

NON-ACADEMIC MISCONDUCT DISCIPLINARY PROCEDURE

1. Introduction

- 1.1 Durham University is distinctive - a residential collegiate university with long traditions and modern values. We seek the highest distinction in research and scholarship and are committed to excellence in all aspects of education and transmission of knowledge. Our research and scholarship affect every continent.
- 1.2 Students are expected to treat all members of the community with respect including their peers, staff, and visitors to the University and members of the local community. In particular, the University's disciplinary jurisdiction over students' conduct is not limited to University premises or solely within term-time. This means, for example, that behaviour off campus and during vacations, weekends, evenings, on placements and field trips may be taken into consideration. It also means that behaviour in a social setting (for example in residences, or on social media) may have consequences whether or not it takes place during normal University opening hours.
- 1.3 Students are expected to behave in a way that does not interfere with or cause disruption to the normal operations of the University and community. Where there is reason to believe that rules and regulations have been broken, and/or when the behaviour of a student falls below the expected standards, these Disciplinary Procedures will be used.
- 1.4 The maintenance of discipline and good conduct is the responsibility of Senate, and these procedures outline the means by which disciplinary matters involving non-academic misconduct will be managed.
- 1.5 The Disciplinary Procedures categorise non-academic misconduct offences by consideration of the severity of the offence. There are a range of sanctions that may be applied based on the category of misconduct offences. When aggravating factors are present, the category of an offence may be increased and therefore subject to more severe sanctions. Where mitigating factors are present, this may lead to the category of an offence being reduced and therefore subject to less severe sanctions or the category of offence may remain the same but less severe sanctions that are permitted within that category may be applied.
- 1.6 College / Departmental Concerns are considered minor in nature.
- 1.7 Category 1 offences involve allegations of student misconduct which, whilst serious in nature, do not seriously affect or cause serious damage to the University, its academic reputation or its staff or students. Category 1 Offences are considered less serious in nature but will warrant formal investigation and possible sanction by a college AUO.
- 1.8 Category 2 offences involve allegations of student misconduct that either do or have the potential to seriously affect or cause serious damage to the University, its reputation or to its staff and students. Category 2 Offences are considered more serious in nature and warrant investigation and possible sanction by the Senate Discipline Committee. Sanctions for Category 2 offences include exclusion from the University and other sanctions that may impact on a student's academic progress.
- 1.9 Category 2 offences may also include instances where student misconduct is frequent or repeated or the student fails to comply with disciplinary decisions or sanctions previously reached at lower levels or fails to comply with the terms of a suspension.
- 1.10 Specific procedures for Category 1 and Category 2 offences are outlined in this document. College / Departmental Concerns are dealt with by individual departments and colleges and outlined in the relevant guidelines or procedures.

- 1.11 In cases where the alleged offence poses an actual or potential risk to members of the University community, General Regulation VI – Suspension[1] may be applied as a non-judgmental precautionary measure whilst the University investigates the alleged offence.

2. Scope

- 2.1 These Disciplinary Procedures relate to matters of non-academic misconduct. Where the alleged conduct relates to academic offences, it should be referred to the appropriate procedure.
- 2.2 These Disciplinary Procedures apply to all undergraduate, postgraduate taught and postgraduate research students registered at the University.
- 2.3 The University reserves the right to investigate allegations of non-academic misconduct that occur both on and off its premises where the non-academic misconduct poses risks or disruptions to the University or members of the wider community.
- 2.4 These Disciplinary Procedures do not cover students eligible for an award validated by the University but delivered by a partner organisation. The regulations for student discipline in place at the partner organisation will apply.
- 2.5 Occasionally there may be overlap between this disciplinary procedure and other University procedures. In such cases it is for the University to decide which procedure to follow. This decision will be taken by the Director of Student Support and Wellbeing (or their nominee).
- 2.6 Sometimes the behaviour of a student may be referred under the non-academic misconduct procedures, following the outcome of a different process. This may include procedures that deal with complaints[2], grievances, harassment and bullying[3] and sexual violence and misconduct[4].
- 2.7 The outcome of Category 1 cases, if appropriate, and all Category 2 cases will be shared with the complainant / Reporting Party and the student's Academic Department, College and relevant Service. Academic departments will decide whether authority to contact external regulators is required (for example, for regulated professions such as social work and teaching).
- 2.8 Where there are significant concerns that mental or physical illness may have directly impacted on behaviour and/or conduct, an allegation may also be referred to the Fitness to Study procedure[5] for consideration as well as or instead of disciplinary action.
- 2.9 In the event that an investigation into an alleged offence raises concerns for the welfare of an individual, the Authorised University Officer (AUO) may raise their concerns with the relevant College Student Support Office and/or the Head of the Counselling Service and the Head of the Disability Support Service.
- 2.10 To facilitate the sharing of information, the University has in place a Memorandum of Understanding with Durham Constabulary. The University may be informed about incidents of anti-social behaviour and other possible offences in accordance with the Memorandum of Understanding.
- 2.11 Students under investigation for non-academic misconduct are expected to comply with the Code of Practice on Student Behaviour in Appeals and Complaints Matters[6].

