

Birmingham City University

Student Disciplinary Procedure (Non-Academic)

Introduction

The University has introduced a new Academic Misconduct Procedure for the beginning of the 2020/21 academic year (effective from 21 September 2020). A new procedure for non-academic misconduct is also in development, but has not yet been launched.

The procedure set out below therefore replicates the content of the previous Student Disciplinary Procedure, in so far as it relates to non-academic misconduct (previously referred to as general misconduct). The procedure set out below effectively represents the Student Disciplinary Procedure, with references to academic misconduct removed (because these have been replaced by the separate Academic Misconduct Procedure) and minor updates in language e.g. updated job titles and replacement of 'general misconduct' with 'non-academic misconduct.' A tracked changes version of the Student Disciplinary Procedure is available on iCity should anyone wish to refer to what amendments have been made in creating this document.

This procedure will be replaced in due course by a fully updated procedure for non-academic misconduct, and it is anticipated that this should happen around January 2021.

This procedure allows us to meet our responsibilities relating to caring for and protecting our community and others, and to maintain the standards of our awards. It gives us the power to discipline our students, issue formal warnings and apply suitable penalties where there is a good reason to do so.

Our aim is to encourage acceptable behaviour, and prevent behaviour which falls short of our expectations. We expect you to behave in a way that does not disrupt or disturb the learning of others. The procedure is designed to discourage unacceptable behaviour and make sure everyone is treated fairly by applying appropriate penalties for unacceptable behaviour. It also encourages improvement by identifying and agreeing positive actions if your behaviour falls short of the standards we expect. For minor incidents of poor behaviour we will let you know we are not satisfied with your behaviour and may put in place a formal action plan. For poor behaviour that is more serious, we will refer the matter for investigation and we may give you a warning and a penalty. In rare cases, your misconduct may be so serious that we can exclude you from the University and prevent you from applying for further study for up to five years. As part of this Student Disciplinary Procedure, we may need to suspend you from the University, and there is more information about this in the Student Suspension Guidance which is available on iCity.

This procedure applies to all students who are enrolled directly with Birmingham City University and to students enrolled through some of our partner organisations. Your Student Handbook will tell you if this procedure applies. This procedure meets the 'General principles applying to Birmingham City University student procedures'.

Our Articles of Government state that the Vice-Chancellor is responsible for "the maintenance of student discipline and within the rules and procedures provided for within these Articles for the suspension and expulsion of students on disciplinary grounds or other urgent cause and for implementing decisions to expel students for academic reasons". The Vice-Chancellor may delegate responsibilities relating to student discipline to appropriate members of staff as explained in this procedure.

What is misconduct?

Non-academic misconduct applies to any type of misconduct that does not involve an assessment. Here are some examples of general misconduct.

- Any behaviour which is a criminal offence. Some criminal offences will result in you being automatically suspended from the University. More information is included in the University Student Suspension Guidance which is available on iCity.
- Possessing an offensive weapon or replica weapon on University premises, or when doing an off-site activity for the University (such as site visits, or field trips) unless you have our permission.
- Threatening, bullying, harassing, or indecent or violent behaviour (either in person, in writing or online), whether or not actual harm is caused.
- Any form of discriminatory behaviour. This includes using certain language or gestures, or behaviour which is likely to break current discrimination laws or which fails to respect other people's rights to freedom of speech and belief.
- Stealing or attempting to steal or misusing or attempting to misuse our property or the property of another member of the University.
- Damaging or trying to damage our property or the property of another member of the University.
- Not following a reasonable instruction we have issued. This includes failing to change inappropriate behaviour after we have asked you to do so.
- Stopping, or unreasonably delaying, us (or any of our members) from carrying out any of our work, duties or activities.
- Bribing or attempting to bribe any member of University staff.
- Fraud, deception or dishonesty relating to the University. This includes making a false claim for money that you are not entitled to or dishonestly preparing a reference about yourself that makes it seem as though it was written by a member of the University.
- Behaviour which harms or could harm our reputation. This includes using social media for this purpose.
- Breach of any of the University's rules and codes of conduct.

