

Birmingham City University

Student Disciplinary Procedure (Non-Academic)

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1. Introduction

- 1.1 This procedure helps us to meet our responsibilities relating to caring for and protecting our community and others. 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 the learning of others and does not cause, or potentially cause, harm to others. Where your behaviour falls short of those expectations, this procedure allows us to investigate and apply suitable penalties where there is a good reason to do so.
- 1.2 This procedure applies to all enrolled students of the University. We may use the procedure to consider the behaviour of students studying at partner institutions where it is deemed appropriate by the University and where allowed by our agreement with the relevant partner institution. Unacceptable behaviour by an apprentice may be considered by the University or by the apprentice's employer, depending on the context of the behaviour and any agreement between the University and the employer.
- 1.3 We will use this procedure to consider any report of unacceptable behaviour we receive. This includes behaviour that takes place off campus and is irrespective of how the behaviour is carried out e.g. online, in person, via telephone. .
- 1.4 This procedure should be read in conjunction with the University's [Respect at BCU Policy](#) and [associated Definitions](#).
- 1.5 The procedure does not apply to potential misconduct which is intended to give you an academic advantage: such behaviour will be considered under the Academic Misconduct Procedure. 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 procedure.

2. Types of misconduct

- 2.1 The types of behaviour listed below represent examples of behaviour we would consider unacceptable. The list is not intended to be exhaustive and we may investigate where we receive a report of behaviour not captured by the list below or elsewhere in this procedure.

Examples

- 2.2 Where a type of behaviour listed below appears in **bold**, a detailed definition is available in the [Respect at BCU Definitions document](#).
 - Antisocial behaviour e.g. setting off fire alarms unnecessarily
 - Behaviour likely to bring the University into disrepute, such as disruptive behaviour in the community; inappropriate behaviour during a University-arranged activity such as a field trip or sports event; inappropriate social media activity

- **Bullying** e.g. targeted behaviour intended to make a flatmate or cohort colleague unwelcome or intimidated; sending abusive or threatening messages on social media
- Causing a health or safety concern e.g. misuse of laboratory or workshop equipment; falsely reporting that you have contracted an infectious disease; failure to abide by health and safety rules put in place by the University
- Damage to University property or abuse of its facilities e.g. breaking equipment on campus or in University accommodation
- **Discrimination**, including direct discrimination; indirect discrimination; and discrimination by association. For example, excluding someone from a group activity on the basis that they have a disability
- Failing to follow a reasonable instruction issued by a member of University staff e.g. failing to evacuate a building during a fire drill; failing to abide by an instruction not to communicate with another student
- **Harassment** e.g. sending emails or social media messages to someone with inappropriate frequency. The views of the person subjected to the unwanted behaviour are important when considering whether something constitutes harassment.
- **Hate crime** e.g. verbally abusing someone on the basis of their religious beliefs; circulating or displaying discriminatory literature or posters
- **Homophobia, biphobia and transphobia** e.g. directing discriminatory language at someone on the basis that you believe them to be gay
- IT misuse when using the University's networks or equipment, such as visiting inappropriate websites, uploading/downloading inappropriate content, propagation of computer viruses
- **Racism** e.g. using stereotypes associated with specific ethnic groups such as Muslims, Jews or people of Black-African descent
- Relying on forged, falsified or fraudulent documentation, and other forms of deception that are intended to gain an advantage e.g. falsifying evidence in support of extenuating circumstances claims; falsifying a University reference or qualification
- Sexual assault. Sexual assault is intentionally touching another person, where the touching is sexual and the person does not consent. It involves all unwanted physical contact of a sexual nature and examples might include unwanted pinching, embracing, kissing or touching of intimate body parts; as well as rape and serious sexual assault which involves penetration without consent
- Sexual harassment. Sexual harassment is unwanted behaviour of a sexual nature which violates your dignity; makes you feel intimidated, degraded or humiliated; and creates a hostile or offensive environment. It might include sexual comments or

jokes; physical behaviour, including unwelcome sexual advances, touching and various forms of sexual assault; displaying pictures, photos or drawings of a sexual nature; or sending emails or other messages with sexual content

- **Victimisation** e.g. shunning or intimidating another student because they have provided evidence in a complaint against you
- Violence or threat of violence, including possession of a weapon (see further details in the [Firearms, Imitation Firearms & Offensive Weapons Policy](#))

