

NCCA Student Non-Academic Misconduct Policy and Procedures

Section of Policy	Contents of Section	See Page No
1. Introduction		5
2. Scope and Definitions of Student Misconduct including:	<ul style="list-style-type: none"> • Simultaneous allegations of academic and non-academic misconduct • Misconduct occurring off School premises • 'Online'/'Digital' misconduct • Non-academic misconduct definitions • Professional Conduct • Misconduct relating to admissions • Misconduct which is also a criminal offence • Misconduct and School Rules, Regulations and Obligations 	6
3. Operational rules and policies governing these procedures	<ul style="list-style-type: none"> • Presumption of Innocence • Burden of Proof • Legal Context • Anonymous Allegations • Data Processing, confidentiality and record-keeping • Conduct of proceedings • Absence and withdrawal/non-engagement relating to these procedures • Delegation • Procedural integrity and fairness • External Officers • Emergency Powers • Complaints regarding the Misconduct Procedures • Impact of misconduct procedures on academic studies • Timescales • Failure to comply with decisions • Serious breaches of the student terms and conditions within the Contractual Cooling Period 	12
4. Misconduct Procedures	<ul style="list-style-type: none"> • Informal procedures • Informal warnings • Formal Misconduct Procedures • Suspected Misconduct: Preliminary Enquiry 	17

NCCA Student Non-Academic Misconduct Policy and Procedures

	<ul style="list-style-type: none"> • Preliminary Enquiry: Serious breaches of the student terms and conditions within the Contractual Cooling Period <ul style="list-style-type: none"> ◦ <i>Examples of breaches</i> ◦ <i>Behaviour or conduct prior to entering the student contract that would normally constitute a material breach of the Terms and Conditions</i> [...] • Preliminary Enquiry Procedure • Preliminary Enquiry Interview Process • Preliminary Enquiry Findings and Outcomes <ul style="list-style-type: none"> ◦ <i>Preliminary Enquiry Findings</i> ◦ <i>Preliminary Enquiry Outcomes</i> • Disagreement with a Preliminary Enquiry Outcome 	
5. Misconduct proceedings: General Provisions	<ul style="list-style-type: none"> • Proceedings of Panel Hearings <ul style="list-style-type: none"> ◦ <i>Representation and Accompaniment; Witnesses; Written and In-Person representations</i> ◦ <i>Evidence</i> ◦ <i>Adjournment</i> 	26
6. Misconduct Panel	<ul style="list-style-type: none"> • Terms of Reference • Membership of the Misconduct Panel • What the School will send to the student <ul style="list-style-type: none"> ◦ <i>Misconduct Panel</i> • Misconduct Panel Hearing Procedure • Misconduct Panel Outcomes <ul style="list-style-type: none"> ◦ <i>Outcome Procedure</i> ◦ <i>Finding(s)</i> ◦ <i>Decision(s)</i> • General Panel Considerations when determining findings and reaching decisions • Penalties <ul style="list-style-type: none"> <i>Table of Penalties</i> • Hearing Outcome Letter 	27
7. Appeal against a decision of the Misconduct Panel	<ul style="list-style-type: none"> • Grounds of Appeal • Appeal submissions <ul style="list-style-type: none"> ◦ <i>Exceptional Discretionary Grounds</i> • Cases which are forwarded to the Misconduct Appeals Panel • Cases which are rejected by the reviewer for failing to meet any grounds 	35
8. Misconduct Appeals Panel	<ul style="list-style-type: none"> • Terms of Reference • Membership of the Misconduct Appeals Panel • What the School will send the student 	37

NCCA Student Non-Academic Misconduct Policy and Procedures

	<ul style="list-style-type: none"> • Misconduct Appeals Panel Hearing Procedure (see also Appendix 3 Guidance on Hearings) • Misconduct Appeals Panel Outcomes <ul style="list-style-type: none"> ○ <i>Outcome Procedure</i> ○ <i>Finding(s)</i> ○ <i>Decision(s)</i> ○ <i>Appeal Upheld</i> ○ <i>Appeal Not Upheld</i> • Misconduct Appeals Panel considerations <ul style="list-style-type: none"> ○ <i>In reaching Findings</i> ○ <i>In reaching Decisions</i> ○ <i>General Panel Considerations when determining findings and reaching decisions</i> • Hearing Outcome Letter 	
9. Completion of Procedures and the Office of the Independent Adjudicator		43
10. Monitoring and Assurance		43
APPENDICES TO THIS POLICY		
Appendix 1	Flowchart A – Misconduct Procedures (<i>included in this document</i>)	
Appendix 2	Flowchart B – Misconduct Appeal Procedure (<i>included in this document</i>)	
Appendix 3	Guidance on Hearings (General Provisions and Procedures)	
Appendix 4	Non-academic Misconduct Referral Form template	
Appendix 5	Preliminary Enquiry Report Form template	
Appendix 6	Misconduct Appeal Form Template	
Appendix 7	Summary of procedural timescales in the Non-Academic Misconduct Policy	

NCCA Student Non-Academic Misconduct Policy and Procedures



Student Non-Academic Misconduct Policy and Procedures

1 Introduction

- 1.1 National Centre for Circus Arts students are required to familiarise themselves with this Policy and its procedures, and allied regulations, policies and procedures.
- 1.2 National Centre for Circus Arts is a registered Higher Education Provider with the Office for Students and a subscriber to the Office of the Independent Adjudicator (OIA).
- 1.3 Students on National Centre for Circus Arts Higher Education courses are registered with the School, and our degrees are awarded by the University of Kent (the 'validating university'). Where a decision is made under this policy that the student status of a student on one of National Centre for Circus Arts School's higher education courses 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 withdrawal from the student's course of study.
- 1.4 National Centre for Circus Arts seeks 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 students. We therefore expect all students to read and be familiar with this Policy, and maintain good conduct at all times whilst on School premises, or engaged in any programme/course-related activities, including in external environments and outside performances.
- 1.5 Students must comply with instructions given by National Centre for Circus Arts. These rules apply during and outside term-time, throughout the whole of the student's registration at the School, and National Centre for Circus Arts's jurisdiction under this policy and procedures is not limited to its own premises.
- 1.6 This policy and procedures (the 'Policy') shall apply to all students (individually and collectively to any group of students) registered for a course with National Centre for Circus Arts, 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 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.

NCCA Student Non-Academic Misconduct Policy and Procedures

- 1.7 This Policy sets out general definitions of non-academic misconduct, including the breach of the National Centre for Circus Arts Student Code of Conduct and Code of Behaviour. 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 Guidance¹ for Higher Education Institutions on How to Handle Alleged Student Misconduct Which May Also Constitute a Criminal Offence, and the OIA's Good Practice Framework², particularly those sections of the Framework covering disciplinary procedures, and complaints and appeals.
- 1.8 The burden of proof for all decisions made under this policy and its procedures will be the 'balance of probabilities' (i.e. what, on balance, is more likely than not to have occurred). For further information about this, please see Section 3 'Operational Rules and Policies Governing these Procedures: 'Burden of Proof'.
- 1.9 National Centre for Circus Arts recognises 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. Students may be subject to action and/or penalty taken by the student's School under this Policy where the School's policies are infringed.
- 1.10 National Centre for Circus Arts expects the same standard of behaviour from its registered students with regard to activities or facilities provided that take place off School premises, as well as on them. Whilst registered with the School, students are representatives of National Centre for Circus Arts at all times. Behaviour by students 'off-site' which nonetheless breaches this policy or any other School policy, will, where necessary and appropriate, be referred into the procedures under this policy.

