School Rules, Regulations and Obligations**

- 2.23 Nothing in this Policy shall prevent the Schools of the Conservatoire making local rules of conduct relating to particular services, facilities or areas of the School, or regarding student attendance. Use of these regulations for the investigation of misconduct does not preclude the use of local rules associated with conduct relating to academic or non-academic services, facilities or areas.
- 2.24 In the operation of the processes set out in this Policy the School will remain mindful of its legal obligations, including its duty of care and its obligations under the Equality Act 2010 which include, where appropriate, the duty to make reasonable adjustments.

### **3 Definitions and Policies**

#### **Presumption of Innocence**

- 3.1 In all processes under this Policy, a student will be presumed to be innocent of the allegation of misconduct, until the contrary is proved on the balance of probabilities.

#### **Burden of proof**

- 3.2 In all processes under this Policy, the burden of proof which applies to all decisions reached is the balance of probabilities. The definition of the balance of probabilities is that, based on the evidence, more likely than not there is a 51% chance or more that the alleged events occurred.

### **Legal context**

3.3 In all processes under this Policy, the Schools and Conservatoire will act in accordance with the provisions of the Human Rights Act 1998, the Data Protection Act 1998, the Equality Act 2010 and other relevant legislation, and from 25 May 2018, the General Data Protection Regulations (GDPR).

### **Anonymous allegations**

3.4 The Conservatoire and its Schools will not normally take action in response to anonymous allegations of misconduct, except where they are satisfied that just cause and/or reasonable grounds exist to do so.

### **Data processing, confidentiality, and record keeping**

3.5 In line with the provisions in the Data Protection Act 1998 and from May 2018 the General Data Protection Regulation (GDPR), the School may share information regarding a misconduct case with the Conservatoire or the validating university, as necessary, to ensure fair and proper process in the case, and to monitor or enhance this Policy and procedures or the student experience more generally. Where necessary, this may include sharing personal and sensitive/special data regarding individual students. All such information will be treated confidentially by all parties and in line with the School Data Processing Statement and Conservatoire Data Processing Statement<sup>11</sup>. If you have any questions or concerns regarding confidentiality and this procedure you should contact your School Data Protection Officer.

3.6 In accordance with the Conservatoire's duties under the General Data Protection Regulations (2018) and the Data Protection Act (2018) and in keeping with OIA recommendations, records will be retained for a minimum of 15 months and for no longer than is reasonably necessary (i.e. no longer than 6 years after the final action on the student's case, at which point the individual student file will be destroyed). Some deviation from this schedule can be expected for cases which, in the judgement of the School and/or Shared Services, are unique or complex and therefore require shorter or longer record retention periods.

3.7 All misconduct proceedings, including Preliminary Enquiry interviews, Misconduct Panel hearings and Misconduct Appeals Panel hearings, will be held in private.

3.8 Where partnership arrangements with other organisations are in place for the delivery of learning opportunities to students, any variations to the policies or procedures set out in this Policy shall be set out in the relevant guidance to students.

3.9 The Conservatoire School Principals may delegate their powers under this Policy to a nominee, providing always that any person to whom these powers may be delegated will be in a position to act and be seen to act impartially in respect of the particular student case. Where reference is made under this Policy and procedures to the Principal of a School, such references include the Principal's nominee, nominated by the Principal to act on their behalf in matters of student misconduct.

3.10 In operating any of the processes or procedures under this Policy, any Member School of the Conservatoire may as necessary involve members of staff from the central office of the Conservatoire to support those processes, and/or for procedural advice and guidance. This may mean that an officer

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<sup>11</sup> The Conservatoire Data Processing Statement can be found at <http://www.cdd.ac.uk/policies/student-related-policies/>

of the Conservatoire from the central office may as necessary fulfil a procedural role where normally the policy indicates this will be a member of School staff.

- 3.11 The Conservatoire and its Member Schools hold procedural integrity and fairness at the heart of all our policies. In order to avoid any potential conflicts of interest (e.g where procedural independence may be compromised), and/or where specific expertise is required, staff from the central office of the Conservatoire may also as necessary operate procedures on behalf of a Member School, at the request of the School Principal or their nominee. No proceedings under this Policy shall therefore be invalidated by virtue of the involvement of an officer of the Conservatoire.
- 3.12 Where it has good cause<sup>12</sup> to do so, in accordance with the General Data Protection Regulations 2018 (GDPR) the School will disclose the outcomes of misconduct processes and/or information about students ascertained in the course of such processes to relevant parties, such as the police. There may also be circumstances in which disclosures may have to be made to other parties, such as placement providers and/or employers or sponsors. Other than the student, it is at the School Principal's discretion as to who else needs to be informed about any matter relating to the process and outcomes.

#### **Emergency powers**

- 3.13 Nothing in this Policy will prevent the Principal from taking action under their emergency powers (see Emergency powers of Exclusion or Suspension of a student).
- 3.14 Where allegations of suspected misconduct are received, the Preliminary Enquiry Officer will determine the most appropriate action to be taken, including referring a case under other procedures and regulations as appropriate, as per Section 4.12d ).

#### **Complaints regarding the Non-Academic Misconduct procedures**

- 3.15 All students have the right of appeal against decisions reached under these procedures. This Policy sets out the specific avenue/right of appeal at the relevant stage, at each stage of the process<sup>13</sup>.

#### **Impact of misconduct procedures on release of results**

- 3.16 Where allegations of non-academic misconduct against a student are being considered under this process, and consideration has not yet been concluded at the time the Board of Examiners meets to consider results at the end of a year (including an appeal process against a Misconduct Panel decision), the student will normally be allowed to academically progress through their programme of study. Academic progression in such circumstances however is no indication of a School's view of alleged misconduct, nor is it an indication of any right to continue with a programme of study subsequent to a decision of the Misconduct Panel or Misconduct Appeals Panel, and it will not be taken into account as a mitigating factor by either Panel.
- 3.17 If a student is in their final year of study, and an investigation into non-academic misconduct is still continuing when the Board of Examiners considers their marks for an assessment or award (including an appeal process against a Misconduct Panel decision), the marks/final result may be released but the

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<sup>12</sup> Good cause would be, for example, where an outcome of a misconduct process might necessitate in referral of a matter to the police. This may not necessarily be at the end of all misconduct procedures, but might, for example, be the result of an allegation of misconduct which may constitute a criminal offence and which it is necessary to refer to the police ahead of any formal School misconduct procedures being able to be concluded.

<sup>13</sup> See the following sections of this Policy: **Preliminary Enquiry; Misconduct Panel; Misconduct Appeals Panel; OIA.**

student may not normally graduate until the conclusion of the misconduct case. This could mean that a student may not graduate with their peers.

### **Timescales**

3.18 A summary of the timescales and according responsibilities of this Policy is provided in Appendix 4. Except where otherwise stated, all timescales in this Policy constitute calendar days, excluding bank holidays and statutory closure days.