The above are only examples and other types of misconduct may also result in disciplinary action being taken. If you are on a programme of study covered by the Fitness to Practise Procedure we may investigate alleged misconduct under the Fitness to Practise Procedure rather than this Student Disciplinary Procedure.

Levels of concern

We consider all misconduct to be a serious matter. Most types of misconduct can range from being minor to major in nature, and we will respond in a way that is in proportion to the seriousness of the particular issue raised.

Proving the allegation

It is our responsibility to prove the allegation against you. The person or panel responsible for deciding whether you have committed misconduct will accept the explanation that is most likely to be true. This is known as the balance of probability.

Disability and misconduct

This procedure applies to all students equally. We do not accept disability as a reason for your misconduct. However, we may reasonably adjust the process we follow to take account of any disability you have disclosed to us. For example, this could involve an extra person being present during an investigation and panel meetings to provide sign language interpretation, or more breaks during an investigation or panel meeting.

Where there are concerns about a student's wellbeing any action under this procedure may be deferred pending consideration under the Fitness to Study Procedure.

Time limits

We will raise concerns that may relate to your behaviour as soon as possible so that you can take action to correct your behaviour. We aim to complete the formal stage, including any panel meeting, within 50 working days. To help us achieve this you must meet any deadlines we set for providing further information or documents and attending meetings. There will occasionally be circumstances when we need to extend the timeframe for different stages. (We will only do this if there is a good reason, for example if we need to wait for a key witness to be available to speak to us.) If this is the case, we will tell you and will explain the reasons for the delay and tell you the new timescales. We will provide regular updates on progress where appropriate.

Criminal offences

Where the alleged misconduct would also constitute a criminal offence, the University shall have the discretion to continue action under this procedure but such action may be deferred pending any police investigation or prosecution.

Student representation

You have the right to take someone with you to meetings. This person is not there to act in a legal capacity. They are there to provide advice and support to you, not to act on your behalf. The Students' Union Advice Centre can help you with this.

