

# **national centre for circus arts**

## **1. Introduction**

The National Centre seeks to maintain an environment which is safe and conducive for all members, whether students or staff, and supports their wellbeing and fosters their professional development of all students. We therefore expect all students to maintain good conduct at all times whilst on School premises, or whilst engaged in any programme-related activities, including in external environments and outside performances.

These rules apply during and outside term-time, throughout the whole of the student's registration at the School, both on and offsite.

This policy summary covers, for example, misconduct involving harm to other members of the School community, or damage to the School's property or its reputation, rather than academic matters such as allegations of plagiarism which are dealt with under the Academic Misconduct Policy.

In the event that a concern may relate to both, it may be necessary for separate procedures to be followed simultaneously or for one procedure to be paused pending conclusion of another. This will be determined by the School Principal or their nominee.

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

## **2. Definitions**

Non-academic misconduct can be defined in the following ways:

- **Physical misconduct;**
- **Sexual misconduct;**
- **Harassment/Abusive behaviour/Related behaviours;**
- **Psychological harm or threats;**
- **Limiting others' freedom of speech**
- **Damage to property;**
- **Unauthorised taking or use of property;**
- **Causing a health and/or safety concern;**
- **Obstructing the functions or activities of the School**
- **Damaging the reputation of the School**
- **Actions which contradict, professional, academic or ethical standards.**
- **Failure to disclose criminal convictions or providing false information**

In addition, it can also be defined as a breach of any rule, regulation, code of conduct/practice or policy such as:

- Student Code of Conduct and School Code of Behaviour
- Attendance Policy
- Freedom of Speech Policy
- Criminal Records Policy
- Emergency Powers of Exclusion or Suspension
- National Centre Inclusivity Policy and Protocols
- IT Policy on Acceptable Use
- Code of Conduct
- Sexual Misconduct, Harassment and Related Behaviours Policy
- Student Complaints Procedure
- Support Through Studies Policy
- The National Centre Terms and Conditions;

Non-academic misconduct (disciplinary) process is a civil matter and is based upon an allegation that has to be proven 'on the balance of probabilities'. This can result in permanent expulsion from the School. The criminal process is an external procedure and deals with allegations that a student has committed a criminal act and must be proved 'beyond reasonable doubt'.

All students in the National Centre 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.

Where a registered student has provided false or misleading information, this will be dealt with under this policy. Where a student is applying to be a student, this will be dealt with under the School Admissions Policy and/or the Criminal Records policy.

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

Where the alleged misconduct could also constitute an offence under the Criminal Law, the School's investigations or proceedings will be delayed until the police and courts have completed their investigations. 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.

Although disciplinary action may be paused, the School may take any action to safeguard both the student and the School community.

Where a current registered student obtains a criminal conviction, the matter will normally be immediately referred to the Convictions Consideration Panel.

In exceptional circumstances, the Principal of the School will refer concerns to the police where they consider it appropriate or where the School is legally obliged to do so, and will co-operate with the police in their investigation.

#### **4. Legal Context**

In all processes under this Policy, the National Centre 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.

Where it has good cause<sup>1</sup> to do so, in accordance with the General Data Protection Regulations 2018 (GDPR) the School will disclose the outcomes of misconduct processes and/or information about students ascertained in the course of such processes to relevant parties, such as the police. There may also be circumstances in which disclosures may have to be made to other parties, such as placement providers and/or employers or sponsors. Other than the student, it is at the School Principal's discretion as to who else needs to be informed about any matter relating to the process and outcomes.

#### **5. Absence**

None of the proceedings outlined in this Policy will be paused due to the absence of a student. However, if 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, at its discretion

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

Where allegations and related appeals of non-academic misconduct against a student are being considered and but have not been concluded at the time the Board of Examiners meets to consider results at the end of a year, the student will normally be allowed to academically progress through their programme of study. This does not indicate the School's view of alleged misconduct, and does not give the right to continue with a course of study.

If a student is in their final year of study, and an investigation is continuing the marks/final result may be released but the student may not graduate until the conclusion of the misconduct case.

#### **7. Failure to comply with decisions**

Failure by a student to comply with a decision 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.

#### **8. Cooling OFF**

The first 14 days of a student's enrolment constitute the 'Contractual Cooling Period'.