### **Failure to comply with decisions**

3.19 Failure by a student without good reason, in the view of the School, to:

- comply with any decision reached or order issued by the School and/or Conservatoire under this Policy (including by the Preliminary Enquiry Officer, a Misconduct Panel, a Misconduct Appeals Panel, the School Principal, or CEO of the Conservatoire), or
- to comply with the terms of a temporary exclusion or suspension made under this Policy and procedures,

may itself constitute an act of misconduct and may therefore be dealt with either in accordance with this Policy, or under the Support Through Studies procedures, as deemed appropriate by the School Principal or their nominee.

## **4 Misconduct Procedures**

### ***Informal procedures***

4.1 The Conservatoire and its Schools recognise that many concerns regarding student conduct can and should where appropriate be dealt with informally by members of staff. However, matters of concern which cannot be dealt with informally will normally be investigated and appropriate outcomes determined as per the following procedures.

### ***Informal warnings***

4.2 Under these informal procedures a member of staff authorised by the Principal may issue an informal warning regarding their future conduct to a student and/or indicate targets for improvement and/or a timeframe within which a further informal review of the student's conduct shall be conducted. As appropriate, the member of staff shall advise the student that failure to meet expectations may result in referral for further consideration under the formal procedures. Examples of misconduct which may lead directly to a verbal warning may include:

- failure to conform to attendance requirements
- inappropriate behaviour in class
- use of inappropriate clothing and/or equipment for class work

4.3 A note of such informal warnings will be held centrally by the School together with a record of acknowledgement by the student. Where a student wishes to complain about or disagrees with an informal warning, they have the right to request that a Preliminary Enquiry be conducted under the formal procedures.

### ***Formal procedures***

4.4 These regulations comprise a **3-stage procedure**:

- a) **Preliminary Enquiry** (for handling initial allegations/reports of suspected misconduct, determining and referring such allegations under the appropriate policy, procedures and regulations, and determining appropriate action for instances of minor misconduct)
- b) **Misconduct Panel** (for determining whether there is sufficient evidence to substantiate and uphold a charge of major misconduct, on the balance of probabilities, and/or determining whether the student is deemed unsuitable to continue training for the profession)
- c) **Misconduct Appeals Panel** (to review the case in accordance with the grounds outlined in Section 7 of this Policy, in order to determine whether the decisions and findings of the Misconduct Panel should stand)

### **Suspected Misconduct: Preliminary Enquiry**

4.5 Where any member of staff, examiner, placement provider, any student of the School, member of the School or Conservatoire staff (either from one of the Schools or from Shared Services), or member of the public believes that misconduct may have been committed by a student, they should notify the School as soon as possible. Where any other person involved in a Conservatoire activity or programme-related activity believes that misconduct may have been committed by a student in the course of that activity, they should also notify the School as soon as possible.

### **Preliminary Enquiry Procedure**

4.6 A member of staff appointed by the School Principal will act as the Preliminary Enquiry Officer. On receipt of an allegation of suspected misconduct, the Preliminary Enquiry Officer will conduct a Preliminary Enquiry. The Preliminary Enquiry Officer has the discretion as to whether to investigate anonymous allegations and/or to request that an oral report regarding an allegation is put into writing.

4.7 The Preliminary Enquiry Officer may make some initial enquiries before determining whether to open an investigation, to satisfy themselves whether the matter should be investigated further. Where it has been determined that a Preliminary Enquiry investigation should take place, the Preliminary Enquiry Officer should normally notify the student in writing of this, together with an expected date/timeline for conclusion of the Preliminary Enquiry, and notifying the student of any support available.

4.8 The Preliminary Enquiry Officer will review the information provided regarding the allegation, and will determine whether there is sufficient evidence to proceed under the Misconduct Policy. To reach this determination, the Preliminary Enquiry Officer may make any necessary enquiries to acquire further information, which may include inviting the student against whom the allegation has been made to make a written response to the allegations, interviewing the student against whom the allegation has been made, and/or any parties who may be able to provide necessary information. Such interviews are not an obligatory part of the process, and it is at the discretion of the Preliminary Enquiry Officer to determine whether they are necessary. However, in undertaking the investigation, the Preliminary Enquiry Officer should consider whether any interviews of any parties concerned are necessary.

4.9 The Preliminary Enquiry Officer may delegate any investigative actions, including interviews, to other staff within the School or the Conservatoire, as appropriate.

#### **Preliminary Enquiry Interview Process**

4.10 Where an interview is held as part of the investigation:

- The student will be informed in advance in writing of the nature and purpose of the meeting;
- The student will not be required to attend (though it is in their interests to do so), nor will they be obliged to make a statement or give any explanation either in writing or in attendance at the meeting;
- The student may be accompanied for support to the interview by a family member or a friend (either from inside or outside the School), and should normally give at least 24 hours' notice of anyone expected to accompany them;
- The Preliminary Enquiry Officer has the discretion to accept or decline any statements or supporting evidence/documentation presented by an accompanying individual on behalf of the student, but any such statements/evidence/documentation may be forwarded for consideration should the case be referred under these or other procedures;
- Written notes of the interview will be made; these will be circulated to the student for the opportunity for their agreement and any corrections normally no later than 2 working days after the interview has been held;
- The Preliminary Enquiry Officer has the discretion to terminate the interview at any point (e.g. if any attendee including any supporting person displays unacceptable behaviour);
- Any information resulting from the interview may be used to determine the outcome of the Preliminary Enquiry.

#### **Preliminary Enquiry Findings and Outcomes**

The Preliminary Enquiry Officer will compile a report<sup>14</sup> on completion of the Preliminary Enquiry to confirm the outcome of the Enquiry, which will include any relevant recommendations regarding the outcome and any further action needed. The student will receive a copy of the report on completion of the Preliminary Enquiry process. Where other staff have undertaken any investigative actions on behalf of the Preliminary Enquiry Officer and have compiled the report, the Preliminary Enquiry Officer will sign off the report and any resulting recommendations before the report is forwarded to the student.

4.11 The Preliminary Enquiry Report will include the following:

- details of the allegations made
- the established facts following the investigation
- the findings (e.g. no case to answer, minor misconduct, major misconduct, alternative procedure referral – see section 4.12a-d below)
- the outcome i.e. whether any further action will be taken, and what that action will be.

#### ***Preliminary Enquiry Findings***

4.12 The Preliminary Enquiry Report will state one of the following decisions:

- a) **There is insufficient or no evidence of any misconduct** on the part of the student, therefore no further action will be taken. The student will be informed that no further action will be taken

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<sup>14</sup> The Preliminary Enquiry Report form (Appendix 3) should be used for this.

at this time. They will be advised whether a copy of the report will be held centrally by the School but separately from the student's file (where there is cause within the law for records to be maintained, these shall be held securely by the Preliminary Enquiry Officer and the student shall be informed of this);