Behaviour which might constitute a criminal offence

- 2.3 Behaviour that may amount to a criminal offence is usually best dealt with by the police, Crown Prosecution Service, and the criminal courts in the first instance. Behaviour that may be criminal may also be a breach of this procedure and we may reasonably take action whether or not a criminal charge or conviction has been given. Our expectations in respect of disclosure of criminal offences committed while you are a student are set out in the [Students with Criminal Convictions Policy and Procedure](#).
- 2.4 If the police or courts are involved in considering and / or investigating behaviour reported, we will usually await the outcome of those proceedings before conducting any internal investigation. We will keep in touch with all students involved, and with the police during this process. We may need to take some form of temporary action against a reported student, in order to protect other students and staff members. Further details of temporary action are provided in the Student Suspension Guidance.
- 2.5 Where you are acquitted of a criminal offence, or where the criminal investigation has been closed, we may still take action under this procedure where the alleged behaviour would still represent misconduct under the procedure.
- 2.6 Where you are convicted of a criminal offence, we may still take action against you. If you have been imprisoned then we will need to consider whether it is possible for you to continue with your studies, and whether disciplinary action is necessary or proportionate. In all cases, we will keep information about students who are subject to disciplinary proceedings confidential as far as possible.
- 2.7 If you report behaviour that may amount to a criminal offence, we will ensure that you understand your options and support you whatever action you choose to take. Your options might include reporting the matter to the police; asking the University to take disciplinary action; or taking no further action. We will provide you with appropriate signposting information depending on the nature of the behaviour you report, and if you decide to report the matter to the police, we will help and support you to do so. In exceptional circumstances we may consider reporting the incident(s) directly to the police where the safety of students, staff or another member of the public may be at risk.

3. Timescales

3.1 The following timescales apply to the Student Disciplinary Procedure (Non-Academic):

Making a report We do not apply a specific timeframe within which you must make a report of unacceptable behaviour. However, you must be aware that the more time that passes after an incident occurs, the harder it usually is to investigate. This is due to factors such as the availability of evidence and the reliability of individuals' memories. There may also be occasions where we are unable to investigate and / or apply a penalty, because e.g. the other party has left the University since the behaviour occurred. If we cannot investigate or apply a penalty, we will tell you and provide reasons. In all cases we encourage you to make a report as soon as possible. Students experiencing unacceptable behaviour do not have to have made a report in order to access support services.

Informal resolution In cases where informal resolution might be appropriate, we will aim to resolve and close them within 15 working days. Where a matter cannot be resolved within 15 working days it will be moved to the formal stage.

Formal stage Where reports are investigated formally, we will aim to resolve them within 40 working days from the date the report is made.

Review Review requests should usually be submitted within 15 working days of the outcome being issued. We aim to conclude a review within 15 working days.

3.2 If at any stage we need to extend these timescales, we will tell you and explain why. We will keep you updated throughout any periods of delay. There may be times when we pause a case while we wait for you to take action e.g. to provide evidence. The timescales above will not apply when a case is paused.

4. The misconduct process

4.1 This procedure aims to provide a quick, simple process with a strong focus on dealing with concerns proportionately and as quickly as possible. The primary aims of this procedure are to support students in understanding what the University considers to be unacceptable behaviour; to ensure that reports of unacceptable behaviour are thoroughly investigated wherever necessary, and that proportionate penalties are applied as appropriate; and to ensure that cases are used as an opportunity for learning to ensure that behaviour is not repeated.

4.2 *Student representation*

4.2.1 You have the right to take someone with you to misconduct meetings. This may be a student advisor from the Students' Union or a friend or relative who is not acting in a legal capacity. The role of this person is to support and advise you. Where appropriate this person may speak in support of you, but you will usually be expected to speak for yourself in any meeting or panel hearing.

4.3 *Support and reasonable adjustments*

4.3.1 If you tell us that you need wellbeing support or the nature of the case means we think you would benefit from wellbeing support, we will signpost you to appropriate internal and/or external support services.

4.3.2 If you have a disability and want us to consider making specific reasonable adjustments to the procedure, you should raise this as soon as possible during the process. We may need to speak to a Disability Adviser or other staff member to confirm what adjustments would be appropriate. Anyone taking part in a misconduct meeting is entitled to ask for a break at any time.

4.3.3 Note that we will not usually accept the existence of a disability as an explanation for unacceptable behaviour, unless there is clear and independent evidence to demonstrate that the behaviour arose as a result of disability.