2 Scope and Definitions of Student Misconduct

- 2.1 This section of this policy sets out the School's 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 their relationship with the School.
- 2.2 There is a distinction between non-academic matters (for example, misconduct involving harm to other members of the School community, or damage to the School's property or its reputation) and academic matters (for example, allegations of plagiarism). Academic matters in relation to misconduct are subject to the Academic Misconduct Policy³.

¹ [UUK Guidance for HEIs Student Misconduct](#)

² <https://www.oiahe.org.uk/resources-and-publications/good-practice-framework/>

³ <https://www.kent.ac.uk/ai/academicpolicies.html>

NCCA Student Non-Academic Misconduct Policy and Procedures

Simultaneous allegations of academic and non-academic misconduct

2.3 In the event that a concern may relate to both the academic and non-academic conduct of a student, the School Principal or their nominee, in consultation with the validating university as appropriate, shall determine the appropriate procedure or procedures for its investigation and consideration. 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, or for one procedure to be held in abeyance pending conclusion of another. This will be determined by the School Principal or their nominee.

2.4 Misconduct may also include the breach of, or failure to meet, expected standards of professionalism in the performing arts, as set out in the School's [Student Code of Conduct and School Code of Behaviour](#).

Misconduct occurring off School premises

2.5 No student of National Centre for Circus Arts shall engage in conduct either on or off School premises which may reasonably be deemed to constitute misconduct, as per the definitions of misconduct in this policy. Where a student is alleged to have engaged in conduct or behaviour that takes place off National Centre for Circus Arts premises which falls within one or more of the definitions of misconduct set out in this Policy, the alleged misconduct including any resulting reports and/or supporting evidence will normally be referred into these Non-Academic Misconduct procedures for investigation (see the 'Preliminary Enquiry' section of this policy for further information).

'Online'/'Digital' misconduct

2.6 Behaviour that falls within one or more of the definitions of misconduct set out in this policy will be deemed by National Centre for Circus Arts as misconduct whether that behaviour took place online or in person.

Non-academic misconduct definitions

2.7 In general terms, the School defines 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, and/or with those who work or study in the School);
- **Reputational damage** (action which damages, or brings the School into disrepute);
- **Action which deviates from accepted institutional, professional, academic or ethical standards.**

(See also 'Misconduct which is also a criminal offence' further on in this section)

NCCA Student Non-Academic Misconduct Policy and Procedures

2.8 Students are subject to all the 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 2.10 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 validating university policies and regulations.

2.9 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.

2.10 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 School makes for our students from time to time in force, or which are established by the validating university that are applicable to students' studies at the School. Examples of such policies include, but are not limited to, the following:

- National Centre for Circus Arts_Student Code
- National Centre for Circus Arts Performance and Production Codes of Conduct
- National Centre for Circus Arts_Attendance Policy
- National Centre for Circus Arts_Criminal Records Policy
- National Centre for Circus Arts_Emergency Powers of Exclusion or Suspension
- National Centre for Circus Arts_Events Policy
- National Centre for Circus Arts_Inclusivity Policy and Protocols
- National Centre for Circus Arts_IT Policy on Acceptable Use
- National Centre for Circus Arts_Policy on Sexual Misconduct, Harassment and Related Behaviours
- National Centre for Circus Arts_Student Complaints Procedure
- National Centre for Circus Arts_Support Through Studies Policy
- National Centre for Circus Arts_Terms and Conditions;
- Any relevant applicable National Centre for Circus Arts_placement agreements or equivalent agreements

b) constitutes sexual misconduct, harassment or related behaviours as defined in the **National Centre for Circus Arts 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;

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NCCA Student Non-Academic Misconduct Policy and Procedures

- 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 School, or a visitor to the School, or any other person;
- 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 premises;
- h) constitutes acts, omissions or statements intended to deceive the School;
- i) causes damage to School property, or the property of students, employees or visitors to the School;
- j) misuses, wilfully damages, defaces, steals or converts to improper use of property of the School (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 applicable health and safety policy (eg of a placement provider);
- 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 the student's Course;
- p) constitutes unauthorised entry onto School property;
- q) disrupts, obstructs or interferes with the activities of the School (including training, administrative or social activities) on School 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 School, or any visitor to the School, or any attempt to disrupt, obstruct or interfere in this regard;
- s) causes damage, or could cause damage, to the reputation of the School;

NCCA Student Non-Academic Misconduct Policy and Procedures

- 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.

2.11 Any reported/alleged behaviour such as is described above will be investigated in accordance with this Policy and its 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'⁴). 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/course-related activity.

2.12 The internal non-academic misconduct (disciplinary) process is a civil matter. It is based upon an allegation that a student has breached one or more of the School's policies, rules and regulations. The allegation has to be proven 'on the balance of probabilities'⁵, and the most serious sanction that can be applied is permanent expulsion from the School, with the removal of the right to register for any further course of study with National Centre for Circus Arts.

2.13 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 cannot make a finding of a criminal offence, however it can consider whether a breach of this Policy appears to have occurred and, if so, refer the alleged breach for consideration under these procedures.

Professional Conduct

2.14 All students in National Centre for Circus Arts 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 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.

2.15 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/course](#), overseen by the Board of Examiners. Expectations regarding a student's professional conduct are set out in the School's [Student Code of Conduct](#) and breaches of the Student Code of Conduct and/or School Code of Behaviour may be subject to action under this Policy and its procedures.

⁴ See 'Suspected Misconduct: Preliminary Enquiry'

⁵ See also 'Burden of proof'.

NCCA Student Non-Academic Misconduct Policy and Procedures

Misconduct relating to admissions

- 2.16 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).
- 2.17 Where information comes to light that an application may contain false, fraudulent or misleading information from a successful applicant who has already registered as a student on a course of study with the School, subject to the findings of the Preliminary Enquiry the student's registration may be immediately terminated and student status withdrawn, or the Preliminary Enquiry Officer may determine another course of action is appropriate (in the event of exceptional mitigating circumstances). For more information, please see Section 4 of this Policy, 'Preliminary Enquiry' (in particular, '*Behaviour or conduct prior to entering the student contract that would normally constitute a material breach of the Terms and Conditions*').
- 2.18 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 applicable **School Admissions Policy** (which may include, where appropriate, referral into of the matter into the procedures under this Policy) and, where applicable, the **Criminal Records policy**.

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Misconduct which is also a criminal offence

- 2.19 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 Panel⁶ (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.
- 2.20 In determining whether to commence or proceed with any action or process under this Policy, the School is not bound by the outcome of any police or criminal investigation or prosecution.