- b) **There is sufficient evidence, on the balance of probabilities, to form the basis of a charge of minor misconduct** (misconduct which constitutes a minor infringement of this Policy). The Preliminary Enquiry Officer may determine that appropriate action is taken in line with this Policy (see Minor Misconduct findings/concerns which do not warrant referral to a Panel); the case will **not** proceed to a formal Misconduct Panel. A record will be kept on the student's School file of the Preliminary Enquiry Report until the student has completed their programme of study, unless the Principal authorises a different timescale for retention;
- c) **There is sufficient evidence to form the basis of an allegation of major misconduct** (misconduct which constitutes a major infringement of this Policy), therefore the case **will be referred** to the Misconduct Panel. The Preliminary Enquiry Report will be submitted to the Misconduct Panel along with any supporting evidence gathered as part of the Preliminary Enquiry process. For the avoidance of doubt, multiple allegations which might otherwise in isolation each be regarded as minor, may be considered as potential major misconduct and referred to the Misconduct Panel;
- d) **There is sufficient evidence and/or reasonable grounds to refer the matter to another policy as appropriate**<sup>15</sup>, to best manage the matter. This may include:
- Ceasing the misconduct procedures under this Policy and referring the matter entirely under another policy
  - Placing the misconduct procedures under this Policy in abeyance whilst the matter is referred under another policy, setting a date for future review of whether they should be re-instigated or ceased
  - Referring the matter under another policy whilst simultaneously continuing with the misconduct process, making any fair and reasonable adjustments to either process as necessary

### ***Preliminary Enquiry Outcomes***

#### **Minor Misconduct findings/concerns which do not warrant referral to a Panel**

4.13 Where it is determined that there is sufficient evidence to uphold a charge of minor misconduct (see section 4.12b), the Preliminary Enquiry Officer may impose one or more of the following 'Category 1' types of penalty (for the full list of non-academic misconduct penalties under this Policy, see Section 6):

#### ***Category 1 penalties***

- a. A formal warning or a final warning (for a repeated offence);
- b. A formal written reprimand;
- c. A requirement to make a verbal/written apology to any party concerned, as, and if, appropriate;

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<sup>15</sup> Eg Support Through Studies procedures.

- d. The payment by the student of compensation for damage or loss caused, which shall not exceed the value of any damage caused or loss incurred;
- e. Withdrawal of privileges (particularly any privileges abused by the student offender) for a period not exceeding one month;
- f. Requirement to remove material published either in hard copy or electronically which is deemed to be inappropriate;
- g. Set conditions or expectations for the student's future behaviour.

4.14 It is at the discretion of the Preliminary Enquiry Officer to determine the appropriate action, or to award a penalty from the above list, following a finding of minor misconduct.

4.15 The Preliminary Enquiry will normally be completed **within 14 days of** receipt of an allegation, and the student will receive confirmation of the outcome in writing, normally within 48 hours of the conclusion of the Preliminary Enquiry. However, in particularly sensitive cases, where interviews with any parties are deemed necessary, or where it is foreseen that untimely disruption to studies might be caused by this process, this may result in extending the length of the completion of the process. Any student facing an allegation of misconduct will be updated in writing accordingly. Any other persons involved in the case may be notified by the Preliminary Enquiry Officer that the Preliminary Enquiry has been concluded, but they will only be informed of the Preliminary Enquiry decision and/or findings where the Preliminary Enquiry Officer deems it appropriate and necessary.

4.16 Where a student wishes to complain about or disagrees with a Preliminary Enquiry finding of minor misconduct (including disagreement with respective action/penalty), they have the right to request their case be heard by the Misconduct Panel. A request should be made in writing to the Preliminary Enquiry Officer, normally within 7 days of receiving formal written notification of the Preliminary Enquiry outcome, on receipt of which the student's case will be referred to the Misconduct Panel.

## **5 Misconduct proceedings: General Provisions**

5.1 All Misconduct Panel hearings and Misconduct Appeals Panel hearings will be closed sessions and not open to the public.

### **Proceedings of Panel Hearings<sup>16</sup>**

#### ***Representation and Accompaniment; Witnesses***

5.2 The Conservatoire and its Schools are committed to ensuring students are properly supported, and recognises that facing an allegation of misconduct, or pursuing an appeal against a decision of the Misconduct Panel, can be very stressful for a student. Provisions as follows are therefore made to support students throughout the processes at all stages:

- **Students have the right to be represented**
- **Students have the right to be accompanied**
- **Students have the right to call witnesses**

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<sup>16</sup> See also Appendix 3 to this policy: Guidance on Hearings (General Provisions and Procedures)



5.3 The student must give notice in writing to the Secretary of the relevant Panel<sup>17</sup> at least 48 hours in advance of a hearing of the Misconduct Panel, or of the Misconduct Appeals Panel, of the following:

- If the student is to be represented and/or accompanied at either a hearing of the Misconduct Panel or Misconduct Appeals Panel, the name(s) of the person/persons who is/are to attend must be received in writing by the Secretary to the Panel
- If the student wishes to be represented by an individual not listed in Appendix 3, section a), it is at the discretion of the Chair of the relevant Panel as to whether this will be permitted
- The name(s) of any witness(es) the student wishes to call.

5.4 The Chair of the relevant Misconduct Panel or Misconduct Appeal Panel has the discretion to refuse to permit a representative or friend or family member to attend where prior written notice has not been given.

5.5 The Chair of the Panel has the ultimate discretion to accept or reject an application for alternative representation and their decision will be final. Where the Chair determines that an application for alternative representation be rejected, the reasons will be provided in writing.

5.6 The Chair of the Panel has the ultimate discretion to admit or refuse any witness evidence or other evidence, and their decision will be final.

5.7 Where the student is unable to attend the hearing and wishes to attend, they may request a deferral of the hearing at the earliest opportunity and in any case at least 48 hours before the hearing, by contacting the Secretary of the Misconduct Panel or Misconduct Appeals Panel in writing (this includes via email). The student must state the reason(s) for the request, and the Secretary will forward the request to the Chair of the Panel. Where appropriate and applicable, the Chair of the Panel may request that the student forward supporting evidence. Deferrals will only be granted where the Chair of the Panel is satisfied that reasonable grounds (eg illness, bereavement) exist to prevent the student from attending the hearing. The Chair of the Panel has the ultimate discretion to grant or refuse a request for a hearing to be deferred.

5.8 For the purpose of the hearing, a decision on any point of procedure by the Chair of the Panel will be binding.

For more details of these provisions, please see Appendix 5, Non-Academic Misconduct: Guidance on Hearings (General provisions and procedures).

### ***Evidence***

5.9 The ruling of the Chair of either the Misconduct Panel, or the Misconduct Appeals Panel, shall be final on the admission of all evidence at the hearing, including the admission of written evidence and of oral evidence from witnesses or other parties at the appeals hearing. This shall include the power to refuse to admit evidence or hear witnesses on the basis of lack of relevancy. The Chair of either Panel has the sole discretion to determine to proceed with a hearing or adjourn it, in the absence of any particular witness.

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<sup>17</sup> The student will be provided with contact details when notified in writing of the decision to hold a Hearing.

### **Adjournment**

5.10 The Chair has the discretion to adjourn the hearing where the timeframes for providing documentation, or notifying witnesses, or for other good cause, have not been met. For more details, please see Appendix 5, Non-Academic Misconduct: Guidance on Hearings (General provisions and procedures).

## **6 Misconduct Panel**

6.1 Where a Preliminary Enquiry Officer refers a report of alleged misconduct to a Misconduct Panel, the report will be referred to the Conservatoire Quality Office who will make the arrangements for the Panel. The Misconduct Panel Members will be appointed by the Conservatoire CEO.

