



Abertay University

CODE OF STUDENT DISCIPLINE: NON-ACADEMIC MISCONDUCT

Purpose

As members of the University, students subscribe to institutional regulations, which enable all members of the Abertay community to live and work together constructively and with respect. These regulations require all members of the University community to observe certain standards of behaviour. The purpose of the Code is to be corrective, where appropriate, rather than punitive; to help and encourage students to achieve and maintain acceptable standards of conduct; to ensure consistent and fair treatment for all; and to protect the University community.

Principles

Our policy and practice should:

- Be fair;
- Be applied consistently;
- Encourage students to interact with one another and the University in a positive and respectful way;
- Not disadvantage students accused of alleged misconduct;
- Be simple, understandable and administratively straightforward.

Practice

This Code is intended to demonstrate how the University will proceed where students do not comply with the standards of behaviour expected of them; the process through which allegations of misconduct by students will be considered; and the possible sanctions that may be applied where such misconduct is proven.

Student and Academic Services

Approved by Court 11 November 2020

CODE OF STUDENT DISCIPLINE: NON-ACADEMIC MISCONDUCT

1. PURPOSE OF THIS CODE

As members of the University, students subscribe to institutional regulations that enable all members of the Abertay community to live and work together in a constructive environment. These regulations require all members of the University community to observe certain standards of behaviour. This code provides a route map as to how the University will proceed where students do not comply with the standards of behaviour expected; the process through which allegations of misconduct will be considered; and the possible sanctions that may be applied where such misconduct is proven. The purpose of the Code is to be corrective rather than punitive; to help and encourage students to achieve and maintain acceptable standards of conduct; to ensure consistent and fair treatment for all; and to protect the University community.

The University has jurisdiction over the conduct of Abertay students:

- i. where the conduct relates to the work of the University, whether on University property or elsewhere;
- ii. where the conduct involves, affects or concerns other members of the University, whether on University property or elsewhere;
- iii. where the conduct (a) jeopardises or damages or may jeopardise or damage the good name and reputation of the University, (b) causes or is likely to cause injury or impair safety to other members of the University, whether on University property or elsewhere, or (c) raises the question as to whether a student should remain a member of the University because s/he poses a danger to other members, or to the good order of the University, even where the conduct may not be related to the work of the University, may not have taken place on University property and may not have impacted directly on other members of the University.

The University distinguishes between the above and academic matters, which are dealt with elsewhere under the **Code of Student Discipline: Academic Misconduct**. Some cases, however, may incorporate allegations of both academic and non-academic misconduct. Examples include that of a student who fraudulently presents false information either verbally or in writing to the University (this may include falsified medical documentation, an untrue explanation of circumstances affecting study or false reasons for absence). Other examples include that of a student found to be in possession of unauthorized materials in an examination who, when challenged, becomes aggressive and/or abusive to the invigilator. In such cases, the Student Disciplinary Board will comprise members of both academic and non-academic staff and will be empowered to impose those penalties or sanctions found in both **Codes of Student Discipline**.

Where the misconduct is the subject of a police investigation and/or prosecution, the University will normally suspend the disciplinary procedure and await the outcome of any criminal proceedings before deciding whether or not to apply its own processes. A finding of guilt or acquittal in a criminal court will not preclude the University from thereafter taking disciplinary action in respect of the same incident.

The University may report to the police any allegation of criminal misconduct if it believes that this will best serve the interests of the University community or the wider public interest. This also applies to any investigations, prosecutions, and/or any enforcement or other action taken by any other bodies, including those acting under immigration regulations; national security or defence; the Student Awards Agency for Scotland; Health & Safety Executive; HM Revenue & Customs, or others.

Examples of misconduct are given in **Appendix A**. The list is not exhaustive and does not prevent the University considering and adjudicating on any other conduct or action that may be a breach of discipline, whether on University property or elsewhere. Students who are covered by the General Regulations on Fitness to Practice may also be referred to the appropriate Fitness to Practice Procedure. Any student who assists a fellow student, or students, to commit misconduct will be deemed to have committed misconduct and will be dealt with in accordance with this procedure.

Students are expected to adhere to the appropriate public health and University guidelines with respect to social distancing, quarantine, and other measures to assist in stopping the spread of COVID-19. A failure by any student to comply with quarantine requirements; and/or observe social distancing and/or any other measures to protect against infection with COVID-19 whether that happens (a) in the University or (b) outwith the University but with a potential impact for the University will be considered to be potentially serious misconduct (depending on the extent of the failure) and will **be** dealt with under this Code of Discipline.