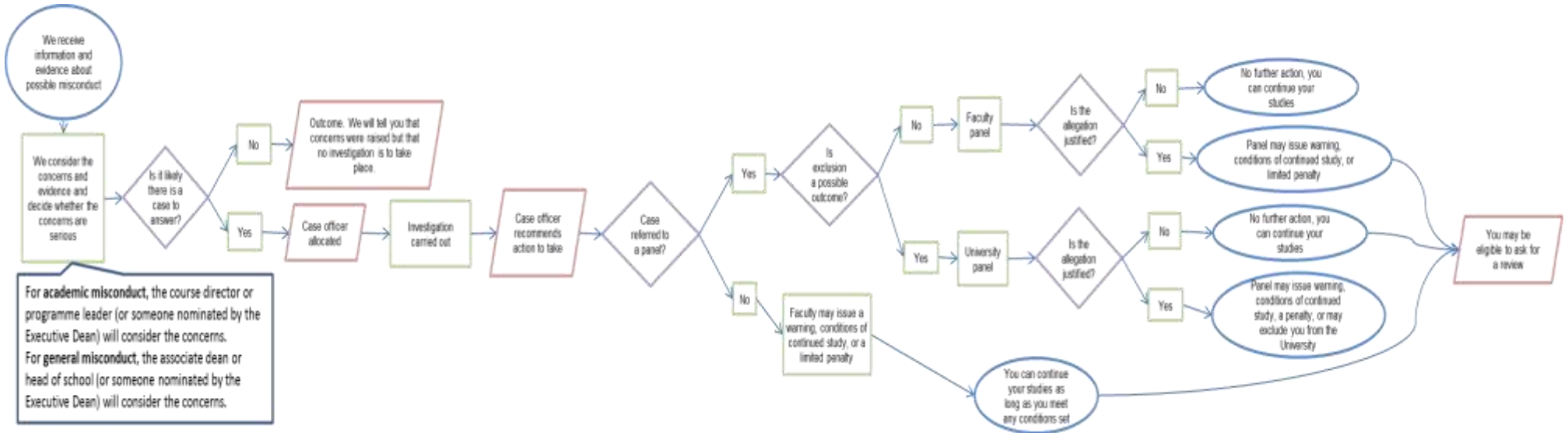
Confidentiality

We will not share any information about you or any case against you unless we need to as part of our procedures or if there is good reason and urgent cause to do so. This could include passing information about your case to external agencies such as social services. If we learn that you are or have been involved in criminal activity then we may need to inform the police.

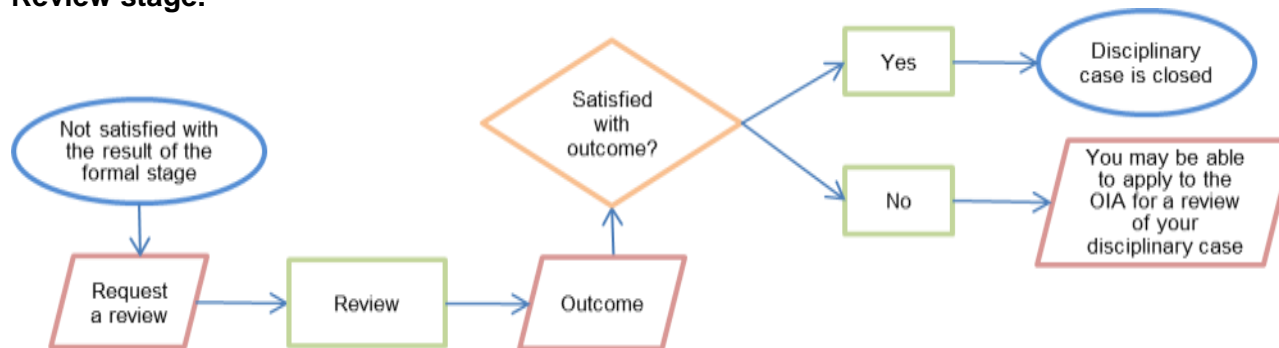
Our 'Guidance on the production of references for students', which is available from your faculty, explains what information we will share if we are asked for a reference.

Flowchart of stages

Formal stage:



Review stage:



Stages of the procedure (please see the flowchart)

This procedure aims to provide a quick process that is proportionate to the concerns being raised. There is a strong focus on staff having the power to deal with concerns as soon as possible. The Student Disciplinary Procedure has an informal stage, a three-step formal stage, and a review stage (see the flowchart).

Informal stage - guidance and advice

This stage is for minor misconduct concerns. These would include situations where you were probably not aware of how your behaviour was affecting others and where you could quickly change your behaviour to avoid it happening again. During the informal stage, issues are dealt with quickly and locally, often by the relevant University tutor. In most cases, a conversation with you about your behaviour and how to improve will be enough to deal with the matter. To help with your ongoing development, we may put an action plan in place. If you do not make the necessary progress, repeat the behaviour or if the issue is serious, it may move on to the formal stage.

Formal stage – triage, investigation and recommendation, and faculty or University panel

The formal stage is to be completed within 50 working days of the disciplinary concerns being raised using the Student Disciplinary Concerns form. It involves assessing the concerns being raised and, where appropriate, carrying out a formal investigation. We may hold a faculty or University panel to consider very serious or complicated cases. The formal stage will involve the following three stages.

(1) Triage

For concerns that are felt to be anything more than minor concerns that can be dealt with effectively through guidance and advice, the person raising the concerns must fill in the 'Student Disciplinary Concerns' form and send it to the Student Governance team. The person completing the form must provide all supporting evidence within two weeks of sending us the form. If we do not receive the evidence within two weeks, we will not investigate the concerns but may still discuss them with you to provide you with relevant guidance and advice. Student Governance will pass on the form for further consideration.