6.2 Where a Preliminary Enquiry Officer refers a report of alleged misconduct to a Misconduct Panel, the Panel will be served by a Secretary, appointed by the CEO of the Conservatoire, who shall be a member either of the Conservatoire central office or a member of staff or of a Conservatoire School.

6.3 The Secretary shall act as note-taker and shall advise the Misconduct Panel regarding procedural matters but shall not take part in any decision-making.

### **Terms of Reference**

6.4 The **terms of reference** of the Misconduct Panel are:

- a) To consider cases referred to it by the Preliminary Enquiry Officer, in order to determine whether an allegation of misconduct or unprofessional behaviour has been substantiated on the balance of probabilities, and to determine appropriate outcomes and action in accordance with these procedures;
- b) To advise the School Academic Board on disciplinary matters or any related issues that may arise from the Panel proceedings. This may include matters related to the Conservatoire (see Section 9, 'Monitoring and Assurance').

6.5 In the circumstance that the student and/or any other relevant parties are unable to attend, it will be at the discretion of the Chair of the Misconduct Panel as to whether the proceedings may continue or whether any other action (eg a rescheduling of the hearing or the opportunity to make further written submissions) is necessitated. Where a student is for good reason unable to attend a hearing on the scheduled date, a new date will normally be offered.

### **Membership of the Misconduct Panel**

6.6 The **membership** of the Misconduct Panel will be:

- a) a Chair, who shall be a senior member of the School's staff, unconnected with the student's programme of study<sup>18</sup>, or a senior member of staff from another Conservatoire School and approved by the School's Academic Board;
- b) Two other members, unconnected with the student's programme of study, who shall normally be either members of staff of the School or of one of the other Conservatoire schools.

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<sup>18</sup> The Chair of the Misconduct Panel may be a member of teaching staff or non-teaching staff, with authority to chair the Misconduct Panel granted by the School Academic Board.

6.7 No member from the same programme team with whom the student is studying will serve as a Chair or Panel Member.

6.8 No one will serve on the Misconduct Panel who has had formal involvement in any previous consideration of the allegation of, or a connection to, the misconduct to be considered by the Panel. Panel members must be in a position to act and be seen to act impartially in relation to the student and the allegation being considered.

6.9 The quorum for a hearing of the Misconduct Panel will be the Chair and two other members.

**What the Conservatoire will send to the student (see also Appendix 3 Guidance on Hearings)**

***Misconduct Panel***

6.10 In the event of a Misconduct Panel being convened, written notice of the following will normally be sent to the student at least 10 days in advance of the hearing:

6.10.1 The date of the Panel hearing;

6.10.2 The names of the Panel members and any witnesses/expert advisers called by the School;

6.10.3 The name and contact details of the Secretary to the Panel;

6.10.4 All documentary evidence, including the Preliminary Enquiry Report and copies of any witness statements;

6.10.5 The names of any witnesses the student has already informed the School that they wish to call;

6.10.6 Notification of the rules governing the conduct of Hearings, as set out in this Policy, including their right to be accompanied / represented.

6.11 In all cases, students will be provided with written notice of the exact date of the Panel hearing, together with the respective Panel documentation, at least 7 days in advance of the hearing.

6.12 The student may present documentary material and/or witnesses in their defence or mitigation to the Misconduct Panel. The student may submit any personal written statement and/or supporting evidence/witness statements, to the Panel for consideration. Any such documentation should normally be submitted by the student to the Secretary of the Panel not less than 48 hours before the Panel hearing, to allow for circulation to members for consideration prior to the hearing. Any such documentation submitted after this deadline will only be accepted at the discretion of the Chair of the Misconduct Panel, where the Chair is satisfied that it is reasonable to do so and that doing so will not unduly compromise the proceedings.

6.13 Both the student and the School have the right to call any witnesses to the Panel, and both parties should present the names of any witnesses they wish to call to the Chair of the Panel (via the Panel Secretary) normally at least 48 hours in advance of the hearing. The Chair of the Panel has the ultimate discretion to admit or refuse any witnesses.

6.14 The student has the right to be accompanied and/or represented at the Hearing. The student should notify the Chair of the Panel of the name(s) of any accompanying person(s), normally at least 48 hours in advance of the Hearing. The Chair of the Panel has the ultimate discretion to allow to admit or refuse any representative.

### **Misconduct Panel Hearing Procedure (see also Appendix 3 Guidance on Hearings)**

6.15 The following paragraphs should be read in conjunction with Appendix 5 Guidance on Hearings:

- 1) All parties will normally be present at the Misconduct Panel Hearing at the same time, unless any reasonable adjustment is required which would preclude this.
- 2) The School representative will normally present the concerns with regard to the conduct of the student to the Misconduct Panel first, and call any witnesses; however it is at the discretion of the Chair of the Panel to invite parties to speak as they deem it appropriate.
- 3) The student facing the allegation(s) of misconduct (or their representative) will be invited to reply to the allegation(s) and may call witnesses. The student shall also be invited to present to the Panel any mitigating circumstances which the student considers to be relevant to the case.
- 4) At the conclusion of all presentations and questions, the student facing the allegation(s) of misconduct and/or (or their representative) may address the Panel and make a closing statement. At their discretion, the Chair of the Panel may also make a closing statement.
- 5) The deliberations of the Panel are confidential, and will be held in private, with only the Secretary and the Panel present. The Panel will determine on the balance of probabilities its findings and decision(s).
- 6) A decision of the Misconduct Panel, determined on the balance of probabilities, will be reached by a majority vote of the members of the Panel present at the hearing but will be announced as a decision of the Panel. The votes of the individual Panel members will be treated as confidential.
- 7) The Panel will endeavour to reach a decision and findings without adjournment. However, in the event that the Panel determines at any point during proceedings that it needs further information in order to reach a decision or for other good cause, it shall adjourn the case. The student will be notified of the adjournment normally within 24 hours of the decision to adjourn, and the Secretary to the Panel will endeavour to collect the respective information the Panel considers it needs to reach a decision. (For more information on adjournments, please see Appendix 5 Guidance on Hearings.)
- 8) The decision(s) and findings of the Panel will be communicated in writing via a Hearing Outcome Letter to the student, the School representative and any other parties the Chair deems necessary and appropriate, normally within 7 days of the date of the hearing.
- 9) Should the Misconduct Panel determine that the allegation(s) and/or concerns were not established, or without foundation, that decision will be communicated to all persons involved in the case, normally within 7 days of the date of the hearing.

### **Misconduct Panel Outcomes**

#### ***Outcome Procedure***

6.16 After considering all the evidence, in its deliberations, the Misconduct Panel will reach the following findings and decision(s) on the balance of probabilities. The Panel will proceed by reaching its findings and then moving to its decision(s) as follows:

### ***Finding(s)***

6.17 Firstly, the Panel will determine whether the alleged misconduct on the part of the student has occurred by making the following finding:

- a) whether any misconduct allegation(s) have been substantiated.

In reaching its finding, the Panel may also determine:

- b) whether there are any other or further concerns which have emerged which should be taken into account, or which require further investigation.

### ***Decision(s)***

6.18 Once the Misconduct Panel has reached its findings as above, it will determine any relevant action, as stated below:

- any appropriate penalties which should be applied to the student (such decision(s) will be reached as per paragraphs 6.14, 6.15 and 6.16)
- any action deemed necessary by either the student and/or the School
- whether there are any matters which should be referred under alternative School procedures.