⁶ See Criminal Records Policy Appendix 2

NCCA Student Non-Academic Misconduct Policy and Procedures

2.21 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 procedures⁷, 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).

2.22 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 investigation. However, the School may take any action deemed necessary for safeguarding both the student and the School community, as outlined above (e.g. imposing **Precautionary Measures** as set out in the **Policy on Sexual Misconduct, Harassment and Related Behaviours**, or taking action under the **Emergency Powers of Exclusion and Suspension**). The School may also commence disciplinary action in relation to any matter which is not part of the criminal investigation (e.g. drug use).

2.23 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 following a risk assessment by the School will the alleged crime be reported to the Police by the School contrary to the wishes of the victim.

Misconduct and School Rules, Regulations and Obligations

2.24 Nothing in this Policy shall prevent National Centre for Circus Arts from making local and/or temporary rules relating to particular services, facilities and areas of the School, or regarding student attendance. The School's use of the rules and processes set out in this Policy does not prevent the School from using such local and/or temporary rules associated with conduct relating to academic or non-academic services, facilities or areas of the School.

2.25 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 to all students and staff of the School, and its obligations under the Equality Act 2010 which include the duty to make reasonable adjustments.

3 Operational rules and policies governing these procedures

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.

⁷ See Criminal Records Policy and Procedures

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NCCA Student Non-Academic Misconduct Policy and Procedures

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**.

3.3 The definition of the balance of probabilities is that, based on the evidence, it is more likely than not that the alleged events occurred.

Legal context

3.4 In all processes under this Policy, National Centre for Circus Arts will act in accordance with the provisions of the Human Rights Act 1998, the Data Protection Act 2018, the Equality Act 2010 and other relevant legislation, and the General Data Protection Regulations (GDPR) 2018.

Anonymous allegations

3.5 National Centre for Circus Arts operates the procedures under this Policy under the principles of natural justice and the duty to act fairly. National Centre for Circus Arts will therefore 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. In reaching this decision, National Centre for Circus Arts will take the following into consideration:

- The seriousness of the allegation, and whether there are justified grounds for investigating this further;
- Whether the anonymous allegations sufficiently indicate that one or more members of the School community may be at risk of serious harm or danger;
- Whether the person facing an anonymous allegation of misconduct has sufficient information to be able to make a proper defence;
- Any other relevant information that in the view of the School Principal, warrants the School investigating the anonymous allegation.

Data processing, confidentiality, and record keeping

3.6 In line with the provisions in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), the School may share information regarding a misconduct case with members of a Misconduct Panel or Misconduct Appeal Panel 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. Panel Members may as necessary be either School staff and/or external to the School (see 'External Officers', below). 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 Protection Policy](#). If you have any questions or concerns regarding confidentiality and this procedure you should contact the School Data Protection Officer.

3.7 In accordance with the School'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.

NCCA Student Non-Academic Misconduct Policy and Procedures

normally 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, are unique or complex and therefore require shorter or longer record retention periods.

Conduct of proceedings

- 3.8 All misconduct proceedings, including Preliminary Enquiry interviews, Misconduct Panel hearings and Misconduct Appeals Panel hearings, will be held in private.
- 3.9 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.

Absence and withdrawal/non-engagement relating to these procedures

- 3.10 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 relevant procedure believe that they have sufficient and reasonable evidence and representations to proceed.
- 3.11 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 of procedures will be considered by the School, but it is at the discretion of the School as to whether there are sufficient grounds to temporarily adjourn any misconduct procedures.
- 3.12 The School may commence or proceed with any action or process under this Policy in the absence of the student, including 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.

Delegation

- 3.13 The School Principal 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 the School, such references include the Principal's nominee, nominated by the Principal to act on their behalf in matters of student misconduct.

Procedural integrity and fairness

- 3.14 Integrity and fairness are at the heart of all the School's policies and procedures. National Centre for Circus Arts has a number of close artistic and historical links with similar small specialist higher education providers of dance and allied artistic disciplines. We recognise that

NCCA Student Non-Academic Misconduct Policy and Procedures

there may be times where the involvement in our processes and procedures of one or more individuals who are located within a similar or cognate higher education context and who are fully independent of National Centre for Circus Arts, may be of substantial benefit to students, providing assurances against bias and prejudice, and giving independent oversight of our procedures and processes. This oversight also helps to ensure fairness and reasonableness, and maintain and enhance quality.

External Officers

- 3.15 In operating any of the processes or procedures under this Policy, National Centre for Circus Arts may therefore, as necessary, involve appropriate members of staff from one or more similar small specialist higher education providers of Circus and allied artistic disciplines, to support those processes, and/or for procedural advice and guidance. This means that such members of staff may as necessary fulfil a procedural role where normally the policy indicates this will be a member of School staff. For ease of reference, National Centre for Circus Arts terms such members of staff to be 'External Officers'. No proceedings under this Policy shall therefore be invalidated by virtue of the involvement of an External Officer.
- 3.16 In order to avoid any potential conflicts of interest (e.g where procedural independence may be compromised), and/or where specific expertise is required, External Officers as defined above may also as necessary operate procedures under this Policy on behalf of National Centre for Circus Arts, 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 External Officer procured by National Centre for Circus Arts.
- 3.17 Where it has good cause⁸ 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), or under the Precautionary Measures (see Policy on Sexual Misconduct, Harassment and Related Behaviours).

⁸ 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.

NCCA Student Non-Academic Misconduct Policy and Procedures

- 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 4.24(d)).

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 each relevant stage of the process⁹.

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/course 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 course 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 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 7. 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 under this Policy (including by the Preliminary Enquiry Officer, a Misconduct Panel, a Misconduct Appeals Panel, the School Principal, or
 - to comply with the terms of a temporary exclusion or suspension made under this Policy and procedures, or
 - to comply with the terms of a temporary exclusion or suspension made under another Policy and procedures (for example but not limited to, the Emergency Powers of Exclusion and Suspension, or the Policy on Sexual Misconduct, Harassment and Related Behaviours)

⁹ See the following sections of this Policy: **Informal Warnings; Preliminary Enquiry; Misconduct Panel; Misconduct Appeals Panel; OIA.**

NCCA Student Non-Academic Misconduct 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.

Serious breaches of the student terms and conditions within the Contractual Cooling Period

- 3.20 All students who join National Centre for Circus Arts sign up to our [Student Code of Conduct](#) at the time they formally accept an offer of a place at National Centre for Circus Arts on a course of higher education. The first 14 days of a student's enrolment constitute the 'Contractual Cooling Period' applicable to the student contract (as set out in the applicable 'Terms and Conditions' issued by the School and signed by the student).
- 3.21 During this cooling period, or subsequent to formal acceptance of a place but prior to enrolment, conduct by an enrolled or incoming new student who has entered into the student contract (the 'Terms and Conditions') that is deemed by the School to be a breach of any of our policies, and incompatible with our values and ethos of inclusivity, kindness, and community, will be referred into the Preliminary Enquiry procedures under this Policy (see Section 4 of this Policy) for investigation and review.
- 3.22 If, in the view of the Preliminary Enquiry Officer, evidence established on the balance of probabilities satisfies them that a serious breach has occurred which makes it inappropriate for the student to begin or remain on the Course, and/or as a student of the School, the Preliminary Enquiry Officer may exceptionally recommend to the School Principal the immediate termination of the student contract.
- 3.23 Please see also 'Preliminary Enquiry: Serious breaches of the student terms and conditions within the Contractual Cooling Period' in Section 4 of these procedures.