2. PROCEDURE IN CASES OF ALLEGED NON-ACADEMIC MISCONDUCT/OFFENCE(S)

Investigation

Before embarking on any disciplinary action, it is important that the facts are established through a preliminary investigation. Alleged misconduct/offence(s) will initially be investigated by an Authorised Investigator (AI). For the purposes of this Code, the student(s) against whom an allegation has been made will be described as the Responding Student(s) and any person(s) making an allegation as the Reporting Person (s).

Responding Student(s)

As part of any investigation, and before making a report to the Student Disciplinary Panel, the AI will conduct an interview with the student(s) against whom the allegation(s) of misconduct have been made. The AI will inform the student(s) as soon as possible of the alleged offence or offences and give reasonable notice of the time, date and place at which the student(s) may attend. The student(s) will have an opportunity to submit a written statement regarding the allegation(s) before the meeting, which should indicate whether s/he intends to admit or deny responsibility. At the meeting, the student(s) may only be accompanied by another member of the University community, i.e. a fellow student, a member of staff or a member of the Students' Association Executive, or University support worker. The student(s) will have the opportunity to present evidence and/or make a statement in mitigation, if s/he wishes. Failure to attend the meeting will not preclude the AI from making their report to the Student Disciplinary Panel, based on the evidence available. The AI will also gather evidence from other sources, such as witness statements and may also conduct interviews with members of staff and/or other students. The AI will consult Student and Academic Services to ascertain whether the student has a previous record of misconduct.

Reporting Person(s)

At the same time, an AI with no prior involvement with the student(s) against whom the allegation(s) of misconduct has been made will contact the student(s) making the allegation(s) of misconduct. The AI will give reasonable notice of the time, date and place at which the student(s) may attend. The student will have an opportunity to submit a written statement regarding the allegation(s) prior to the meeting, at which they may be accompanied by another member of the University community (i.e. a fellow student, a member of staff or a member of the Students' Association Executive, or University support worker), and to present evidence. The AI will also gather evidence from other sources, such as witness statements. They may also conduct interviews with members of staff and/or other students.

In both cases, the AI will encourage the student(s) to seek support from relevant sources, both internal and external to the University¹.

The AIs will each submit the reports of their investigations to the Student Disciplinary Panel, which will take a view on whether, based on the balance of probabilities, misconduct has occurred and whether escalation to a formal Student Disciplinary Board hearing is warranted.

Student Disciplinary Panel

The Student Disciplinary Panel (Panel) is intended to ensure a consistent approach to risk and needs identification, and their management. The Panel will be chaired by the Student Services Manager or appropriate nominee, who will convene meetings with at least two members of Abertay staff not previously involved in the investigation, the Abertay Students' Association Vice-President or their nominee and a clerk.

In assessing the reports on the investigation, the Panel will give consideration to:

- The severity of the alleged misconduct
- The individual² and organisational³ risks posed by the alleged misconduct
- The risk posed to the Reporting Student(s) by the Responding Student(s)

Following discussion, the Panel may:

- (a) dismiss the allegation of misconduct,
- (b) decide that, although misconduct did occur, the matter has now been resolved,
- (c) decide that misconduct did occur and offer the Responding Student(s) the option of a written reprimand,
- (d) where the Responding Student(s) does not accept a panel decision under (c)
- (e) where the Panel believes that further consideration is required, refer the matter to a meeting of the Student Disciplinary Board to consider the alleged misconduct and determine the case in accordance with the procedures set out in **Appendix B**

The clerk to the Panel will communicate the decision to the student in writing **normally** within five working days of the date of the Panel meeting. The notice confirming the decision will give an opportunity to accept a written reprimand and details the process should the reprimand not be accepted. The decision will also be communicated to the School and to Student and Academic Services, in order to be lodged in the student's record, where appropriate.

Student Disciplinary Board

The Student Disciplinary Board will normally be chaired by the Head of Governance or nominee (senior member of University staff) and will comprise, of two other members of University staff, the Abertay University Students' Association President, or their representative and a clerk

Details of the conduct of the hearing are given in **Appendix B**.

If misconduct is admitted or, following the meeting, established, the Disciplinary Board may impose

¹ In cases of alleged sexual assault, the AI will make the alleged victim(s) aware of local services, such as Dundee Women's Aid, Rape Crisis, WRASAC and the Tayside Sexual Assault Referral Network (SARN), if they do not wish to report the matter to Police Scotland at the time.