For **general misconduct**, an associate dean, head of school or director of service (or someone nominated by the Student Complaints, Appeals and Discipline Committee) will consider the filled-in Student Disciplinary Concerns form and the relevant evidence to decide whether there is a case to answer.

If we feel there is no case to answer, we will tell you about the concerns that were raised and, where relevant, put an action plan in place for you.

If we feel there is a case to answer, we will refer the matter to a suitably trained case officer who will carry out an investigation. We will tell you if we do this and will give you information about the case officer who will investigate your case.

(2) Investigation and recommendation:

The case officer will have no knowledge of you or of any previous disciplinary or fitness to practise matters you have been involved in. There may be occasions when a case officer is appointed from outside your faculty to ensure independence.

Where the case has involved criminal proceedings heard by a court, we will not re-investigate any matters that formed part of those proceedings.

Example 1

The University learns that you have been convicted of theft by a Crown Court. We will open a disciplinary case against you for general misconduct. Since a Court has already found you guilty of theft, the Case Officer will not consider whether or not you did commit theft and will not revisit the facts of the Court case. The Case Officer will instead consider whether the fact of your conviction means you have committed general misconduct.

The case officer will provide specific information about the concerns being raised, and will give you a copy of the evidence. Student Governance will invite you to a meeting with the case officer to discuss the concerns and evidence. You have the right to take a companion with you to the meeting. This may be a friend, relative or member of the Students' Union. As the meeting will be held during normal working hours on any of the University campuses, we will expect you to attend. The meeting will only be rescheduled if the case officer decides there is a good or urgent reason for this.

The case officer will consider the disciplinary concerns and may talk to relevant staff or students and refer to documents and other evidence. If you wish to present evidence, we expect you to give it to the case officer either before or at the meeting. This may include copies of emails or letters, or statements from witnesses if it is safe and helpful to provide these. In exceptional circumstances, the case officer may ask you or any other relevant person to provide evidence after the meeting. You will receive copies of all the evidence the case officer has considered during the investigation. The case officer will produce a report based on their investigation, which will outline the process they have followed, the information they have gathered, the evidence they have considered, their conclusions and their recommendations.

The case officer can make any of the following recommendations.

- There is no case to answer, so we will not hold a panel and will not take any further action.
- There is a case to answer, but it does not need to be considered by a panel. We may issue you with any of the following.
 - A guidance note about your future behaviour or requirements you must meet.
 - A written warning about your future behaviour or requirements you must meet.
 - A final written warning about your future behaviour or requirements you must meet.
 - A conditional learning agreement. You must meet the conditions set out in the agreement to be allowed to continue on the programme of study.
- There is a case to answer that needs to be considered by a panel.

The associate dean, head of school or director of service (or other approved person) that made the referral will consider the case officer's recommendation. At this stage, the associate dean, head of school or director of service may take into account any previous disciplinary or relevant fitness to practise matters against you when deciding whether to accept the case officer's recommendation. The associate dean, head of school or director of service can make the following decisions:

- To accept the case officer's recommendation without change.
- To accept the case officer's recommendation with minor changes.
- Not to accept the case officer's recommendation, but take a different course of action instead.

In all cases, we will tell you the outcome of the investigation and what action, if any, we have decided to take.

This stage must be completed within 25 working days of the concerns being referred for investigation.

If the concerns are very serious and it is possible that we may decide to exclude you from the University, your case will be considered by a University panel.

(3) Faculty or University panel

We will hold a faculty or University panel in line with our standard procedures for such panels.

A disciplinary faculty panel can make the following decisions as appropriate:

- You will receive no formal warning or penalty. We may give you a guidance note about your future behaviour.
- We may give you an action plan or a learning agreement (or both) which you will need to keep to and show how you are making progress. If you do not meet the conditions we may give you a written warning or a final written warning.
- We may give you a written warning which we will keep on your student file for a set time. If you commit another offence we will take this written warning into account when deciding on any further penalty.
- We may give you a final written warning which means that if you commit another offence you are likely to be excluded from the University.