4 Misconduct Procedures

Informal procedures

- 4.1 National Centre for Circus Arts recognises 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:

NCCA Student Non-Academic Misconduct Policy and Procedures

- 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 Misconduct 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 National Centre for Circus Arts staff (including external/guest teachers, staff on temporary contracts and external officers acting on behalf of National Centre for Circus Arts in a professional capacity), examiner, placement provider, any student of the School, other member of the School, 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 National Centre for Circus Arts activity or course-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: Serious breaches of the student terms and conditions within the Contractual Cooling Period

4.6 National Centre for Circus Arts [Student Code of Conduct](#) sets out the values of National Centre for Circus Arts, along with our expectations for how we will treat each other, with kindness, understanding and empathy, and that by joining National Centre for Circus Arts students are committing to behaving in ways that are inclusive and respectful, and do not engage in attitudes or behaviour that are incompatible with our values.

NCCA Student Non-Academic Misconduct Policy and Procedures

4.7 Where a student who is in the Contractual Cooling Period, or who has formally accepted an offer of a place on a course of higher education at National Centre for Circus Arts, is alleged during that time to have engaged in behaviour that may constitute a breach of either the National Centre for Circus Arts Student Code of Conduct, or any other policy applicable to the student contract (the relevant student 'Terms and Conditions'), the allegation(s) will be referred into the procedures under this Policy and a Preliminary Enquiry will take place.

4.8 The Preliminary Enquiry Officer will conduct their Preliminary Enquiry in accordance with the normal Preliminary Enquiry procedures. However, if, in the view of the Preliminary Enquiry Officer, evidence established on the balance of probabilities satisfies them that a serious breach has occurred within or prior to the Contractual Cooling Period which makes it inappropriate for the student to begin or remain on the Course, and/or as a student of the School, the Preliminary Enquiry Officer may exceptionally recommend to the School Principal the immediate termination of the student contract without recourse to further disciplinary procedures.

Examples of breaches

4.9 Examples of policy/contractual breaches that would, in the reasonable view of the Preliminary Enquiry Officer, make it inappropriate for a student in the 14-day Contractual Cooling Period (or having entered into the Student Contract with the School but prior to enrolment) to remain on their course, include but are not limited to:

- Harmful attitudes (for example, transphobia, misogyny, anti-Semitism, Holocaust denial) that are incompatible with our values and harmful to our community
- Racist behaviour
- Sexual Misconduct (as defined in the Policy on Sexual Misconduct, Harassment and Related Behaviours)
- Harassment
- Violence
- Bullying
- Other unacceptable behaviours that fall within the definition of 'Related Behaviours' as defined in the Policy on Sexual Misconduct, Harassment and Related Behaviours

4.10 In the event that the Preliminary Enquiry Officer makes a recommendation to the Principal of the School for immediate termination of the contract as a result of a finding, on the balance of probabilities, of a serious breach within or prior to the Contractual Cooling Period which makes it inappropriate for the student to begin or remain on the Course, the Principal will review the recommendation together with all relevant available evidence including the Preliminary Enquiry Report, and determine whether the recommendation should be upheld.

4.11 If the recommendation is upheld, the student's contract will be terminated immediately and the student will be notified in writing of the decision and issued with a copy of the Preliminary

NCCA Student Non-Academic Misconduct Policy and Procedures

Enquiry Report and any relevant documentation that was considered as part of the Preliminary Enquiry.

4.12 If the recommendation is not upheld, the Principal will refer the matter to a Misconduct Panel to determine whether alleged possible major misconduct has occurred on the part of the student.

4.13 Where the breach by the student occurred within the 14-day Contractual Cooling Period following their enrolment at the School and results in the termination of their contract, the student will have the right to request a review of this decision by the Chair of the Board of Governors (see 'Disagreement with a Preliminary Enquiry Outcome').

Behaviour or conduct prior to entering the student contract that would normally constitute a material breach of the Terms and Conditions

4.14 Where the Preliminary Enquiry Officer determines that behaviour or conduct which would normally constitute a serious breach by the student occurred prior to them entering the contract with National Centre for Circus Arts, the matter will be referred to the Principal who will review the information together with the student's application to the School, to determine whether the student should reasonably have disclosed this information at the point of, or during their application to, the School.

4.15 In the event the Principal determines that the student should reasonably have disclosed this information, the student's contract will normally be terminated on the basis that they have made a false, fraudulent or misleading application, in accordance with the relevant **Terms and Conditions** and the applicable **Admissions Policy**. The student will have the right to request a review of this decision by the Chair of the Board of Governors (see 'Disagreement with a Preliminary Enquiry Outcome').

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4.16 Where the Principal determines that there are no reasonable grounds to expect the student to have disclosed this information to the School in the course of making their application, the Principal shall determine any necessary action (eg setting any expectations for the student; identifying any necessary appropriate support), in liaison with relevant staff at the School (eg Head of Academic Administration and Student Support).

Preliminary Enquiry Procedure

4.17 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.

4.18 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,

NCCA Student Non-Academic Misconduct Policy and Procedures

together with an expected date/timeline for conclusion of the Preliminary Enquiry, and notifying the student of any support available.

4.19 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.

4.20 The Preliminary Enquiry Officer may delegate any investigative actions, including interviews, to other staff within the School or to External Officers acting on behalf of the School, as appropriate.

Preliminary Enquiry Interview Process

4.21 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.

NCCA Student Non-Academic Misconduct Policy and Procedures

Preliminary Enquiry Findings and Outcomes

The Preliminary Enquiry Officer will compile a report¹⁰ 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.

4.22 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 4.24a-g below)
- the outcome i.e. whether any further action will be taken, and what that action will be.

4.23 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.

Preliminary Enquiry Findings

4.24 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 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

¹⁰ The Preliminary Enquiry Report form (Appendix 3) should be used for this.

NCCA Student Non-Academic Misconduct Policy and Procedures

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~~course 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 appropriate¹¹, to best manage and address 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

(e) There is sufficient evidence, on the balance of probabilities, of a minor breach of School policy, rule or regulations within or prior to the Contractual Cooling Period that constitutes a material breach of the Terms and Conditions on the part of the student, therefore, the Preliminary Enquiry Officer will make one or more of the following recommendations to the School Principal:

- That a record of minor misconduct be placed on the student's file for the duration of their registration on their course;
- That a record of minor misconduct be placed on the student's file for a limited period;
- Any recommended remedial actions for the student to undertake, including a timeframe for completion of such action(s)

(f) There is sufficient evidence, on the balance of probabilities, of a serious breach of School policy, rule or regulations within or prior to the Contractual Cooling Period that constitutes a material breach of the Terms and Conditions on the part of the student,

¹¹ Eg Support Through Studies procedures.