4.4 *Staff involvement*

4.4.1 Staff involved in misconduct cases will be impartial and will have had no previous involvement in the case under consideration. In all cases, we will use suitable alternative staff members if the individuals named in the procedure are unavailable for any reason e.g. due to absence or because of a conflict of interest. In exceptional circumstances, we may consider using individuals external to the University to complete some parts of the process e.g. investigation. This might be where a case is particularly sensitive or requires specialist knowledge of a particular type of behaviour, for example.

4.5 *Burden and standard of proof*

4.5.1 In all cases of potential misconduct, the University is responsible for determining whether or not misconduct has been committed. Our decisions will be based on the balance of probabilities i.e. the person or panel investigating the case will accept the explanation that they consider is most likely to be true. This is a lower standard of proof than the one used in criminal proceedings, where allegations must be proved beyond reasonable doubt.

4.6 *Anonymous reports*

4.6.1 Where unacceptable behaviour is reported anonymously, there may be limited action we take in response because we will usually need to disclose the identity of the complainant. However, we can use the information gathered to provide better support to others and inform prevention work across the university. You need to be aware

that exceptionally there may be occasions where as part of our duty of care we are required to investigate the incident and take any necessary action against individuals involved. This will be done only where necessary due to a significant risk or ongoing duty of care which we have to act upon. We will carefully consider why you do not want any further action to be taken, as well as the safety and wellbeing of anyone else affected.

5. How to report unacceptable behaviour

5.1 Where you experience unacceptable behaviour at the University, we encourage you to report it through the [Report and Support online reporting system](#) (please open with Google Chrome as some display features do not function in other browsers).

5.2 You can also report unacceptable behaviour through the [Student Complaints Procedure](#) or by filling in a [Student Disciplinary Concerns Form \(Non-Academic\)](#). However, we prefer reports to be made via Report and Support as it represents a single point of data capture and also ensures you can access the support information available through the site.

5.3 Where a report of unacceptable behaviour is received via Report and Support and disciplinary action is being considered by the University, we will arrange for a suitable member of staff to complete a Student Disciplinary Concerns Form if informal resolution is not possible and / or does not seem appropriate.

5.4 Informal resolution

5.4.1 It may not always be necessary for a formal investigation to be held in respect of unacceptable behaviour and there may be occasions when informal resolution is possible. The purpose of the informal resolution stage is to resolve the issue as quickly as possible. Any investigation is not intended to be exhaustive and the matter may be referred to the formal stage if more detailed consideration is necessary.

5.4.2 Informal resolution will not be appropriate for reports of serious or repeated unacceptable behaviour, but might be appropriate in other cases, for example antisocial behaviour such as being noisy in a quiet study space; individual instances of rudeness; or causing a health and safety concern by leaving a laptop wire trailing across a walkway. In all cases the impact of the behaviour on others will be taken into account in considering whether informal resolution is appropriate.

5.4.3 All staff and students should feel empowered to challenge unacceptable behaviour and seek an informal resolution e.g. by asking students to be quiet. Where an individual is not comfortable in doing this, it may be possible to seek assistance from Security Services for on campus behaviour (0121 331 6969); or the behaviour can be reported via Report and Support. Note that it might not be possible to provide an immediate response to behaviour reported through Report and Support.

5.5 Formal process – the reporting party

5.5.1 *What to expect – where the reporting party is a staff member*

5.5.2 If you report unacceptable behaviour by a student via Report and Support, your report will be received by a member of the [Mental Health & Wellbeing team](#) who will refer the matter to Student Governance. A member of Student Governance staff will contact you to advise on next steps. You will be invited to provide any additional evidence you have in support of your report, and may be asked to meet an investigating Case Officer to discuss the case and answer any relevant questions. Unless there are exceptional circumstances, your name will need to be disclosed to the student because they will need to know the identity of the person making the report in order to offer a full response. This is in line with the principles of natural justice. Details of how anonymous reports will be handled are set out at section 4.6 above.

5.5.3 The outcome of student disciplinary cases is usually only shared with the individual subject to investigation (the reported party). Details of outcomes are not usually shared with the person who made the report. However, in all cases we will take into account whether you have a legitimate interest in knowing the outcome of a case and the extent to which it might be appropriate to share details of an outcome with you. We might provide limited details if we think this is likely to mitigate against any distress or harm caused to you by not knowing the outcome, for instance, and where this is possible in line with data protection requirements.

5.5.4 *What to expect – where the reporting party is a student*

5.5.5 If you report unacceptable behaviour by another student via Report and Support, your report will be received by a member of the Mental Health & Wellbeing team who will contact you to discuss the report and to talk you through the options available to you. This includes the University taking action to investigate under this procedure. You can find further information on the Mental Health & Wellbeing team [here](#).