### **General Panel Considerations when determining findings and reaching decisions**

6.19 As part of its decision-making, the following factors may be taken into consideration by the Misconduct Panel in reaching findings and determining an appropriate penalty:

- The severity of the offence, including any aggravating factors resulting from its impact
- The student's engagement with the School during the misconduct process
- Whether there is any evidence of malicious intention
- The number of previous and/or contemporaneous misconduct offences, both non-academic and academic
- Whether the student has had any concerns about conduct drawn to their attention prior to this instance
- Whether the student is in receipt of any formal warnings, or any other School sanctions
- Any mitigating circumstances and/or aggravating factors which are accepted by the Panel<sup>19</sup>.

### **Penalties**

6.20 Where the Misconduct Panel determines that an allegation of misconduct or unprofessional conduct has been substantiated on the balance of probabilities, the Panel may impose one or more of the following measures listed in the 'Table of Penalties' below.

6.21 The penalties are listed as 'category 1' or '2'. 'Category 1' penalties may be awarded when the Panel deems the misconduct to be a more minor offence; more serious offences may receive a 'category 2' penalty. Penalties will only be considered and applied after a Panel has determined on the balance of probabilities that misconduct has occurred.

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<sup>19</sup> For examples of mitigating and aggravating factors, see the Student Guide: Non-Academic Misconduct policy, found on [www.cdd.ac.uk](http://www.cdd.ac.uk)

6.22 Penalties listed in the ‘Table of Penalties’ are non-exhaustive and will be applied on a case-by-case basis, taking into account the circumstances of each offence, including any aggravating or mitigating factors, and of any established precedents. For repeated or multiple offences, ‘category 2’ penalties will normally be considered. More than one penalty may be applied simultaneously from either category as deemed appropriate by the Misconduct Panel. The Misconduct Panel may determine that both a Category 1 penalty and a Category 2 penalty be applied simultaneously for the same offence(s).

<b>Table of Penalties</b>
<p><b>Category 1 Penalties</b> (Penalties that may be applied by the Preliminary Enquiry Officer, the Misconduct Panel, or the Misconduct Appeals Panel)</p> <ul style="list-style-type: none"> <li>a. A formal warning or a final warning (for a repeated offence);</li> <li>b. A formal written reprimand;</li> <li>c. A requirement to make a verbal/written apology to any party concerned, as, and if, appropriate;</li> <li>d. The payment by the student of compensation for damage or loss caused, which shall not exceed the value of any damage caused or loss incurred;</li> <li>e. Withdrawal of privileges (particularly any privileges abused by the offender) for a period not exceeding one month;</li> <li>f. Requirement to remove material published either in hard copy or electronically which is deemed to be inappropriate;</li> <li>g. Set conditions or expectations for the student’s future behaviour.</li> </ul>
<p><b>Category 2 Penalties</b> (Penalties that may only be applied by the Misconduct Panel, or the Misconduct Appeals Panel)</p> <ul style="list-style-type: none"> <li>h. Mandatory attendance at a workshop or course within a specified time period<sup>20</sup>;</li> <li>i. Restorative action such as a reflective statement or project;</li> <li>j. Restricted ability to contact the complainant, where the complainant is a student or member of staff of the Conservatoire;</li> <li>k. Requiring that the student does not represent their School or the Conservatoire in a paid or unpaid capacity for a specified period of time. This could include employment by the School or Conservatoire on a contractual or casual basis<sup>21</sup>, representing the School or Conservatoire other events, or voluntary roles such as student ambassador or similar;</li> <li>l. Conditions for the continuation of student status;</li> <li>m. Exclusion from, or restrictions concerning, participation in specified activities (including external programme-related activities) or use of specified facilities of the student’s School for a stated period. Conditions for return to those activities may be specified;</li> <li>n. The suspension of the student’s studies, in whole or in part, for a specified period or until an agreed review date;</li> <li>o. Permanent exclusion / removal of student status<sup>22</sup> with or without the right to re-register for any further programme of study with the School;</li> </ul>

<sup>20</sup> Where a student is required to complete a workshop, course or restorative exercise, this may result in a delay to graduation. The Misconduct Panel and Misconduct Appeals Panel will consider potential additional consequences when determining penalties and will ensure that sanctions remain proportionate.

<sup>21</sup> Where a student is contracted to undertake paid employment for their School or for the Conservatoire, action may also be taken under School staff disciplinary procedures.

<sup>22</sup> In such cases, the Panel will determine whether there is just cause to deprive the student of any credits already achieved and any award to which they may lead.

p. Such other penalty as may be deemed appropriate, provided that the penalty is both proportionate and relevant to the offence.

- 6.23 The Misconduct Panel may order that any measures agreed will be imposed immediately, or that the imposition should be deferred. The conditions of any such deferment will be clearly stated as part of the decision of the Panel. The imposition may be contingent upon the student failing to fulfil any conditions set.
- 6.24 The Misconduct Panel will have the discretion to indicate a point in the future and/or the conditions under which a substantiated allegation of misconduct may be considered spent. Once spent, any record(s) of the offence will be removed from the student's file, including any records of any suspension or exclusion relating to the offence.
- 6.25 The Panel may determine to vary the penalty in the light of accepted mitigating circumstances or other aggravating factors.
- 6.26 The findings and decisions of the Misconduct Panel will be communicated to the student, the Principal of the student's School, and any other interested parties as deemed appropriate by the Chair of the Panel, and in accordance with the General Data Protection Regulations 2018 (GDPR).
- 6.27 Where a student wishes to complain about, or disagrees with, a decision or finding(s) of the Misconduct Panel, they must submit an appeal in accordance with section 7 of this policy. An appeal must be made under one of the stated grounds, normally within 14 days of the date of the Hearing Outcome Letter. The decision of the Misconduct Panel stands until and unless it is overturned following a successful appeal.

#### **Hearing Outcome letter**

- 6.28 The Secretary to the Misconduct Panel will send a Hearing Outcome Letter to the student, normally within 7 days of the date of the hearing. The Misconduct Panel Hearing Outcome Letter will set out the decision(s) of the Panel and the reasons for the decision(s), and provide information on the right of appeal.
- 6.29 A copy of the Hearing Outcome letter containing the finding(s) and decision(s) of the Panel will be placed on the student's file. Subject to the provisions set out in paragraphs 6.19-6.24 above, the student will also be advised that the finding(s) and decision(s) of the Panel may be taken into consideration in the event of a future finding of misconduct or unprofessional behaviour under this policy. The finding(s) and decision(s) of the Panel may also be taken into consideration by the School when determining whether to exercise powers of temporary exclusion or suspension in the future.

## **7 Appeal against a decision of the Misconduct Panel**

### **Grounds of Appeal**

- 7.1 Following a hearing of the Misconduct Panel, a student may submit an appeal against the decision(s) of the Panel, under one or more of the following grounds:
- a) There has been procedural irregularity i.e. that some rules or procedures were not applied correctly;
  - b) There was prejudice or bias on the part of a decision-maker;

- c) The decision(s) is/are unreasonable and/or the sanction or outcome disproportionate;
- d) There is new evidence that is also material to the case, which the student can demonstrate was for good reason not previously available, and sufficient evidence remains that this warrants further consideration by a Misconduct Appeals Panel.