3. General Principles

- 3.1 This procedure seeks to operate in a fair and transparent manner in accordance with the principles of natural justice. It does not seek to reproduce elements of the criminal law and is not a formal legal process.
- 3.2 The University has legal obligations which will apply to this procedure: for instance, the duty to act fairly and reasonably in relation to all parties in the application of this procedure. The

standard of proof required is the balance of probabilities: that is, it is more likely than not that the alleged misconduct occurred.

- 3.3 Students involved in disciplinary procedures shall have the right to be accompanied to any investigative meeting or hearing;
 - 3.3.1 The accompanier is there to provide moral support. Student are expected to speak on their own behalf; there is no automatic right for an accompanier to speak on a student's behalf and it is at the University's discretion as to whether the accompanier is permitted to address the meeting.
 - 3.3.2 Students will be advised of their right to be accompanied by a trained Durham Students' Union Advocate who will be able to advise the student and advocate on their behalf.
 - 3.3.3 The University does not normally permit legal representation in misconduct procedures. However, for Category 2 cases the University will consider requests by the student for legal representation at the Senate Disciplinary Committee hearing. The decision as to whether or not to permit legal representation will be taken by the University Secretary (or the University Secretary's nominee) and will be at the University's sole discretion.
- 3.4 The University will, wherever possible, seek to adhere to the time limits outlined within these procedures. In cases where there are special circumstances which require variance from specified time limits, students will be advised of the reasons for this
- 3.5 Where possible, and practical, students will be given the opportunity to attend disciplinary hearings in person. Whilst the University does not require attendance by any student at any meeting convened under these procedures, it will take reasonable steps to enable the student to participate by telephone, video or on-line, as an alternative to physical attendance. If it is not possible to arrange within a reasonable timescale, or at a reasonable time in the UK working day, the University may proceed to hold the meeting in the student's absence.
- 3.6 The University reserves the right to proceed with any investigative or disciplinary meeting in the absence of a student, subject to the student having been properly notified of the date and time, or where criminal proceedings do not allow the student to attend in person. The University will ensure that the student is provided with information to be considered at the meeting and given opportunity to make written representation. The proceedings of any such meeting will not be invalidated simply by virtue of the student not attending.
- 3.7 The University reserves the right not to proceed with any investigation following an allegation against a student if it is considered there are insufficient grounds or evidence to do so.
- 3.8 During the application of these procedures the University reserves the right to adjourn any investigation or meeting and reconvene at a later date.

4. Definitions and Terms

- 4.1 Authorised University Officers (AUOs) are University staff who are authorised to act in relation to allegations of student misconduct and may delegate their authority to another member of staff on a case-by-case basis. AUOs are identified in General Regulation I - Definitions.
- 4.2 As noted in section 1 above, there are two types of misconduct offence. These are likely to fall into one of the areas listed below and will be heard under the appropriate process depending on the severity of the case. In general terms, the non-academic misconduct procedure is concerned with:
 - a) Actions which cause actual or potential distress or harm to others.
 - b) Actions which cause actual or potential damage to property of others.

- c) Actions which disrupt the normal operations, and/or safe use of, the University including where applicable, reputational damage to the University.
 - d) Actions which impede or interfere with the pursuance of work/ study of University members, or impact on normal operations of the University.
- 4.3 Examples of offences are given in Appendix A. The examples given are intended to be illustrative and not exhaustive. Additional examples may also be specified by other University policies, codes of practice and regulations.
- 4.4 Where students are cited in multiple or repeated offences, cases will be considered with the utmost seriousness and previous disciplinary action will be considered as part of deciding the reasonable sanctions to be imposed.