During this period and from formal acceptance of a place, any misconduct deemed to be a breach of any of our policies, will be referred into the Preliminary Enquiry process. If it found that a breach has occurred, termination of the student contract may occur

## 9. Informal Misconduct Procedures

The National Centre recognises that many concerns regarding student conduct can and should, where appropriate, be dealt with informally by members of staff. If that can't be achieved, then the following steps will be explored

Under these informal procedures a member of staff authorised by the Principal may issue an informal warning regarding their future conduct to a student, indicate targets for improvement, or a timeframe to achieve them. This may involve advice 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:

- Poor attendance
- inappropriate behaviour in class
- use of inappropriate clothing and/or equipment for class work

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

## 10. Formal Misconduct Procedures

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

- **Preliminary Enquiry**: for handling allegations of suspected misconduct and determining appropriate action for instances of minor misconduct
- **Misconduct Panel**: for determining whether to uphold a charge of major misconduct, and/or determining whether the student can remain in the School
- **Misconduct Appeals Panel**: to review the case to determine whether the decisions and findings of the Misconduct Panel should stand

## 11. Preliminary Enquiry Procedure

A member of staff appointed by the School Principal will act as the Preliminary Enquiry Officer who will make initial enquiries before determining whether to open an investigation. The Preliminary Enquiry Officer will notify the student in writing of this, together with an expected timeline for and notifying them of any support available.

These initial enquiries may include inviting the student to make a written response to the allegations, interviewing them and/or any third parties.

## **Preliminary Enquiry Interview Process**

Where an interview is held as part of the investigation:

- The student will be informed in advance in writing
- 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
- The student may be accompanied for support to the interview by a family member or a friend and should normally give at least 24 hours' notice of this
- Written notes of the interview will be made; these will be circulated to the student no later than 2 working days after the interview

## **Preliminary Enquiry Findings and Outcomes**

The Preliminary Enquiry Officer will compile a report, which will include any relevant recommendations regarding the outcome and any further action needed and the student will receive a copy.

- The Preliminary Enquiry Report will include their findings such as no case to answer, or minor misconduct, or major misconduct (a record will be kept on the student's School file until completion of their study) and what the outcome will be.

The Preliminary Enquiry will normally be completed within 14 days of receipt of an allegation, and the student will receive an outcome in writing, within 48 hours of the conclusion of the Preliminary Enquiry. In sensitive cases, this may result in extending the length of the completion of the process.

If there is sufficient evidence of major misconduct the case will be referred to the Misconduct Panel. Multiple minor allegations, may be considered as potential major misconduct.

## **Minor Misconduct findings**

Category 1 penalties

- A formal warning or a final warning (for a repeated offence);
- A formal written reprimand;
- A requirement to make a verbal/written apology to any party concerned, as, and if, appropriate;
- 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;
- Withdrawal of privileges (particularly any privileges abused by the student offender) for a period not exceeding one month;
- Requirement to remove material published either in hard copy or electronically which is deemed to be inappropriate;
- Set conditions or expectations for the student's future behaviour.

## **Disagreement with a Preliminary Enquiry Outcome**

Where a student wishes to complain about a Preliminary Enquiry finding 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 decision

## **12. Misconduct proceedings: General Provisions**

All Misconduct Panel hearings and Misconduct Appeals Panel hearings will be closed sessions and not open to the public, but the National Centre 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.

Therefore:

- **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**

The student must normally submit any written statements or other supporting documentary evidence to the panel at least 48 hours in advance and must also submit the names of anyone accompanying them and the names of any witnesses.

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.

Where the student is unable to attend, they may request a deferral of the hearing at least 48 hours before the hearing, by contacting the Secretary of the Misconduct Panel 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.

The ruling of the Chair of either the Misconduct Panel, or the Misconduct Appeals Panel, shall be final and this may include the power to refuse to admit evidence or hear witnesses on the basis of lack of relevance. The Chair of either Panel may also adjourn in the absence of any particular witness or if timeframes for providing documentation have not been met.

## **13. Misconduct Panel**

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 make arrangements and the panel members. The Secretary shall advise the Misconduct Panel regarding procedural matters but shall not take part in any decision-making.

### **Terms of Reference**

To consider cases referred by the Preliminary Enquiry Officer, to determine whether an allegation of misconduct has taken place on the balance of probabilities, and to determine appropriate outcomes and actions and to advise on disciplinary matters or any related issues that may arise from the Panel proceedings

## **Membership of the Misconduct Panel**

- A Chair, who shall be a senior member of the School's staff, unconnected with the student's programme of study, or a senior member of staff from another higher education institution;
- Two other members, unconnected with the student's programme of study, who shall normally be either members of staff of the School or members of staff from other higher education institutions.

No one will serve on the panel who has had involvement in any previous consideration of the allegation of, or a connection to, the misconduct.

The Preliminary Enquiry Officer will normally attend but this may be another member of staff if necessary.

## **What the School will send to the student**

Written notice will normally be sent to the student at least 10 days in advance of the hearing and will include:

- The date of the hearing
- The names of the Panel members, and any witnesses/expert advisers called by the School;
- The name and contact details of the Secretary to the Panel;
- All documentary evidence
- The names of any witnesses the student has already informed the School that they wish to call;
- Notification of the rules governing the conduct of Hearings, as set out in this Policy, including their right to be accompanied / represented.