### **Appeal submissions**

7.2 An appeal must be made under one of the stated grounds, normally within 14 days of the date of the Hearing Outcome Letter. Appeals submitted after this deadline may be rejected for being out of time. Appeals which do not state any grounds may also be summarily rejected.

7.3 To make an appeal, a student should submit an appeal form<sup>23</sup>, together with any supporting documentation/evidence which they consider should be taken into account, to the Principal who will either act as the Misconduct Appeal Reviewer or delegate the role to another senior member of staff. Students must include with their appeal all documentation that they wish the Misconduct Appeal Reviewer to consider, including any information relating to mitigating circumstances.

7.4 The Misconduct Appeal Reviewer may for good cause extend the time period in which the student may submit an appeal to the School.

7.5 There are two stages to the Misconduct Appeal process:

- 1) The appeal submission is reviewed by the Misconduct Appeal Reviewer, to determine whether it **discloses grounds** for a Misconduct Appeals Panel to be convened, otherwise the appeal shall be rejected by the Misconduct Appeal Reviewer.
- 2) Where the Reviewer is satisfied that the submission discloses grounds, a Misconduct Appeals Panel is convened to give further consideration to the appeal.

7.6 In this procedure, '**discloses grounds**' means that the Misconduct Appeal Reviewer considers that there is sufficient evidence that the appeal may meet one or more of the above grounds, or that there is some other good cause, to merit further consideration of the appeal. It is not sufficient for an appeal merely to state the grounds upon which the student is appealing.

### **Cases which are forwarded to the Misconduct Appeals Panel**

7.7 Where the Misconduct Appeal Reviewer finds that the appeal submission discloses grounds, the reviewer will notify the student in writing of this decision, normally within 21 days of receipt of the appeal submission, and refer the case to the Misconduct Appeals Panel Secretary to organise an Misconduct Appeals Panel. The student will be invited to submit any additional documentation or statements that they wish to have considered by the Panel at the point they are notified of the Hearing.

### **Cases which are rejected by the reviewer for failing to disclose any grounds**

7.8 Where the Misconduct Appeal Reviewer finds that the appeal submission does not disclose grounds, the reviewer will reject the appeal. The reasons will be set out in the Appeal Outcome Letter, and the original decision(s) and finding(s) of the Misconduct Panel will stand. The Appeal Outcome Letter will be sent normally within 21 days of receipt of the appeal submission, and either simultaneously or shortly after, the student will be issued with a Completion of Procedures Letter, normally no more than 14 days after the date of the Appeal Outcome Letter. On receipt of the Completion of Procedures letter, the

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<sup>23</sup> The Misconduct Appeal Form can be located on the Conservatoire website [www.cdd.ac.uk](http://www.cdd.ac.uk)



student will have recourse to take their complaint to the Office of the Independent Adjudicator (see Section 9 of these procedures).

## **8 Misconduct Appeals Panel**

8.1 A Misconduct Appeals Panel has authority to consider appeals against decisions made by Misconduct Panels.

### **Terms of Reference**

8.2 The Terms of Reference of the Misconduct Appeals Panel are:

- a) To consider cases referred to it by the Misconduct Appeal Reviewer, in order to determine whether the evidence is of sufficient significance to cast doubt upon the reliability of the decision(s) arrived at by the original Misconduct Panel;
- b) To determine appropriate outcomes and action in accordance with these procedures;
- c) To advise the School Academic Board on disciplinary matters or any related issues that may arise from the Appeals Panel proceedings (including from the previous Misconduct Panel proceedings). This may include matters related to the Conservatoire.

### **Membership of the Misconduct Appeals Panel**

8.3 The **membership** of the Misconduct Appeals Panel will be appointed by the CEO of the Conservatoire, and will be:

- a) A Chair, usually a member of the School's governing body;
- b) A senior member of staff from another School, to be drawn from either principals or other senior staff of another School;
- c) Another member, who shall be either a member of staff of the School or of one of the other Conservatoire Schools.

8.4 The Panel will be served by a Secretary who shall be a member of Conservatoire staff, either from one of the Schools or from Shared Services. The Secretary shall act as note-taker and shall advise the Misconduct Appeals Panel regarding procedural matters but shall not take part in any decision-making.

8.5 No one will serve on the Misconduct Appeals Panel who has had formal involvement in any previous consideration of the allegation, or a connection to, the misconduct to be considered by the Panel. Panel members must be in a position to act and be seen to act impartially in relation to the student and the case being considered. The School Principal may serve as Panel Chair or a Panel member if she/he has not been involved in the case, or its consideration under this Policy.

8.6 Any member appointed to a Misconduct Appeals Panel who considers that there is or that there appears to be a conflict of interest or compromise in their serving on a particular Panel shall notify the Secretary to the Misconduct Appeals Panel. The Secretary shall then determine whether a replacement Panel member should be appointed.

8.7 The quorum for a hearing of the Misconduct Appeals Panel will be the Chair and two other members.

8.8 In determining whether a School representative should attend the hearing to respond to the student's appeal, the final decision regarding the member of staff to be called shall rest with the Chair of the Misconduct Appeals Panel.

8.9 In the circumstance that the student and/or any other relevant parties are unable to attend, it will be at the discretion of the Chair of the Misconduct Appeals Panel as to whether the appeal proceedings may continue or whether any other action (eg a rescheduling of the hearing or the opportunity to make further written submissions) is necessitated. Where a student is for good reason unable to attend a hearing on the scheduled date, a new date will normally be offered.

#### **What the Conservatoire will send the student**

8.10 In the event of an Misconduct Appeals Panel being convened, written notice of the following will normally be sent to the student at least 10 days in advance of the hearing:

- The date of the Panel hearing
- The names of the Panel members and any witnesses called by the School
- The name and contact details of the Secretary to the Panel
- All documentary evidence, including:
  - b) all the documentation submitted to and considered by the Misconduct Panel (including the Preliminary Enquiry Report and copies of witness statements)
  - c) A copy of the Misconduct Panel Hearing Outcome letter
  - d) A copy of the student's appeal
  - e) A copy of the letter appointing the Misconduct Appeals Panel
- The names of any witnesses the student wishes to call (allowed at the discretion of the Chair)

8.11 In all cases, students will be provided with written notice of the exact date of the Misconduct Appeals Panel Hearing, together with the respective Panel documentation, at least 7 days in advance.

8.12 The student has the right to be accompanied and/or represented at the hearing. The student should notify the Chair of the Panel of the name(s) of any accompanying person(s), normally at least 48 hours in advance of the Hearing. The Chair of the Panel has the ultimate discretion to allow to admit or refuse any representative.

8.13 In the event that a staff member (a School Representative) is invited to attend a hearing to respond to the student's appeal, a copy of the Panel documentation will be sent to the staff member normally at least 5 days in advance of the hearing.

8.14 The student may submit any personal written statement and/or supporting evidence/witness statements, to the Panel for consideration. Any such documentation should normally be submitted by the student to the Secretary of the Panel not less than 48 hours before the Panel hearing, to allow for circulation to members for consideration prior to the hearing. Any such documentation submitted after this deadline will only be accepted at the discretion of the Chair of the Misconduct Appeals Panel.