5. Non-academic Misconduct Procedure

- 5.1 Upon receipt of an allegation, an AUO or their delegated representative will determine whether the alleged misconduct should be investigated locally as a Category 1 offence or referred to the Senate Disciplinary Committee (SDC) as a Category 2 offence. Statistics in relation to Category 1 cases will be reported to the Student Conduct Office termly.
- 5.2 In cases of alleged bullying and harassment the procedures under the Bullying & Harassment Policy and Procedure for Students [\[3\]](#) will be applied.
- 5.3 In cases of alleged sexual violence and misconduct, the Sexual Violence and Misconduct Policy and Procedure [\[7\]](#) will be applied.
- 5.4 Where an AUO considers the misconduct should be referred to the SDC, the Student Conduct Office will be contacted and provided with a report of the nature of the misconduct and any supporting information. The Chair or Deputy Chair of the SDC, will then decide whether:
- a) To refer the misconduct allegation to the SDC;
 - b) To refer the conduct back to the AUO to be treated as a Category 1 offence;
 - c) To recommend no further action in accordance with this procedure.
- 5.5 Where it is not clear how the alleged offence should be categorised, the AUO will contact the Student Conduct Office providing details of the alleged incident and its investigation, in order for a decision regarding classification. The Head of the Student Conduct Office will consult with the Director of Student Support and Wellbeing and/or the Pro-Vice-Chancellor (Colleges and Student Experience) as necessary.

Aggravating factors

- 5.6 There may be certain circumstances in which an offence is subject to a more severe sanction due to the presence of aggravating factors. These factors could include, but are not limited to the following:
- a) Offences which are related to protected characteristics under the Equality Act 2010.
 - b) Offences which directly or indirectly cause a physical or mental injury.
 - c) Offences for which a student has received a previous warning or sanction.
 - d) Offences where there is a power relationship between the offender and the complainant, where this power is abused.
 - e) Offences which may be considered to constitute domestic abuse.
 - f) Offences which include the use of force/violence/threats/intimidation.

- g) A pattern of misconduct which has been founded previously.
- h) Offences that occurred whilst the student was under a No Contact Arrangement, No Contact Order or any type of suspension.

5.7 Where a Category 1 offence may be considered to include aggravating factors, the AUO will take advice from the Student Conduct Office on whether the case should be considered as a Category 2 offence and referred to the SDC.

Mitigating factors

5.8 There may be certain circumstances in which an offence is subject to a less severe sanction due to the presence of mitigating factors. Mitigating factors could include, but are not limited to the following:

- a) Evidence that the offence was committed without the intent to cause harm, damage or upset;
- b) The student has demonstrated sincere remorse for the offence;
- c) The student has clearly accepted responsibility for the offence;
- d) The student took immediate steps to remedy the effects of the offence.

5.9 The influence of alcohol or drugs at the time of the offence does not constitute a mitigating factor, but could be considered an aggravating factor [\[8\]](#).

6. Category 1 Offences – Procedure & Sanctions

6.1 Where possible and appropriate, action in respect of Category 1 offences should be taken locally and close to the source of the alleged offence by staff authorised to act as AUOs. An AUO may reach decisions on cases of this type which occur in an area of the University for which they have responsibility or in accordance with a regulation, policy, or code of practice under which they are permitted to operate.

6.2 If a misconduct allegation relates to breaches of rules in more than one regulation, policy or code of practice, the AUO who receives the allegation will contact the other appropriate AUOs to determine the process to be followed. In certain cases it may be appropriate for a joint investigation to take place.