² For example, likelihood of further breaches of the code; impact of any breach of the code on the reporting student and the University community; risk of continued harassment or bullying for the reporting person; breach of other university policies, etc.

³ For example, impact of any breach of the code on the University community; reputational damage to the University; breach of other university policies, etc.

one or more of the following penalties, as appropriate (this list is not exhaustive):

- (a) A written or oral reprimand.
- (b) Exclusion for a period not exceeding 28 days.
- (c) Suspension of matriculated student status for a period.
- (d) Suspension of access to University facilities, such as IT and Library services.
- (e) Restitution or compensation for damage caused.
- (f) Expulsion from residence in University Halls of Residence.
- (g) Recommendation to the Principal that the student be expelled from the University.

The Disciplinary Board will communicate its decision to the Responding Student(s) in writing **normally** within five working days of the date of the Disciplinary Board meeting. The notice confirming the decision will give details of the right of appeal. The decision will also be communicated to the School and to Student and Academic Services, in order to be lodged in the student's record.

3. RIGHTS OF APPEAL

Responding Student(s) may appeal against the decision of a Student Disciplinary Panel or Student Disciplinary Board, but only if there are valid *grounds to appeal*. The only valid grounds for appeal are:

- (a) procedural irregularity; or
- (b) bias or prejudice; or
- (c) substantive new evidence which has become available and which was not presented to the original Panel/Board for good reason.

An appeal against a decision of a Disciplinary Panel or Board must be made in writing to Student and Academic Services, stating clearly the grounds of appeal, not more than 10 working days after the date on the decision letter. The appellant should also make explicit whether they are appealing the finding of the Panel or Board the penalty imposed or both the finding and the penalty.

On receipt of the appeal, the Director of Student and Academic Services will review the case to determine whether there are grounds for the appeal to proceed.

If the appeal or complaint is deemed not to contain grounds to proceed, the appellant will be advised of this **normally** within 5 working days of receipt of the appeal. The student will be informed of his or her right to seek an independent review of the University's decision by the Scottish Public Services Ombudsman.

If the Director of Student and Academic Services considers that the appeal should proceed, the matter will be referred to an Appeal Panel, whose composition is detailed below under Appendix D.

Where an appeal is upheld, the Appeal Panel can remove the sanction and/or refer the matter back to the Student Disciplinary Panel or Board with recommendations for the matter to be reviewed. The panel can also reach a partially upheld decision, when appropriate. If the appeal is rejected, the Appeal Panel will review the level of penalty imposed and may confirm it, reduce it or increase it. The decision will also be communicated to the School and to Academic Services, in order to be lodged in the student's record.

The decision of the Appeal Panel is final and concludes the University's internal procedures.

A student who remains dissatisfied with the outcome of the University's internal processes may seek

an independent review of the University's decision by the Scottish Public Services Ombudsman.

4. SUSPENSION OR EXCLUSION FROM THE UNIVERSITY IN CASES OF URGENCY

In cases of urgency, the Principal, the Vice-Principal or the University Secretary shall have the power to take immediate action to suspend or exclude a student temporarily from the University. These powers will only be used if it is believed that such action is necessary to protect members of the University community or members of the public in general, or to protect a particular member or members. The terms 'suspension', 'exclusion' and 'expulsion' are defined in **Appendix C**.

Reasons for the decision will be recorded in writing and provided to the student. The student will also be informed of the duration of the suspension or exclusion, which will normally be 10 working days, in the first instance, and subject to review at the end of that period.

During any period of suspension or exclusion, all reasonable efforts will be taken to minimise any academic disadvantage to the student (e.g. provision of lecture notes, sitting exams away from the main examination locations etc). Suspension pending a hearing is not a penalty.

Appendix A – Examples of Misconduct/Offences under the Code

A person who, without good cause, seriously disrupts, abuses or interferes with the functions, duties or activities of any member of the University community or any University activity, is guilty of misconduct under this Code. Examples of offences include, but are not limited to:

- Minor anti-social behaviour (this includes excessive noise at anti-social times, minor vandalism and throwing items out of windows).
- Refusal to leave a building during a fire alarm.
- Tampering with fire alarms or fire extinguishers.
- Using threatening, abusive or offensive language, whether expressed orally or in writing.
- Posting material which is defamatory, in breach of copyright or the Data Protection Act of 1998, brings the University in disrepute, constitutes bullying, harassment or otherwise generally unacceptable behavior. This includes communication via email and social media.
- Misusing or making unauthorised use of University premises or items of property, including computer misuse, infringement of copyright when copying or downloading published information.
- Intentionally or recklessly damaging University property or the property of any member of the University community.
- Behaving in a violent, indecent or threatening manner.
- Engaging in deception or other forms of dishonesty in relation to the University.
- Behaving in a way likely to cause injury to any person or impair safety.
- Carrying an offensive weapon.
- Harassing any member of the University community. For these purposes "harassment" means behaviour or language which is regarded by the person to whom it is directed as harassment and which would be regarded as harassment by any reasonable person.
- Discriminating against any member of the University community on any ground such as colour, race, nationality, national origins, disability, sexual orientation, religion or belief, family circumstances, political beliefs, gender, gender reassignment, trade union membership, age or any other unfair distinction.
- Deliberately doing, or failing to do, anything that thereby causes the University to be in breach of a statutory obligation.
- Fraud, deceit or dishonesty in relation to the University, its staff, students and visitors.

- Misuse of drugs or alcohol⁴.
- Failing to comply with a previously-imposed penalty under this Code.

Note: The standard of proof to be used in all discipline cases is the balance of probabilities. Any penalty imposed will take account of the severity of the actual misconduct, the wider circumstances, including any mitigating evidence presented by the student, and any previously recorded incidents in which misconduct by the same person was either admitted or investigated and established.

⁴ See also the Substance Misuse Policy for Students

Appendix B – The Disciplinary Board

Composition of the Disciplinary Board

The Convener of the Disciplinary Board will normally be the Head of Governance or nominee (a senior member of University staff) .

Members of the Disciplinary Board will be drawn from a pool of staff, both academic and non-academic. Alongside the Convener, the Disciplinary Board will comprise two staff members and the President of the Students' Association or their nominee, and a Clerk to record the decision of the Board. The Responding Student(s) will be informed in advance of the composition of the Board and given adequate notice of the date, time and venue for the meeting. At the meeting, the Responding Student(s) may be accompanied by another member of the University community, i.e. a fellow student, a member of staff or a member of the Students' Association. The Responding Student(s) should confirm prior to the hearing the name of any individual accompanying them and in what capacity s/he is accompanying the Responding Student(s).

Conduct of Disciplinary Board meetings

The Disciplinary Board will meet in private prior to the hearing to agree the issues to be addressed and the details of how the hearing will be conducted. Witnesses and the Responding Student will not be in the hearing at the same time.

The Convener will outline the procedures to be followed by any witnesses after which any witness(es) will be called to give evidence.

The Convener will outline the procedures to the Responding Student, and then outline the nature of the allegation(s) against the Responding Student(s), and invite them to state whether he or she admits or denies the allegations.

The Convener will invite the Chair of the Disciplinary Panel to make a statement regarding the decision reached following the investigation at the meeting of the Panel.

The Board will take the opportunity to seek clarification on any points raised with the Chair of the Disciplinary Panel.

The Convener will invite the Responding Student(s) to make a statement.

The Responding Student(s) and/or their representative may at this stage present supporting evidence to the Disciplinary Board. Evidence may include oral evidence of witnesses or written submissions, including mitigating evidence, which should have been submitted to the Clerk no less than two working days before the meeting. The Responding Student or representative may not call as a witness or cross-examine the Reporting Person(s).

The Board will take the opportunity to seek clarification on any points raised, both with the student and any witness(es).

The Responding Student(s) and/or their representative will be invited to address questions through the Convener to the Chair of the Disciplinary Panel on witness(es) statement(s) in their written submissions.

The Responding Student(s) and/or their representative will be invited to give a concluding statement. This will be the final stage at which new evidence can be submitted. Where a Responding Student(s)

introduces new material at the hearing, it will be at the discretion of the Board whether to accept the evidence. The Board reserves the right to consider any new evidence separately and may suspend or defer the hearing in order to consider any such submission.

When all statements have been made, all witnesses heard and all questioning completed, all persons present other than the members of the Disciplinary Board must leave the room. The Clerk will, however, remain with the Disciplinary Board.

The Disciplinary Board will consider the evidence and reach a decision, which will be sent to the Responding Student(s) in writing **normally** within five working days. The decision will also be communicated to the School and to Student and Academic Services, in order to be lodged in the Responding Student(s) record.

Where a Responding Student(s) cannot attend the meeting, s/he may nominate another person to represent him or her, but is not required to do so. Where a Responding Student(s) elects to nominate another person to represent him or her at the meeting, written notification of this must be submitted in advance to the Clerk. A Responding Student(s) may only nominate another member of the University community (i.e. a fellow student, a member of staff or a member of the Students' Association Executive, or University support worker) as their representative.