8.15 In the event they are invited to attend the Misconduct Appeals Panel hearing, the student may present documentary material and/or witnesses in their defence or mitigation to the Misconduct Appeals Panel,

provided that the Panel has received such documentary evidence and/or notification of the names of any witnesses, at least 48 hours before the hearing.

**Misconduct Appeals Panel Hearing Procedure (see also Appendix 3 Guidance on Hearings)**

8.16 The following paragraphs should be read in conjunction with Appendix 3 Guidance on Hearings:

- 1) All parties will normally be present at the hearing at the same time, unless any reasonable adjustment is required which would preclude this.
- 2) The Chair will determine the order of the hearing. This may include inviting either the student or the School representative to speak first, as the Chair deems appropriate. It is at the discretion of the Chair for the Panel to invite parties to speak throughout the hearing as they deem it appropriate. The Chair will satisfy themselves that both the student and the School representative are given fair and adequate opportunity to make any representations and to respond to questions.
- 3) The Panel will ask all questions during the hearing. Any questions that either the student or the School representative wish to ask of each other must be addressed through the Chair of the Panel. The Chair of the Panel will decide whether or not any such questions may be permitted.
- 4) At the conclusion of all presentations and questions, the School representative will be asked if they have any final statement to make. The student (or their representative) will then be invited to address the Panel and make a closing statement. At their discretion, the Chair of the Panel may also make a closing statement.
- 5) The deliberations of the Panel are confidential, and will be held in private, with only the Secretary and the Panel present. The Panel will determine on the balance of probabilities its findings and decision(s), in accordance with these procedures.
- 6) A decision of the Misconduct Appeals Panel will be reached by a majority vote of the members of the Panel present at the hearing but will be announced as a decision of the Panel. The votes of the individual Panel members will be treated as confidential.
- 7) The Panel will endeavour to reach a decision and findings without adjournment. However, in the event that the Panel determines at any point during proceedings that it needs further information in order to reach a decision or for other good cause, it shall adjourn the case. The student will be notified of the adjournment normally within 24 hours of the decision to adjourn, and the Secretary to the Panel will endeavour to collect the respective information the Panel considers it needs to reach a decision. (For more information on adjournments, please see Appendix 5 Guidance on Hearings.)
- 8) The decisions and findings of the Panel will be communicated in writing to the student, the School representative and any other parties the Chair of the Panel deems appropriate, normally within 7 days of the date of the Hearing.

## **Misconduct Appeals Panel Outcomes**

### ***Outcome Procedure***

8.17 After considering all the evidence, in its deliberations the Misconduct Appeals Panel will reach the following findings and decision(s) on the balance of probabilities. The Panel will proceed by reaching its finding(s) and then moving to its decision(s) as follows:

### ***Finding(s)***

8.18 Firstly, the Misconduct Appeals Panel will determine whether the appeal has met the grounds and therefore whether it should be upheld, by making one of the following finding(s):

- a) That there is sufficient evidence to demonstrate, on the balance of probabilities, that one or more of the grounds of appeal have been met, which warrants a review of the decision(s) and/or finding(s) of the Misconduct Panel, and therefore **the appeal is upheld**
- b) That there is no evidence, insufficient evidence, and/or that the Misconduct Appeals Panel is not satisfied, on the balance of probabilities, that one or more of the grounds of appeal have been met, that therefore the original decision of the Misconduct Panel stands, and therefore **the appeal is not upheld**

### ***Decision(s)***

8.19 Once the Misconduct Appeals Panel has reached its findings as above, it will take any relevant action, as articulated below:

### ***Appeal Upheld:***

8.20 In the event that the appeal is upheld, the Misconduct Appeals Panel may:

- a) **Overturn, amend**, or (having reviewed the outcomes) **confirm** that the original findings and/or decision should stand. Where the original findings and/or decision are overturned, the Misconduct Appeals Panel will make new finding(s) and/or decision(s), which will replace those of the original Misconduct Panel.
- b) **Refer the matter back to a new Misconduct Panel** for fresh consideration. In this event the student would have right of appeal against the decision of the Misconduct Panel, but not against the decision of the Misconduct Appeals Panel to refer the matter. No member of the original Misconduct Panel will serve as a member on the new Misconduct Panel.

### ***Appeal Not Upheld:***

8.21 In the event that the appeal is not upheld, the original finding(s) and decision(s) of the Misconduct Panel will stand. However, the Misconduct Appeals Panel has the authority to make any reasonable orders (including referring the student under different procedures) or make any recommendations to the School Academic Board in accordance with its findings, as stated in the Misconduct Appeals Panel Terms of Reference above.

8.22 The findings and decisions of the Misconduct Appeals Panel are final. This includes the finding that the original finding(s) and/or decision(s) of the Misconduct Panel should stand.

8.23 As part of its decision-making, the Misconduct Appeals Panel may take the following into account:

**In reaching Finding(s)**

- Whether the evidence is of sufficient significance to cast doubt upon the reliability of the finding(s) and/or decision(s) arrived at by the original Misconduct Panel;
- whether there are any other or further concerns which have emerged which should be taken into account, or which require further investigation or warrant referral under another procedure (eg Support Through Studies)

**In reaching decision(s)**

- Whether any penalties previously handed down to the student warrant amendment (including an increase in severity, where fair and reasonable in the event of new evidence or information), or rescindment
- any action deemed necessary by either the student and/or School
- whether there are any matters which should be referred under alternative School procedures

**General Panel Considerations when determining findings and reaching decisions**

- The severity of the offence, including any aggravating factors resulting from its impact
- The student's engagement with the School during the misconduct and appeal process
- Whether there is any evidence of malicious intention
- The number of previous and/or contemporaneous misconduct offences, both non-academic and academic
- Whether the student has had any concerns about their conduct drawn to their attention prior to this instance of misconduct concerns
- Whether the student is in receipt of any formal warnings, or any other School sanctions
- Any mitigating circumstances and/or aggravating factors which are accepted by the Panel.

8.24 The Misconduct Appeals Panel will have the discretion to indicate a point in the future and/or the conditions under which a substantiated allegation of misconduct which it has determined should stand following an appeal hearing, may be considered spent. Once spent, any record(s) of the offence will be removed from the student's file, including any records of any suspension or exclusion relating to the offence.

8.25 Where a student wishes to complain about, or disagrees with, a decision or finding(s) of the Misconduct Appeals Panel, they will have recourse to take their complaint to the Office of the Independent Adjudicator for Higher Education (OIA).

**Hearing Outcome letter**

8.26 The Secretary to the Misconduct Appeals Panel will send an Appeal Hearing Outcome Letter to the student, normally within 7 days of the date of the hearing. The Misconduct Appeals Panel Hearing Outcome Letter will set out the decision(s) of the Panel and the reasons for the decision(s), and will provide information on Completion of Procedures (see Section 8).