6.3 The investigation into allegations of misconduct in this category should follow the broad principles set out below to ensure that the process is fair and transparent to all involved:

- a) The student(s) accused and those ruling on the misconduct will receive written notification of the misconduct and the process to be followed to investigate.
- b) Following notification, the student(s) accused will have the right to be accompanied (as outlined in section 3 above) at any meeting they attend to investigate the misconduct
- c) The AUO should have at least one other member of the University community present to hear the case, one of whom shall act as a note-taker at meetings to investigate the misconduct. It is good practice for student representatives to also be present.
- d) Before a conclusion is reached and appropriate sanctions implemented the student(s) should be given the opportunity to make written or oral statements to defend themselves against the allegation, or where they wish to admit the offence to account for the misconduct and submit mitigation.
- e) Where the student was given reasonable notice to attend a meeting to investigate the offence and fails to attend without good reasons, the AUO may proceed to reach conclusions and sanctions as appropriate in the absence of the student.

- f) The AUO also has the right to postpone, continue or adjourn the case at their discretion.
 - g) The student should be informed of their right to appeal the decision.
- 6.4 Following an investigation into an allegation of a Category 1 offence, an AUO may determine that there is no further action required or they may impose sanction(s).
- 6.5 If during an investigation the AUO believes that the allegation should be treated as a Category 2 offence then this will be referred to the Senate Discipline Committee in line with 8.1 below.
- 6.6 Within 10 working days of the outcome of an investigation, the AUO will provide the student(s) with a brief written, reasoned decision summarising the facts found and the considerations which led the AUO, on the balance of probabilities, to reach the decision. The AUO may impose the sanctions, including:
- a) A written reprimand.
 - b) A behavioural contract.
 - c) Restitution of damage.
 - d) Temporary or permanent exclusion from use of specific University and/or College facilities or services.
 - e) Compulsory attendance to undertake training or workshops.
 - f) Restorative justice including voluntary work or community service.
 - g) Any or all of these or any other sanction (other than exclusion or expulsion from the whole University) as deemed reasonable by the bodies above.

7. Category 1 Offences – Right of Appeal

- 7.1 A student may exercise the right to appeal by writing to the Student Conduct Office within 10 working days of receiving the outcome of the investigation. The appeal process will not re-investigate the offence.
- 7.2 The request for the right to appeal will be considered by the Principal of the relevant College (or Chair of Colleges where the Principal has already been involved in the case) or Head of the relevant Department. The student will be asked to state the grounds of their appeal, and the right to appeal will only be granted if there is evidence of the following:
- a) Procedural irregularity.
 - b) Evidence of further material circumstances which could not reasonably have been expected to have been submitted for consideration at the time of the investigation/hearing.
 - c) The sanction imposed was disproportionate to the offence.
- 7.3 If there are grounds for appeal, the Principal / Head of Department will review the papers, but will not re-hear the case or interview the student. They may then decide to take action as follows:
- a) Uphold the original decision.
 - b) Referring the case back to the AUO to reinvestigate in light of new evidence or in a procedurally correct manner. This may involve the reallocation of the case to an AUO who had no prior involvement in the case.
 - c) Uphold the original decision but reduce the sanction.
 - d) Overturn the original decision and remove the sanction.

7.4 If the Principal / Head of Department decides that the student has not demonstrated sufficient grounds for appeal, the appeal will be dismissed. The decision is final and the student shall receive a 'completion of procedures' letter summarising the reasoning and outcome of the appeal, and the right to complain to the Office of the Independent Adjudicator and the deadline for submitting a complaint.

8. Category 2 Offences – Procedure & Sanctions

8.1 As set out above, if an AUO determines, in consultation with the Chair of the SDC, that an alleged offence meets the criteria to be considered as Category 2 offence then it will be referred to the SDC.

8.2 Upon referral of an alleged offence, the accused student will be contacted in writing by the Student Conduct Office within 5 working days and informed and notified by email of the nature of the alleged offence and the date of the hearing. The student will be given at least 10 working days' notice of a meeting of the Disciplinary Panel. Where there are exceptional circumstances requiring a shorter period of notice to be given, this can be approved by the Chair and the reasons will be explained to the student.

8.3 The AUO or the student may wish to invite witnesses to appear before the Panel or to provide written statements. If this is the case, the student should advise the Student Conduct Office at least 7 working days prior to the hearing to allow the Student Conduct Office to advise the potential witnesses, collect statements, and circulate to the Panel and the student. Witnesses may attend in person or provide written statements. Witnesses must be willing to participate.

8.4 A Category 2 allegation will normally be heard by the SDC as soon as is practicable following the receipt of a referral by an AUO.

8.5 The student has the right to contact their College Student Support Office or the Students' Union for assistance with responding to the allegation.