NCCA Student Non-Academic Misconduct Policy and Procedures

therefore, the Preliminary Enquiry Officer will make one or more of the following recommendations to the School Principal:

- That the breach warrants immediate termination of the student's contract, or
- That the breach warrants referral into a Misconduct Panel for consideration, or
- That the breach warrants some other action being taken, for example (but not limited to):
 - Suspension or exclusion under the Precautionary Measures (under the Policy on Sexual Misconduct, Harassment and Related Behaviours)
 - Suspension or exclusion under the Emergency Powers of Exclusion and Suspension;
 - Referral into Support Through Studies, with clear actions/expectations set for the student;
 - Remedial actions for the student, with clear timeframes
 - Any other necessary actions (including precautionary actions)

(g) There is sufficient evidence, on the balance of probabilities, of behaviour or conduct by the student that would constitute a material breach of the Terms and Conditions but that occurred prior to the student entering the student contract with National Centre for Circus Arts. In this instance, the Preliminary Enquiry Officer will refer the Preliminary Enquiry Report together with any relevant evidence considered during the Preliminary Enquiry to the School Principal. The Principal will review the information together with the student's application to the School, to determine whether the student should reasonably have disclosed this information at the point of, or during their application to, the School. Having completed this review, on the balance of probabilities the Principal will determine one of the following outcomes, which shall be communicated in writing to the student by the Preliminary Enquiry Officer:

- That the student should reasonably have disclosed this information to the School in the course of their application or during the admissions process, and that the student's contract will therefore be terminated on the basis that they have made a false, fraudulent or misleading application in accordance with the relevant [Terms and Conditions](#) and the applicable [Admissions Policy](#);
- That there are no reasonable grounds to expect the student to have disclosed this information to the School in the course of making their application. In this instance, in liaison with relevant staff at the School (eg Head of Student Support), the Principal will determine:
 - Whether there are any necessary actions arising from the matter for the School to take, including any support for the student;
 - Whether there are any expectations needed to be set for the student.

Preliminary Enquiry Outcomes

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

NCCA Student Non-Academic Misconduct Policy and Procedures

- 4.25 The following excludes breaches that occurred within or prior to the Contractual Cooling Period, or prior to entering the student contract.
- 4.26 Where it is determined that there is sufficient evidence to uphold a charge of minor misconduct (see section 4.24b), 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;
[...]
- 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.

- 4.27 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.

Disagreement with a Preliminary Enquiry Outcome

- 4.28 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.
- 4.29 Where a student is found by the Preliminary Enquiry Officer to have committed a serious breach during or prior to the Contractual Cooling Period, the student will have the right to request a review of this decision by the Chair of the Board of Governors by writing to stevie@nationalcircus.org.uk, normally within 7 days of receiving formal written notification of the Preliminary Enquiry outcome, on receipt of which the Request for a Review will be forwarded to the Chair of the Board of Governors (or their nominee). The Chair of the Board of Governors will normally respond within 14 days of the date on which they received the Request for a Review.

NCCA Student Non-Academic Misconduct Policy and Procedures

- 4.30 Where a student is found by the Preliminary Enquiry Officer to have committed a serious breach prior to entering into the contract with National Centre for Circus Arts, in the event that their contract is terminated by the School, the student will have the right to request a review of this decision by the Chair of the Board of Governors by writing to stevie@nationalcircus.org.uk, normally within 7 days of receiving formal written notification of the Preliminary Enquiry outcome, on receipt of which the Request for a Review will be forwarded to the Chair of the Board of Governors (or their nominee). The Chair of the Board of Governors will normally respond within 14 days of the date on which they received the Request for a Review.

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 Hearings¹²

Representation and Accompaniment; Witnesses; Written and In-Person representations

- 5.2 National Centre for Circus Arts is 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.
- 5.3 In our operation of Misconduct Panels and Misconduct Appeals Panels, the following principles apply 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**
 - **Students have the right to make representations both in writing and in person**
- 5.4 The student must normally submit any written statements or other supporting documentary evidence (known as 'representations') that they wish the Misconduct Panel to consider, at least 48 hours in advance of a Hearing of the Misconduct Panel.
- 5.5 The opportunity to make additional written representations or submit further additional documentary evidence to a Misconduct Appeals Panel will not normally be allowed, because the student's Misconduct Appeal submission will constitute the student's written representations and evidence for consideration. Only in exceptional circumstances and at the discretion of the Misconduct Appeals Panel Chair will further additional documentation or

¹² See also Appendix 3 to this policy: Guidance on Hearings (General Provisions and Procedures)

NCCA Student Non-Academic Misconduct Policy and Procedures

representations submitted subsequent to the Misconduct Appeal submission by the student, be allowed. If the student is not able, or does not want to attend a Hearing of the Misconduct Appeals Panel, an additional written statement in lieu of attendance will normally be allowed, at the discretion of the Panel Chair.

- 5.6 The student must give notice in writing to the Secretary of the relevant Panel¹³ 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.
- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 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 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.
- 5.11 For the purpose of the hearing, a decision on any point of procedure by the Chair of the Panel will be binding.
- 5.12 For more details of these provisions, please see Appendix 3, Non-Academic Misconduct: Guidance on Hearings (General provisions and procedures).

¹³ The student will be provided with contact details when notified in writing of the decision to hold a Hearing.

NCCA Student Non-Academic Misconduct Policy and Procedures

Evidence

- 5.13 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 relevant hearing, including the admission of written evidence and of oral evidence from witnesses or other parties in all instances. This shall include the power to refuse to admit evidence or hear witnesses on the basis of lack of relevance. 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.

Adjournment

- 5.14 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 3, 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 School Principal, who will appoint a Secretary to service and make the arrangements for the Panel. The Misconduct Panel Members will be appointed by the School Principal.
- 6.2 The Secretary shall advise the Misconduct Panel regarding procedural matters but shall not take part in any decision-making. The Secretary will be supported during the course of a Panel Hearing by a note-taker.

Terms of Reference

- 6.3 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 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 (see Section 9, 'Monitoring and Assurance').

Membership of the Misconduct Panel

- 6.4 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/course of study¹⁴, or a senior member of staff from another higher education institution¹⁵;

¹⁴ 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.

¹⁵ See Section 3 'External Officers'

NCCA Student Non-Academic Misconduct Policy and Procedures

- b) Two other members, unconnected with the student's course of study, who shall normally be either members of staff of the School or members of staff from other higher education institutions.

- 6.5 No member from the same course team with whom the student is studying will serve as a Chair or Panel Member.
- 6.6 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.
- 6.7 The quorum for a hearing of the Misconduct Panel will be the Chair and two other members.
- 6.8 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.
- 6.9 A School Representative will normally attend the Misconduct Panel Hearing to bring the case. This will normally be the Preliminary Enquiry Officer, but may be another member of staff if necessary and appropriate. In the event a School Representative is unable to attend, the Panel will consider the Preliminary Enquiry Report and any accompanying evidence/documentation submitted by the School in bringing the case, to constitute the School's representations to the Panel.