5.5.6 You will be invited to provide any evidence you have in support of your report, and will have the opportunity to meet an investigating Case Officer to discuss the case and answer any relevant questions. Unless there are exceptional circumstances, your name will need to be disclosed to the other student because they will need to know the identity of the person making the report in order to offer a full response. This is in line with the principles of natural justice. Details of how anonymous reports will be handled are set out at section 4.6 above.

5.5.7 The outcome of student disciplinary cases is usually only shared with the individual subject to investigation (the reported party). Details of outcomes are not usually shared with the person who made the report. However, in all cases we will take into account whether you have a legitimate interest in knowing the outcome of a case and the extent to which it might be appropriate to share details of an outcome with you. We might provide limited details if we think this is likely to mitigate against any distress or harm caused to you by not knowing the outcome, for instance, and where this is possible in line with data protection requirements. We will also consider whether you can be offered a remedy in respect of any unacceptable behaviour we

find you have been subjected to. A remedy might be e.g. an apology, an explanation of any actions we have taken as a result of learning from the complaint, or an academic or financial remedy, depending on the nature of the concern, the impact on you, and what you are seeking. In all cases, we will confirm to you that the case has been concluded and explain to you what your options are in respect of further action, if you are dissatisfied.

- 5.5.8 The right to review the outcome of a student disciplinary case is usually only available to the individual(s) subject to investigation. In confirming the outcome of a case to you (in line with guidance in the previous paragraph), we will confirm what steps are available to you if you are dissatisfied with the actions taken (see next paragraph).
- 5.5.9 If you are concerned about how your report has been handled, you have the right to submit a separate complaint under the Student Complaints Procedure and an investigation will be conducted as appropriate. We will ensure anyone involved in such a complaint has had no involvement in the underlying disciplinary matter. When you reach the end of the Student Complaints Procedure, we will issue you with a Completion of Procedures letter as appropriate.
- 5.5.10 Completion of Procedures letters entitle you to pursue any issue further through the Office of the Independent Adjudicator ('the OIA'). For further information on the OIA, please see our dedicated OIA page.

5.6 *Formal process – the reported party*

5.6.1 Triage

5.6.2 The formal process begins when a Student Disciplinary Concerns Form (Non-Academic) is completed and sent to Student Governance. The form is usually completed by a staff member, but students are entitled to complete and submit a form themselves if they wish. The person completing the form should provide all available supporting evidence at the time of submitting the form. Where evidence is not available at the time the concerns form is submitted, we may take no further action until evidence is provided; or we may proceed on the basis that evidence will be gathered as part of any formal investigation.

5.6.3 Student Governance will send the completed Student Disciplinary Concerns form and the relevant evidence to a suitably senior member of staff to decide whether or not there is a case to answer. This might be, for example, an Associate Dean; Head of School; or director of service.

5.6.4 If we feel there is no case to answer, we will tell you about the concerns that were raised. We may put in place an action plan if we feel it would be beneficial in ensuring that further concerns do not arise.

5.7 Investigation

- 5.7.1 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. You will be sent a copy of the Student Disciplinary Concerns Form and the evidence submitted in support. 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.
- 5.7.2 Student Governance will invite you to a meeting with the case officer to discuss the concerns and evidence. The meeting may take place in person or via alternative means such as online or via telephone where necessary. 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, 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. Cases can proceed without the need for a meeting where there is good reason e.g. you have not responded to invitations to arrange a meeting or you prefer to provide written statements.
- 5.7.3 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. You should take into account the details of the report made in submitting any evidence on which you wish to rely. In exceptional circumstances, you may be able to provide evidence after the case officer meeting and / or 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.
- 5.7.4 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. The case officer will recommend a suitable penalty (see section 5.10 below). A case officer recommending a penalty will not have access to any information in respect of previous misconduct you have committed. That information will be available to the staff member who considers the case officer's recommendation.
 - There is a case to answer that needs to be considered by a panel.

5.7.5 The Associate Dean, Head of School or director of service (or other suitable person) that initially confirmed the case should be investigated 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.

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

5.8 Disciplinary panels

5.8.1 We will hold a disciplinary panel in line with our standard procedures for such panels. Guidance on panel make-up and procedure is available on iCity.

5.8.2 Panels will decide whether they consider the misconduct to be upheld before proceeding to consider the appropriate penalty. The penalties available to a disciplinary panel are set out at section 5.10 below.

5.8.3 The panel's decision will be issued to you along with the reasons for that decision and the penalty applied, where relevant. You will be advised on what steps are available to you in light of the decision made.