8.6 The student has a right to submit a final written statement no later than 7 working days before the hearing. The student's statement may set out any relevant additional information to bring to the Panel's attention (e.g. an account of mitigating circumstances where the student wishes to admit the offence or evidence to support a rebuttal of the offence). Statements and other documentation will be circulated to the Panel and the student not less than 5 working days before the hearing, although later circulation may be allowed at the discretion of the Chair.

8.7 If the student does not appear on the date of the hearing and the Panel is satisfied that reasonable attempts were made to communicate the date, the hearing may proceed and the appropriate sanction imposed in the student's absence.

8.8 Within 5 working days of the SDC meeting, the Student Conduct Office will inform the student of the outcome and any sanctions (if applicable) as outlined below:

- a) Temporary or permanent exclusion from the University.
- b) Restricting access to the University or parts of it and/or activities organised or sanctioned by the University and/or the Students' Union.
- c) Any other sanction that the Senate Discipline Committee deems appropriate.

8.9 Normally within 10 working days of the hearing, the student will be provided with notes of the hearing which will set out the reasoned decision of the Disciplinary Panel. The Student Conduct Office will also inform the student of any further actions to be taken as a result of the decision and the right of request a review when any further actions are complete.

9. Category 2 Offences – Right of Appeal

- 9.1 A student may exercise the right to appeal by completing the Disciplinary Offences Appeal Form and submitting it to the Student Conduct Office within 10 working days of receiving the outcome of the Panel. The appeal process will not re-investigate the disciplinary offence.
- 9.2 The request for the right to appeal will be considered by the Pro-Vice Chancellor (Colleges & Student Experience) (or their nominee). The student will be asked to state the grounds of their appeal, and the right to appeal will only be granted if there is evidence of the following:
- Procedural irregularity.
 - Evidence of further material circumstances which could not reasonably have been expected to have been submitted for consideration at the time of the investigation/hearing.
 - The sanction imposed was disproportionate to the offence.
- 9.3 Within 20 working days of the appeal being received by the Student Conduct Office, it shall be forwarded to an appointed lay member of University Council together with all of the information considered at the Disciplinary Panel.
- 9.4 If there are grounds for appeal, the lay member of University Council will review the papers, but will not re-hear the case or interview the student. They may then decide to take action as follows:
- Uphold the original decision.
 - Refer the case back to a Disciplinary Panel for a rehearing in light of new evidence or in a procedurally correct manner. The Panel would be comprised of members who have had no prior involvement in the case.
 - Uphold the original decision but reduce the sanction.
 - Overturn the original decision and remove the sanction.
- 9.5 If the lay member of University Council decides that the student has not demonstrated sufficient grounds for appeal, the appeal will be dismissed.
- 9.6 Except in cases where further action is to be undertaken, the decision is final and the student shall receive a 'completion of procedures' letter summarising the reasoning and outcome of the appeal, and the right to complain to the Office of the Independent Adjudicator and the deadline for submitting a complaint.

10. Version Control:

Approval by University Council 5/5/19.

[1] See: https://www.dur.ac.uk/university.calendar/volumei/general_regulations/

[2] See Complaint Procedure for Students:
https://www.dur.ac.uk/university.calendar/volumei/codes_of_practice/

[3] See Bullying & Harassment Policy and Procedure for Students:
<https://cms.dur.ac.uk/resources/colleges.se.division/BullyingHarassmentPolicyandProcedureforStudents.pdf>

[4] See: [Sexual Violence and Misconduct Policy and Procedure for Students](#)

[5] See: [Fitness to Study Policy](#).

[6] See: https://www.dur.ac.uk/university.calendar/volumei/codes_of_practice/

[7] See: https://www.dur.ac.uk/resources/sexualviolence/1920_SMVPolicy.pdf

[8] See: [Student Alcohol Awareness and Use Policy](#) Section 11.

APPENDIX A - EXAMPLES OF MISCONDUCT

Examples of alleged offences are listed below. The examples given are intended to be illustrative rather than exhaustive.