8.27 A copy of the Appeal Hearing Outcome Letter containing the finding(s) and decision(s) of the Panel will be placed on the student's file. As applicable and subject to the provisions set out in paragraphs 8.22-8.23 above, the student will also be advised that the finding(s) and decision(s) of the Misconduct Appeals Panel (and where applicable the original or new Misconduct Panel) may be taken into consideration in the event of a future finding of misconduct or unprofessional behaviour under this policy. The finding(s)

and decision(s) of the Panel may also be taken into consideration by the School when determining whether to exercise powers of temporary exclusion or suspension in the future.





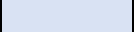
## 9 Completion of Procedures & Office of the Independent Adjudicator

- 9.1 The guidance published by the Office of the Independent Adjudicator shall be followed in the issuing of Completion of Procedures Letters to students in respect of these procedures<sup>24</sup>.
- 9.2 Once a Completion of Procedures Letter has been issued, a student may apply to the Office of the Independent Adjudicator for Higher Education (<http://www.oiahe.org.uk>) for external review in accordance with the rules to which the OIA scheme operates.

## 10 Monitoring and Assurance

- 10.1 In accordance with their terms of reference, a Misconduct Panel or Misconduct Appeals Panel may refer matters relating to individual student cases to the School Academic Board. The School Academic Board will also, as part of its monitoring and quality assurance duties, monitor disciplinary matters, statistical data, or related issues arising from these procedures.
- 10.2 With reference to this Policy, the School Academic Board should:
- Review urgent recommendations made by the Misconduct Panel and/or Misconduct Appeals Panel expeditiously;
  - Monitor outcomes of cases, and any recommendations arising from panels;
  - Review annually all cases, recommendations and outcomes arising from the misconduct process and panel proceedings, as part of its annual monitoring, review and quality assurance processes;
  - Provide an annual report to Conservatoire Senate;
  - Report any matters to Conservatoire Senate as appropriate, for maintenance and enhancement of quality assurance.
- 10.3 Where misconduct has been established in a case, or where a student has been temporarily suspended or excluded, or expelled under this policy, copies of the summary record and the outcome letter shall be placed on the relevant student's file and a record of the proceedings of every Misconduct Panel and Misconduct Appeals Panel shall be kept centrally in the School for record and monitoring purposes. Both records shall be retained in accordance with the School's records management policy.

### Key to procedural flowcharts (Appendices 1 & 2):

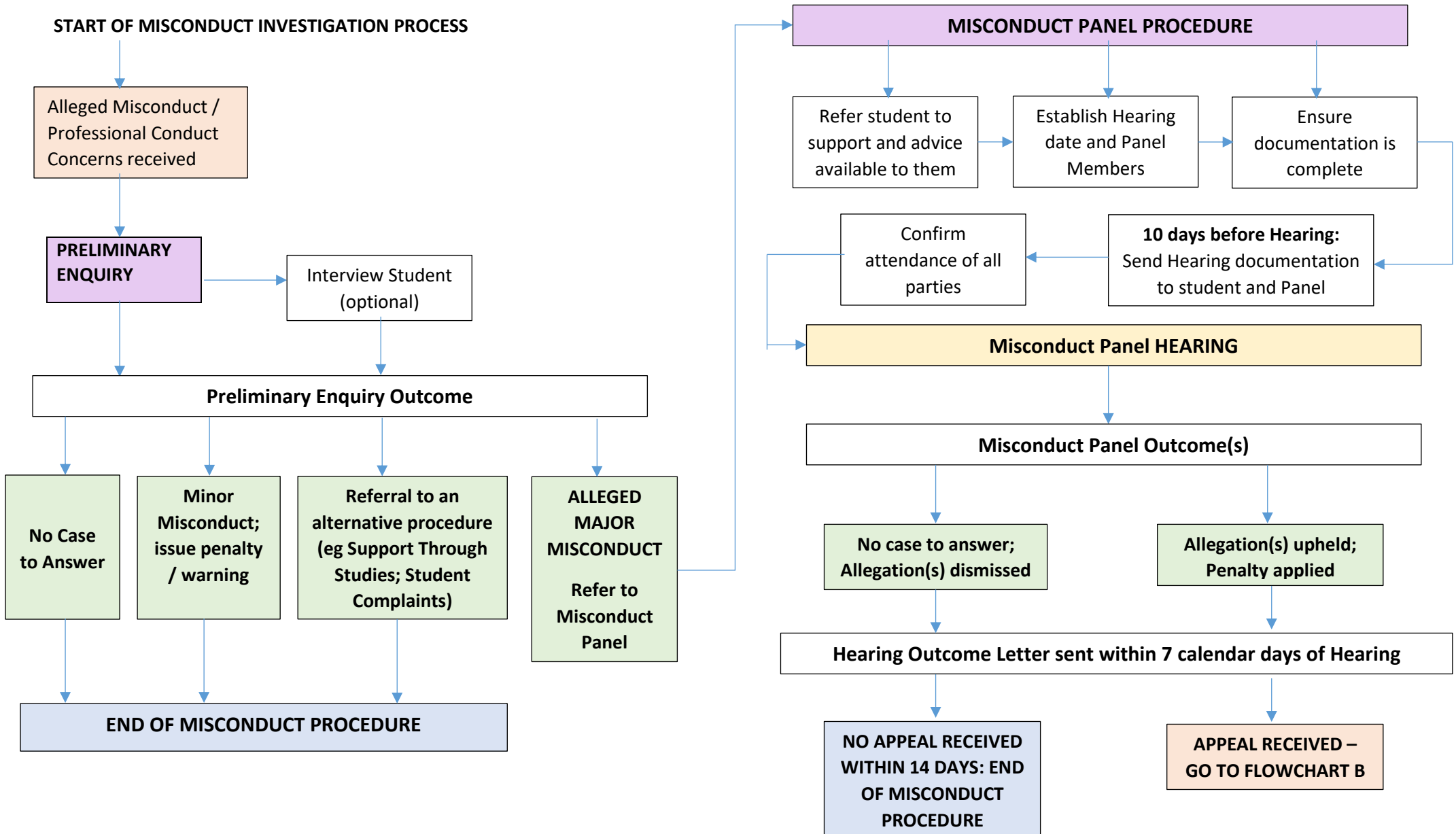
	= Procedural trigger
	= Start of Procedure
	= Procedural Decision
	= Panel Hearing
	= End of Procedure

<sup>24</sup> <http://www.oiahe.org.uk/providers-and-good-practice/completion-of-procedures-letter.aspx>

### Equality Impact

Potential impact on groups with protected characteristics? ( <i>positive; neutral; negative</i> )	Neutral
Does the policy take account of the needs of people with different protected characteristics?	Yes – complete. Flexibility is built in. Additional provision made to accommodate hearing deferral requests and establish due protocol.
• Age	Yes
• Disability	Yes
• Gender reassignment	Yes
• Pregnancy and Maternity	Yes
• Race	Yes
• Religion or belief (including no belief)	Yes
• Sex	Yes
• Sexual orientation	Yes
Equality Impact Assessment completed by:	Conservatoire Quality Assurance Manager September 2019
Date policy approved by Senate:	27 June 2018
Due for next review:	May 2019

**Appendix 1: FLOW CHART A – Formal Misconduct Procedures**





**APPENDIX 2: FLOW CHART B – Misconduct Appeal Procedures**