5.9 Penalties

5.9.1 Penalties applied under this procedure will be proportionate to the identified misconduct. Available penalties include (but may not be limited to):

- A guidance note that advises you as to your future behaviour;
- An action plan that requires you to undertake certain actions within a given timeframe. This might include completing educational modules in respect of issues and behaviour, for example;
- A written formal apology directed to the recipient of your behaviour;
- A fine, where it is directly relevant to the behaviour and its impact e.g. you are found to have broken a lamp and are asked to pay to replace it; or you have broken a door and are required to cover the cost associated with having it fixed;
- A formal written warning;
- A formal final written warning. It is not usually possible to be given more than one final written warning;
- Exclusion from the University for a period of up to five years, during which time you will not be able to re-apply to study at the University.

5.9.2 The following is a non-exhaustive list of factors that can be taken into account when deciding upon an appropriate penalty:

- Whether you have admitted to the misconduct;
- Whether you have shown remorse for your actions;
- The impact of your behaviour on others;
- The impact of your behaviour on the reputation of the University;
- Any mitigating circumstances you choose to put forward;
- Whether you have engaged with any support services in order to address your behaviour;
- How any ongoing impact of your behaviour can best be mitigated;
- Any records of previous misconduct cases upheld against you;
- The impact of potential penalties on your academic progression.

5.9.3 Penalties you have already been given for academic misconduct will not normally be taken into account in deciding the penalty in non-academic misconduct cases.

5.9.4 Details of any relevant previous misconduct will only be shared with panel members after they have found the misconduct to be upheld and decided on an applicable penalty for the misconduct under consideration. A panel may decide to issue an alternative penalty after they have been informed of any previous relevant misconduct.

5.9.5 You will be issued with the panel's decision, along with the reasons for that decision and the penalty applied, via email within 10 working days of the panel date. If it is not possible to meet this timeframe for any reason, we will tell you and explain why.

5.10 Review

5.10.1 If you are not satisfied with the outcome of the formal disciplinary stage, you can request 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 that would have had a significant effect on the outcome of the formal complaint stage;
- The correct procedure was not followed during the formal complaint stage and this has had a significant effect on the outcome;
- The outcome was unreasonable given all the circumstances and the evidence considered.

5.10.2 At the review stage, we will not usually consider the issues again or investigate the matter further. A disciplinary case must have been considered at the formal disciplinary stage before it can move to the review stage.

- 5.10.3 Review requests should be submitted to the Student Casework team using the relevant review request form. You must set out your grounds clearly and briefly, and provide evidence, where possible, of the issues raised. If you do not provide evidence when submitting your form then we may ask you to provide the evidence and give you a time limit to do so; the review may be paused while we await your evidence.
- 5.10.4 Review requests will be considered by a suitably senior staff member with experience of considering complaints. This might include, for example, a Deputy Vice-Chancellor; an Executive Dean; an Associate Dean; or a director of service such as the Assistant Director Student Governance, Mental Health & Wellbeing. The reviewer will always be independent of you and the case, and will decide between the following outcomes:
- There are no grounds for taking the matter further; or
 - The complaint will be referred back to the formal complaint stage (either track) with a recommendation. Where a matter is referred back to the formal stage, the timescales applying to that stage will begin again; or
 - The issues are complicated and so it would be better to deal with them through a review panel. A review panel will be held in line with our standard procedures for such panels.
- 5.10.5 The review decision will be sent to you as a formal decision along with guidance on any relevant next steps.

6 The Office of the Independent Adjudicator (OIA)

- 6.1 Where your review request is not upheld, we will issue you with a Completion of Procedures letter (a CoP) and tell you about your right to make a complaint to the OIA. You will have 12 months from the date of the CoP to make a complaint to the OIA.
- 6.2 The OIA look at whether the University applied its regulations properly and followed its procedures correctly, and consider whether any decision made by the University was fair and reasonable in all the circumstances. The OIA reviews cases but does not re-investigate them.
- 6.3 The OIA normally expects students to follow the University's internal procedures to their conclusion before complaining to the OIA. If you make a complaint to the OIA without having a CoP, your complaint is likely to be deemed ineligible.

7 Relevant Documents

- 7.1 The Student Disciplinary Concerns Form, Disciplinary (Non-Academic) Review Request Form and a series of frequently asked questions about disciplinary cases can be found [on iCity](#).

7.2 The Guiding Principles of Casework Procedures are also available on iCity.

7.3 The University's Academic Regulations can be found on the University's external website.

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