What the School 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, School Representative who will be bringing the case, 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.

NCCA Student Non-Academic Misconduct Policy and Procedures

- 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 Panel Members for consideration prior to the hearing. 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 3 Guidance on Hearings, which provides further operational details of the Misconduct Panel Hearing Procedure:
- 1) All parties will normally be present at the Misconduct Panel Hearing at the same time, unless any reasonable adjustment is required which means it is necessary for attendance to be staggered (eg in cases of alleged serious sexual misconduct).
 - 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) The Panel may ask questions of all those present (including any witnesses/expert advisers called) at the hearing at any point during the proceedings. Expert advisers may address any questions they have during proceedings to the Chair of the Panel. Individuals accompanying the student for support will not normally be permitted to speak during the Hearing, but may at the discretion of the Chair be invited to make a statement in support of the student at the end of the Hearing.

NCCA Student Non-Academic Misconduct Policy and Procedures

- 5) The student and the School representative may ask questions of each other and of any witnesses called, but these must be addressed through the Chair, who has the discretion to allow or decline any such questions.
- 6) At the conclusion of all presentations and questions, the student facing the allegation(s) of misconduct (and/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.
- 7) The Chair will then confirm that the Hearing is at an end, and will clarify that in the event of a finding of misconduct by the Panel, the student will have the right of appeal against the Panel's decision(s) and/or findings, details of which will be provided in the Hearing Outcome Letter. The Chair will then close the Hearing, ask all parties to leave, and the Panel will move to deliberations on the case of alleged misconduct.
- 8) 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).
- 9) 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.
- 10) 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 3 Guidance on Hearings.)
- 11) 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. The outcome of the Panel may be communicated informally to the student, the Principal, and relevant staff in the School prior to the Hearing Outcome Letter, if deemed appropriate by the Chair of the Misconduct Panel. Complex outcomes will not normally be shared informally with the student or other parties ahead of the Hearing Outcome Letter, to ensure there is clarity over the outcome.
- 12) Where an outcome is communicated informally, this will not constitute formal notification of the Panel Outcome, and information shared may necessarily be limited or restricted. The formal outcome, including the full decisions and findings of the Panel, will be communicated in the Hearing Outcome Letter.
- 13) Should the Misconduct Panel determine, on the balance of probabilities, that the allegation(s) of misconduct were not established, or were without foundation, that decision will be communicated to all persons involved in the case, normally in writing

NCCA Student Non-Academic Misconduct Policy and Procedures

within 7 days of the date of the hearing, but at the Chair's discretion, it may be informally communicated to the student and Principal of the School.

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 6.15, 6.16 and 6.17)
 - 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
 - The student's engagement with the School during their registration with the School
 - 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
 - The proportionality of any penalty/sanctions, including where these may set a precedent

NCCA Student Non-Academic Misconduct Policy and Procedures

- Any mitigating circumstances and/or aggravating factors which are accepted by the Panel¹⁶.

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.
- 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 cases where the Panel has made a finding of major misconduct, and/or 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 a penalty/penalties from Category 1 and a penalty/penalties from Category 2 be applied simultaneously for the same offence(s).

Table of Penalties
Category 1 Penalties (Penalties that may be applied by the Preliminary Enquiry Officer, the Misconduct Panel, or the Misconduct Appeals Panel)
<ul style="list-style-type: none">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;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 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.
Category 2 Penalties (Penalties that may only be applied by the Misconduct Panel, or the Misconduct Appeals Panel)

¹⁶ For examples of mitigating and aggravating factors, see the Student Guide: Non-Academic Misconduct policy, found on www.cdd.ac.uk

NCCA Student Non-Academic Misconduct Policy and Procedures

- h. Mandatory attendance at a workshop or course within a specified time period¹⁷;
- i. Restorative action such as a reflective statement or project;
- j. Restricted ability to contact the complainant;
- k. Requiring that the student does not represent the School in a paid or unpaid capacity for a specified period of time. This could include employment by the School on a contractual or casual basis¹⁸, representing the School at other events, or voluntary roles such as student ambassador or similar;
- l. Conditions for the continuation of student status;
- m. Exclusion from, or restrictions concerning, participation in specified activities (including external course-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;
- n. The suspension of the student's studies, in whole or in part, for a specified period or until an agreed review date;
- o. Permanent exclusion / removal of student status¹⁹ with or without the right to re-register for any further course of study with the School;
- 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. (For example, the Panel may determine that a student may be suspended pending the fulfilment of conditions, but that failure to fulfil those conditions would result in permanent exclusion/removal of student status with or without the right to re-register for any further course of study with National Centre for Circus Arts.

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, provided their decision to vary it is proportionate and reasoned.

¹⁷ 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.

¹⁸ Where a student is contracted to undertake paid employment for the School, action may also be taken under School staff disciplinary procedures.

¹⁹ 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.

NCCA Student Non-Academic Misconduct Policy and Procedures

- 6.26 The findings and decisions of the Misconduct Panel will be communicated to the student, the School Principal, and any other relevant 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 Sections 5 and 6 of this Policy, 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 or any other precautionary measures²⁰ 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.**

Please also see 'Exceptional Discretionary Grounds' further on in this section. An appeal cannot be submitted on the basis of Exceptional Discretionary Grounds, and must be made under one or more of the above grounds of appeal.

²⁰ See Emergency Powers of Exclusion and Suspension, and Policy on Sexual Misconduct, Harassment and Related Behaviours

NCCA Student Non-Academic Misconduct Policy and Procedures

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 rejected without consideration.

7.3 To make an appeal, a student should submit an appeal form²¹, together with any supporting documentation/evidence which they consider should be taken into account, to stevie@nationalcircus.org.uk where it will be logged and forwarded to the Principal who will either act as the Misconduct Appeal Reviewer or delegate the role to another individual, who may be:

- a senior member of National Centre for Circus Arts staff, or
- an External Officer acting on behalf of the School, or
- a member of the National Centre for Circus Arts Board of Governors

7.4 Students must include with their appeal all documentation that they wish the Misconduct Appeal Reviewer to consider, including any information relating to mitigating circumstances.

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

7.6 There are two stages to the Misconduct Appeal process:

- 1) The appeal submission is reviewed by the Misconduct Appeal Reviewer, to determine whether it **demonstrates one or more of the 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 demonstrates grounds, a Misconduct Appeals Panel is convened to give further consideration to the appeal.

7.7 In this procedure, '**demonstrates one or more of the grounds**' means that the Misconduct Appeal Reviewer considers that there is sufficient evidence that the appeal may meet one or more of the grounds of appeal set out in section 7.1 of this Policy, or that there is some other good cause, to merit further consideration of the appeal by the Misconduct Appeals Panel. It is not sufficient for an appeal merely to state the grounds upon which the student is appealing.