Actions which cause actual or potential distress or harm to others

- a) Offences against the criminal law
- b) Verbal abuse or intimidation
- c) Causing distress to others through excessive and unacceptable levels of noise in University residence on campus or in the local community
- d) Anti-social behaviour which causes distress to others and/or reputational harm and/or damage to the University's relationship with the local community
- e) Assault or causing physical harm
- f) Sexual violence and misconduct
- g) Threatening, offensive or indecent behaviour
- h) Acts of bullying, harassment or intimidation
- i) Theft, fraud, or deliberate falsification of records
- j) Possession and/or intent to supply controlled drugs
- k) Possession of an offensive weapon/firearm including imitation or replica products
- l) Multiple or repeated minor offences

Actions which cause actual or potential damage to property of others

- a) Offences against the criminal law
- b) Causing minor damage to property
- c) Causing serious and deliberate damage to property
- d) Multiple or repeated minor offences

Actions which disrupt the normal operations, and/or safe use of, the University including where applicable, reputational damage to the University

- a) Offences against the criminal law
- b) Causing distress to others through excessive and unacceptable levels of noise in University residence on campus or in the local community
- c) Anti-social behaviour which causes distress to others and/or reputational harm and/or damage to the University's relationship with the local community
- d) Assault or causing physical harm
- e) Threatening, offensive or indecent behaviour
- f) Persistent acts of bullying, harassment or intimidation
- g) Theft, fraud, or deliberate falsification of records
- h) Possession and/or intent to supply controlled drugs
- i) Possession of an offensive weapon/firearm including imitation or replica products
- j) Multiple or repeated minor offences

Actions which impede or interfere with the pursuance of work/study of University members, or impact on normal operations of the University

- a) Offences against the criminal law
- b) Failure to comply with explicit rules or regulations; for example unauthorised parties in residences, smoking in non-designated areas, causing a disturbance in examinations
- c) Infringement of University Health and Safety rules; for example failure to vacate during fire alarms, lighting fires or barbecues in unauthorised areas, or tampering with safety equipment
- d) Refusal to respond to reasonable requests by relevant University staff; for example refusing to confirm identity when requested during the normal course of their duties, failure to attend a disciplinary meeting without good reason
- e) Causing distress to others through excessive and unacceptable levels on noise in University residence on campus or in the local community
- f) Anti-social behaviour which causes distress to others and/or reputational harm and/or damage to the University's relationship with the local community
- g) Threatening, offensive or indecent behaviour
- h) Persistent acts of bullying, harassment or intimidation
- i) Possession and/or intent to supply controlled drugs
- j) Possession of an offensive weapon/firearm including imitation or replica products
- k) Persistent refusal to pay a fine or observe another penalty imposed following a disciplinary hearing
- l) Trespassing
- m) Multiple or repeated minor offences

APPENDIX B – GROUP DISCIPLINE

Where an allegation of potential misconduct is reported that involves a ‘team’, ‘club’^[1] or a large number of students the following procedure may be followed:

- a) The relevant AUO will advise the Chair of Colleges / Pro-Vice-Chancellor (Colleges & Student Experience) of the allegation.
- b) The Chair of Colleges / Pro-Vice-Chancellor (Colleges & Student Experience) will appoint a lead investigator to act as AUO for the investigation. This will normally be a Principal or Vice Principal.
- c) The Chair of Colleges / AUO will appoint a team of investigators to support the lead investigators. These will normally be Vice Principals and/or Assistant principals.
- d) The Chair of Colleges / Pro-Vice-Chancellor (Colleges & Student Experience) will commission a Terms of Reference for the investigation.
- e) An investigation will be conducted in order to establish:
 - i. Whether there has been a breach of the non-academic misconduct procedure.
 - ii. Whether any breaches are Category 1 or Category 2.
 - iii. Whether any students should be referred to the relevant College for Category 1 breaches of the non-academic misconduct procedure.
 - iv. Whether any students should be referred to Senate Disciplinary Committee for Category 2 breaches of the non-academic misconduct procedure.

In relation to any disciplinary action that follows this investigation, the normal procedures will apply.

Investigations under this procedure will need to be swift, thorough and proportionate.

[1] ‘Team’ or ‘club’ is defined as a group of 11 students or more. This figure can be flexible depending on the context.

Further University policies are available from the [Policy Zone](#).

Should you wish to view the 2018/19 policies these are available [here](#).

Contact for further information: Student Conduct Office (student.cases@durham.ac.uk)