The student may present evidence or witnesses in their defence to the Misconduct Panel. Any documentation should be submitted to the Secretary of the Panel at least 48 hours before the Panel hearing. Both the student and the School have the right to call any witnesses to the Panel

***For details on what happens at a panel hearing, see Appendix 3***

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

- The severity of the offence, including any aggravating factors
- The student's engagement during the misconduct process
- The student's engagement during their registration with the School
- Whether there is any evidence of malicious intent
- Previous offences
- Whether previous concerns about conduct have occurred
- Whether the student is in receipt of any formal warnings, or any other School sanctions
- The proportionality of any penalty/sanctions
- Any mitigating circumstances and/or aggravating factors

## **Penalties**

Where the Misconduct Panel determines that an allegation of misconduct the Panel may impose one or more of the following measures below, which are non-exhaustive. 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.

### **Category 1**

- A formal warning or a final warning
- A formal written reprimand;
- A requirement to make a verbal/written apology
- The payment by the student of compensation for damage or loss caused
- Withdrawal of privileges for a period not exceeding one month;
- Requirement to remove material which is deemed to be inappropriate;
- Set conditions or expectations for the student's future behaviour.

### **Category 2**

- Mandatory attendance at a workshop or course within a specified time period;
- Restorative action such as a reflective statement or project;
- Restricted ability to contact the complainant;
- Requiring that the student does not represent the School in a paid or unpaid capacity for a specified period of time.
- Conditions for the continuation of student status;
- Exclusion from, or restrictions in use of specified facilities of the student's School for a stated period.
- The suspension of the student's studies for a specified period
- Permanent exclusion / removal of student status with or without the right to re-register for any further study

## **Appeals against a decision 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:

- There has been procedural irregularity
- There was prejudice or bias on the part of a decision-maker;
- The decision is unreasonable and/or the outcome disproportionate;
- There is new evidence

### **Appeal submissions**

An appeal must be made within 14 days of the date of the Hearing Outcome Letter. Appeals submitted after this deadline Appeals which do not state any grounds may be rejected without consideration. To make an appeal, a student should submit an appeal form and the Principal will either act as the Misconduct Appeal Reviewer

The appeal submission is reviewed to determine whether it demonstrates one or more of the grounds for a Misconduct Appeals Panel to be convened. Where the Reviewer is satisfied that the submission demonstrates grounds, a Misconduct Appeals Panel is convened.

The decision of the Reviewer as to whether the appeal warrants a Misconduct Appeals Panel, will be given to the student in writing within 21 days of receipt

#### **14. Misconduct Appeals Panel**

A Misconduct Appeals Panel has authority to consider appeals against decisions made by Misconduct Panels and determine the appropriate outcomes, along with advising on disciplinary matters

The membership of the Misconduct Appeals Panel will be appointed by the Chair of the Trustees, and they will appoint:

- 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;
- A senior member of staff from the School, or an External Officer
- Another member, who shall be internal or external to the school
- A Secretary who may be a senior member of staff of the National Centre, or an External Officer.

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. The School Principal may serve as Panel Chair or a Panel member if they have not been involved in the case.

#### **What the School will send the student**

Written notice of the following will be sent to the student at least 10 days in advance of the hearing:

- The date of the 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
- A copy of the Misconduct Panel Hearing Outcome letter
- A copy of the student's appeal
- A copy of the letter appointing the Misconduct Appeals Panel
- The names of any witnesses the student wishes to call

The student may submit any personal written statement and/or supporting evidence/witness statements, to the Panel for consideration 48 hours prior.

**For details on what happens at a panel hearing, see Appendix 3**

## **Misconduct Appeals Panel Outcomes**

After considering all the evidence, the Panel will reach the following findings:

- That there is sufficient evidence to demonstrate that one or more of the grounds of appeal have been met, and therefore the appeal is upheld
- That there is no or insufficient evidence, that the grounds of appeal have been met, that therefore the original decision stands

The Misconduct Appeals Panel Decision is the final decision on the case. Where an appeal is upheld, this means the Panel will review the findings of the original Misconduct Panel to determine whether a different decision should be reached. Even where an appeal is upheld, the Misconduct Appeals Panel may determine that the original outcome is the correct one.

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

- Whether the evidence is of sufficient significance to cast doubt upon the reliability of the findings and/or decision 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

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

## **Hearing Outcome letter**

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 and a copy will be placed on the student's file. Where a decision is overturned the School will no longer hold a record.

## **15. Completion of Procedures & Office of the Independent Adjudicator**

The Office of the Independent Adjudicator for Higher Education (OIA) runs an independent scheme to review student complaints. the National Centre for Circus Arts is a member of this scheme. 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/>

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.

Students normally need to have completed these Non-Academic Misconduct procedures before you complain to the OIA. Once the misconduct procedures have been exhausted, the National Centre 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 their 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/>

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

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 Processing Statement](#) and [Data Protection Policy](#). If you have any questions or concerns regarding confidentiality and this procedure you should contact the School Data Protection Officer.