Exceptional Discretionary Grounds

²¹ The Misconduct Appeal Form can be located on the National Centre for Circus Arts website at: [Policies and Procedures - National Centre for Circus Arts | National Centre for Circus Arts \(nationalcircus.org.uk\)](https://www.nationalcircus.org.uk/policies-and-procedures)

NCCA Student Non-Academic Misconduct Policy and Procedures

7.8 Where the Misconduct Appeal Reviewer does not find that the appeal submission demonstrates one or more of the grounds for a Misconduct Appeals Panel to be convened, but they are satisfied that there is sufficient cause, in the interests of natural justice, for the case to warrant further consideration, the Misconduct Appeal Reviewer may exercise their right to refer the case to the Misconduct Appeals Panel under exceptional discretionary grounds. The application of exceptional discretionary grounds is at the discretion of the Misconduct Appeal Reviewer, and is in no way any indication of the merit (or lack of merit) of an appeal. The decision to refer a case to the Misconduct Appeals Panel under exceptional discretionary grounds is not a direction nor indication to the Misconduct Appeals Panel that the appeal should be upheld.

Cases which are forwarded to the Misconduct Appeals Panel

7.9 Where the Misconduct Appeal Reviewer finds that the appeal submission warrants consideration by a Misconduct Appeals Panel, the reviewer will notify the student in writing of this decision, normally within 21 days of receipt of the appeal submission, and will refer the case to the Misconduct Appeals Panel Secretary to organise a 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. The student will be invited to attend the Hearing (see Section 8 'Misconduct Appeals Panel Hearing').

Cases which are rejected by the reviewer for failing to demonstrate any grounds

7.10 Where the Misconduct Appeal Reviewer finds that the appeal submission does not demonstrate 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.

7.11 In this instance, the Appeal Outcome Letter will be sent normally within 21 days of receipt of the appeal submission, and the student will be issued with a Completion of Procedures Letter within 28 days after the date of the Appeal Outcome Letter. On receipt of the Completion of Procedures letter, the 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:

NCCA Student Non-Academic Misconduct Policy and Procedures

- 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).

Membership of the Misconduct Appeals Panel

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

- a) A Chair, usually a member of the School's governing body or the governing body of another higher education institution, or an External Officer who holds a leadership role in another higher education institution;
- b) A senior member of staff from the School, or an External Officer who will be a senior member of staff of another higher education institution;
- c) Another member, who shall be either a member of staff of the School or an External Officer who will be a member of staff of another higher education institution.

8.4 The Panel will be served by a Secretary who may be a senior member of staff of National Centre for Circus Arts, or an External Officer, appointed by the School Principal to service and make the arrangements for the Panel. The Misconduct Appeals Panel Members will be appointed by the Chair of the School Board of Governors.

8.5 The Secretary shall advise the Misconduct Appeals Panel regarding procedural matters but shall not take part in any decision-making. The Secretary will be supported during the course of a Panel Hearing by a note-taker.

8.6 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 they have not been involved in the case, or its consideration under this Policy.

8.4 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.

NCCA Student Non-Academic Misconduct Policy and Procedures

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

8.6 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.

8.7 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 School will send the student

Misconduct Appeals Panel

8.8 In the event of a 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)

8.9 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.

8.10 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.

8.11 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.

NCCA Student Non-Academic Misconduct Policy and Procedures

- 8.12 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.
- 8.13 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)

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

- 1) All parties will normally be present at the Misconduct Appeals Panel 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 begin by setting out the case for the Misconduct Appeals Panel to consider. 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) Both the student and the School representative may call witnesses at any point during the hearing by making a request to the Chair of the Panel. The Chair of the Panel has the discretion to accept or decline any witnesses called.
- 5) At the conclusion of all presentations and questions, the School representative will be asked if they have any final statement to make. Individuals accompanying the student for support will not normally be permitted to speak during the Hearing, but may at the discretion of the Chair be invited to make a statement in support of the student at the end of the Hearing.
- 6) 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.
- 7) The Chair will then confirm that the Hearing is at an end, and will clarify that the Misconduct Appeals Panel will proceed to deliberate on the Appeal, and that the Misconduct Appeals Panel decision is **final**. The Chair will clarify that the Misconduct

NCCA Student Non-Academic Misconduct Policy and Procedures

Appeals Panel will first determine, on the balance of probabilities, whether grounds have been established for the appeal to be upheld, and if so, what the appropriate outcome of the case is, in accordance with the procedures set out in Section 8 of this Policy (see 'Misconduct Appeals Panel Outcomes'). The Panel will then move to deliberations.

- 8) 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.
- 9) 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.
- 10) 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 3 Guidance on Hearings.)
- 11) 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. Should the Chair deem it appropriate and with just cause, a verbal outcome may be informally delivered to the student and School Representative ahead of the issue of the Appeal Hearing Outcome Letter.
- 12) Complex outcomes will not normally be shared informally with the student or other parties ahead of the Hearing Outcome Letter, to ensure there is clarity over the outcome.

Misconduct Appeals Panel Outcomes

Outcome Procedure

- 8.15 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)

- 8.16 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**

NCCA Student Non-Academic Misconduct Policy and Procedures

- b) That there is no evidence, insufficient evidence, and/or 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)

8.17 The Misconduct Appeals Panel Decision is the final institutional decision on the case. Where an appeal is upheld by the Misconduct Appeals Panel, this means the Panel will review the findings and decision(s) of the Misconduct Panel to determine whether a different decision on the case should be reached. Even where an appeal is upheld, following its review of the Misconduct Panel's findings and decision(s), the Misconduct Appeals Panel may determine that the original Misconduct Panel Outcome is the correct outcome on the case.

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

8.19 Once the Misconduct Appeals Panel has reached its findings (as set out above), it will take any relevant action by making its decision, as articulated below:

Appeal Upheld:

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

- a) **Overturn some or all of the original Misconduct Panel Findings, and overturn the Misconduct Panel Decision(s), and replace them with the Findings of the Misconduct Appeal Panel and issue a new case decision,**

OR

- b) **Amend the original Misconduct Panel Findings and Decision, in which case some or all of the original Misconduct Panel Findings will either stand or be amended, and some or all of the Decision(s) will be amended,**

OR

- c) **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.

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 and the Misconduct Appeals Panel will not review these. 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.

NCCA Student Non-Academic Misconduct Policy and Procedures

Misconduct Appeals Panel considerations

8.22 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 misconduct appeal process
- The student's engagement with the School during their registration with the School
- 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.

8.23 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.

8.24 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).

NCCA Student Non-Academic Misconduct Policy and Procedures

Hearing Outcome letter

- 8.25 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 9).
- 8.26 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. Where a Misconduct Panel finding of misconduct is overturned by the Misconduct Appeals Panel, this means the School will no longer hold that record of misconduct for that student.
- 8.27 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, or the imposition of Precautionary Measures.