A University panel is authorised to make any of the above decisions, and also to exclude you from the University or any of our partner institutions for up to five years.

When the panel decides on the penalty it will not normally take account of penalties you have already been given for a different type of misconduct. For example, if you had received a written warning for academic misconduct and then went on to commit general misconduct, the panel would not normally take the previous warning into account when deciding on the new penalty.

Extending the time limit

If there are clear and justifiable reasons for extending the time limit, we will set new time limits. We will tell you the new time limits and the reasons for the extension.

Closing the disciplinary action at the formal stage

We will give you a clear explanation of the outcome of the formal stage of the disciplinary action in writing, setting out the reasons for each decision in simple, straightforward language. We will record the outcome on our disciplinary record system.

We will tell you about:

- your right to take the case to the review stage;
- the grounds on which you can do this (see below);
- the time limit for moving to the review stage (20 working days of us sending you the outcome of the formal stage);
- the appropriate procedure to follow; and
- where and how to access advice and support, for example the Students' Union or Student Affairs.

If you do not take the case to the review stage within the time limit for doing so, we will close the matter.

Review stage – to be completed within 15 working days of receiving your request for a review

If you are not satisfied with the outcome of the formal stage, you have 20 working days to ask for a review. There are limited grounds for asking for a review, which are as follows.

- There is new evidence which you were unable, for valid reasons, to provide earlier in the process, and which would have had a significant effect on the outcome of the formal stage.
- The correct procedure was not followed during the formal stage and this has had a significant effect on the outcome.
- The outcome was unreasonable given all the circumstances and the evidence considered.

The purpose of a review is to consider whether the outcome was reasonable. At the review stage, we will not usually consider the issues again or investigate the matter further. Your case must have been considered at the formal stage before it can move to the review stage. If your expectations appear to be beyond what can be achieved at the review stage, we will tell you this as soon as possible in writing to manage your expectations about possible outcomes.

You must submit a request for a review electronically, by email, by filling in the appropriate form. We will only accept a form submitted by someone else on your behalf if you have given the other person written permission to act as your representative for the review stage. You must set out your concerns clearly and briefly and provide evidence, where possible, of the issues raised. Only evidence that is clearly referenced in the form will be considered. We will acknowledge the request for a review within five working days.

The Student Governance office will assess your request for a review and the Assistant Director Student Governance, Mental Health & Wellbeing, or someone they nominate to act on their behalf, will use this assessment to decide between the following two possible outcomes.

- There are no grounds for taking the matter further. If this is the case, the Student Governance office will tell you in writing and also let you know about any right you may have to ask the Office of the Independent Adjudicator (OIA) to review your case.
- There are grounds for reconsidering the case.

If there are grounds for reconsidering the case, the Assistant Director Student Governance, Mental Health & Wellbeing, or someone they nominate to act on their behalf, will consider the following.

- Was the outcome reasonable in all the circumstances?
- Was there a mistake in how we used this procedure to assess your case and the outcome has been less favourable to you as a result?
- Have you received clear reasons for the outcome at the formal stage?
- If you have provided new evidence, have you provided valid reasons for not providing it earlier?
- Would any new evidence you have provided have affected the outcome (if there were valid reasons for not providing this earlier)?

The Assistant Director Student Governance, Mental Health & Wellbeing, or someone they nominate to act on their behalf, will decide between the following two options.

- The case will be referred back to the formal stage with a recommendation.
- The issues are complicated and so it would be better to deal with them through a review panel.

We will hold a review panel in line with our standard procedures for such panels.

Extending the time limit

If there are clear and justifiable reasons for extending the time limits, we will set new time limits. The maximum extension will be 10 working days (that is, not more than 25 working days in total from the date we receive your request for a review).

Closing the case at the review stage

We will give you a clear explanation of the outcome of the review in writing. This explanation will set out the reasons for each decision in simple, straightforward language and clearly state any action to be taken (if appropriate). We will record the outcome on our disciplinary record system. We will also let you know about any right you may have to ask the OIA to review your case.