Where a Responding Student(s) has been given sufficient notice to appear but does not attend, it will be at the Convenor's discretion whether the meeting proceeds in the student's absence. Where a Responding Student(s) has indicated their intention to appear but is prevented from so doing for reasons outwith their control (for example by a medical emergency or having been taken into Police custody), the Board will re-convene at a later date in order to allow the Responding Student(s) to attend.

Appendix C - Definition of expulsion, suspension or exclusion

Expulsion is the permanent termination of matriculated student status involving a total prohibition on attendance at or access to the University and on any participation in University activities. A student who has been expelled will not normally be eligible for re-admittance to the University.

Suspension of matriculated student status involves a temporary total prohibition on attendance at or access to the University and on any participation in University activities; but it may be subject to qualification, such as permission to attend for the purpose of an examination. Suspension should be used only where exclusion from specified activities or facilities is considered to be inadequate.

Exclusion involves selective restriction on attendance at or access to the University or prohibition on exercising the functions or duties of any office or committee membership in the University or Students' Association. It may also extend to restriction on access to other places such as hospital wards or school premises (where access to such places is integral to the student's programme of study or professional training). The exact details of such exclusion must be specified in writing and elements of it may be temporary or permanent.

An order of expulsion, suspension or exclusion may include a requirement that the student have no contact of any kind with a named person or persons.

Appendix D – The Appeal Panel

Composition of the Appeal Panel

The Appeal Panel will normally comprise three members of Senior Management who will not have had any significant prior involvement in the matter, one of whom will act as Convenor. The Director of Student and Academic Services will appoint a Clerk who will not have been involved in any previous consideration of the case to administer the Appeal Panel and record their decision(s). The appellant will be informed in advance of the composition of the Appeal Panel and given adequate notice of the date, time and venue for the meeting. At the meeting, the appellant may be accompanied by another member of the University community, i.e. a fellow student, a member of staff or a member of the Students' Association or University support worker. The appellant should confirm prior to the hearing the name of any individual accompanying them and in what capacity s/he is accompanying the appellant.

Conduct of Appeal Panel meetings

The Appeal Panel will meet in private prior to the hearing to agree the issues to be addressed and the details of how the hearing will be conducted.

The appellant should submit any evidence no less than three working days before the hearing. Where an appellant introduces new material at the hearing, it will be at the discretion of the Panel whether to accept the evidence. The Appeal Panel reserves the right to consider any new evidence separately and may suspend or defer the hearing in order to consider any such submission.

The Appeal Panel may seek the assistance of a suitably qualified person at a hearing where it is considered to be beneficial. Such persons are not entitled to participate in Appeal Panel decisions, but may provide advice to the Appeal Panel at the invitation of the Convenor, either during the hearing or when the Panel is sitting in private to discuss the case in advance of the hearing or in reaching its decision following the hearing

Any witnesses and the appellant will not be in the appeal hearing at the same time.

The Convenor will outline the procedures to be followed by any witness(es) after which any witness(es) will be called to give evidence.

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The Convenor will invite the appellant or the person accompanying them to present their case.

The Panel will ask questions of the appellant or the person accompanying them and of any witness(es). The appellant or the person accompanying them will have the right to ask questions of any members of the appeal panel at the hearing.

The appellant and/or their representative will be invited to give a concluding statement.

When all statements have been made, all witnesses heard and all questioning completed, all persons present other than the members of the Appeal Panel must leave the room. The Clerk will, however, remain with the Appeal Panel.

The Appeal Panel will consider the evidence and reach a decision, which will be sent to the appellant

in writing **normally** within five working days. The standard of proof to be used is the balance of probabilities. The decision of the Panel will also be communicated to the School and to Student and Academic Services, in order to be lodged in the appellant's record.

Where the appellant cannot attend the meeting, s/he may nominate another person to represent him or her, but is not required to do so. Where the appellant elects to nominate another person to represent him or her at the meeting, written notification of this must be submitted in advance to the Clerk. The appellant may only nominate another member of the University community (i.e. a fellow student, a member of staff or a member of the Students' Association Executive) as their representative.

Where the appellant has been given sufficient notice to appear but does not attend, it will be at the Convenor's discretion whether the meeting proceeds in the appellant's absence. Where the appellant has indicated their intention to appear but is prevented from so doing for reasons outwith their control (for example by a medical emergency or having been taken into Police custody), the Panel will re-convene at a later date in order to allow the appellant to attend.

Appendix E - Summary of process (requires new infographic)