9 Completion of Procedures & Office of the Independent Adjudicator

- 9.1 The Office of the Independent Adjudicator for Higher Education (OIA) runs an independent scheme to review student complaints. National Centre for Circus Arts is a member of this scheme. If a student is unhappy with the final outcome of these procedures they may be able to ask the OIA to review their case. More information about making a complaint to the OIA, what it can and can't look at and what it can do to put things right if something has gone wrong, can be found here: <https://www.oiahe.org.uk/students/>
- 9.2 Completion of Procedures Letters will normally be issued by the School within 28 days of the conclusion of the School's internal Non-Academic Misconduct Procedures.
- 9.3 Students normally need to have completed these Non-Academic Misconduct procedures before you complain to the OIA. Once the misconduct procedures have been exhausted, National Centre for Circus Arts will send the student a letter called a 'Completion of Procedures Letter', and the student will have 12 months from the date of their Completion of Procedures Letter to apply to take your case to the OIA. More information about Completion of Procedures Letters and when students should expect to receive one can be found on the OIA website here: <https://www.oiahe.org.uk/providers/completion-of-procedures-letters/>
- 9.4 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 procedures²².

²² <https://www.oiahe.org.uk/providers/completion-of-procedures-letters/>

NCCA Student Non-Academic Misconduct Policy and Procedures

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;
 - Report any matters to the School Board of Governors 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.







LIST OF APPENDICES TO THIS POLICY

- **APPENDIX 1: Flowchart A – Misconduct Procedures** (attached to this document)
- **APPENDIX 2: Flowchart B – Misconduct Appeal Procedure** (attached to this document)
- **APPENDIX 3: Guidance on Hearings (General Provisions and Procedures)**
- **APPENDIX 4: Non-Academic Misconduct Referral Form Template**
- **APPENDIX 5: Preliminary Enquiry Report Form Template**
- **APPENDIX 6: Misconduct Appeal Form**
- **APPENDIX 7: Summary of procedural timescales in the Non-Academic Misconduct Policy**

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NCCA Student Non-Academic Misconduct Policy and Procedures

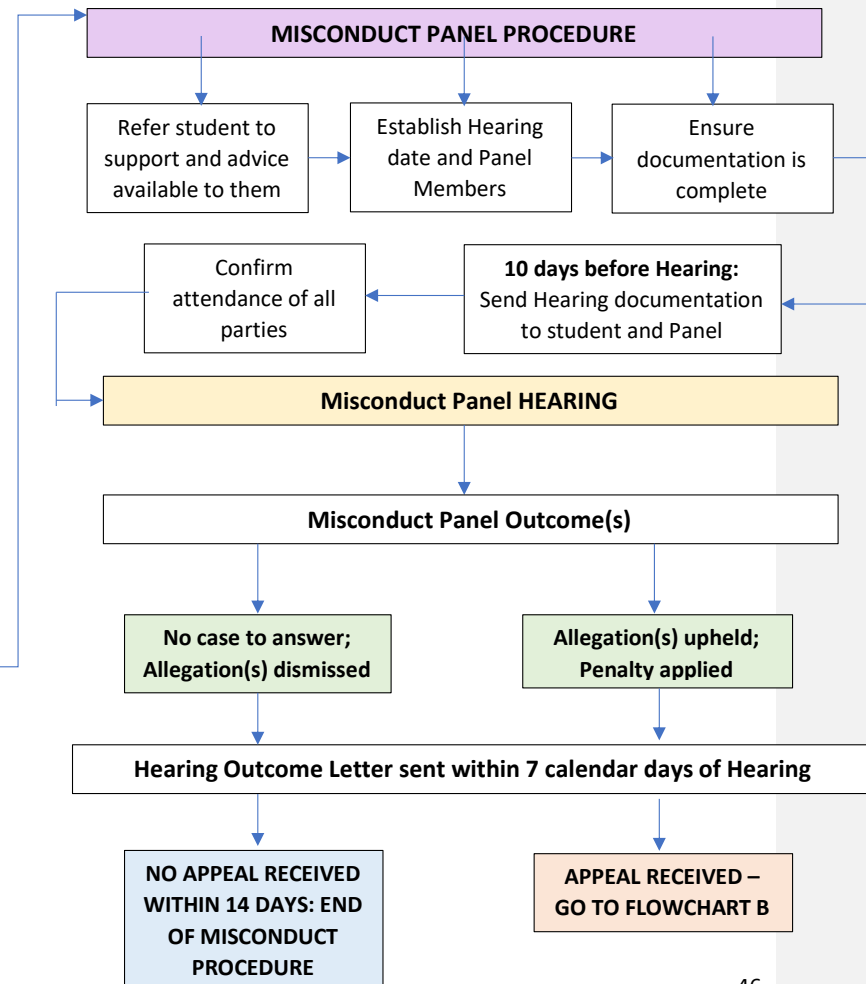
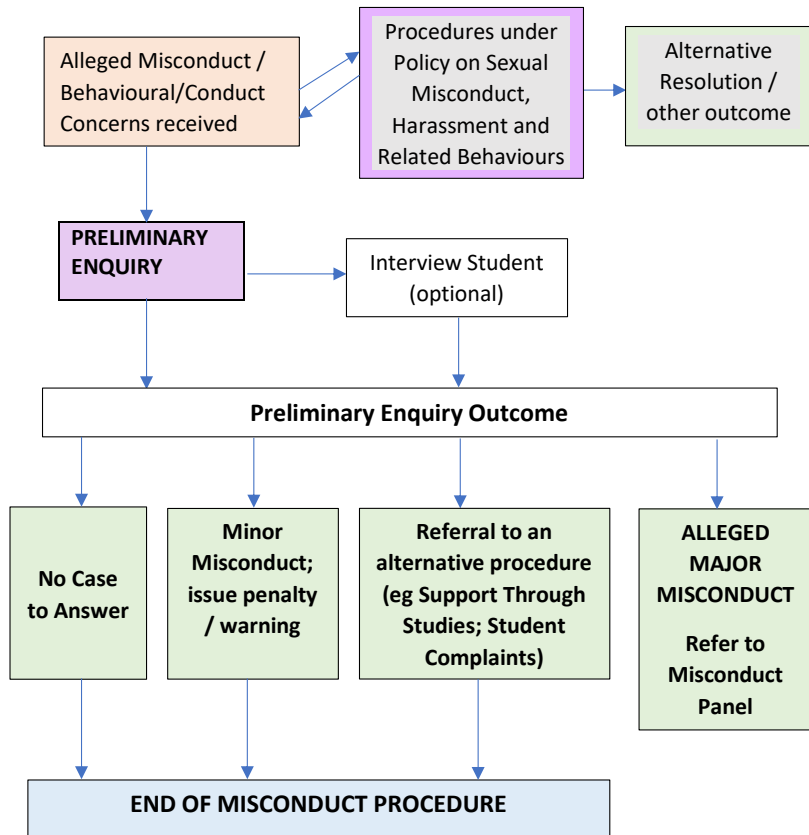
Key to procedural flowcharts (Appendices 1 & 2):

	= Procedural trigger
	= Start of Procedure
	= Procedural Decision
	= Panel Hearing
	= End of Procedure
	= Other policy/procedure

NCCA Student Non-Academic Misconduct Policy and Procedures

Appendix 1: FLOW CHART A – Formal Misconduct Procedures

START OF MISCONDUCT INVESTIGATION PROCESS



NCCA Student Non-Academic Misconduct Policy and Procedures

APPENDIX 2: FLOW CHART B – Misconduct Appeal Procedures

