

# Guide to the Conservatoire Non-Academic Misconduct Policy

## What is the policy?

The Non-Academic Misconduct Policy and its procedures are the means by which your School deals with allegations of student misconduct. The policy does not cover academic misconduct (such as plagiarism), but does cover behavioural misconduct including misconduct which breaches the School and Conservatoire Student Codes of Conduct (including conduct that calls a student’s professionalism into question). All decisions and findings reached at any stage of the procedures are made on the balance of probabilities.

The balance of probabilities means that any decision-maker in these procedures (e.g. the Preliminary Enquiry Officer, the Misconduct Panel or the Misconduct Appeals Panel) must be satisfied that an allegation of misconduct is substantiated if, on the basis of the evidence considered, the occurrence of the event was more likely than not.

## What are the procedures?

The Non-Academic Misconduct Policy has the following procedures under which alleged misconduct may be managed:

PROCEDURE and RELEVANT SECTION OF POLICY	EXPLANATION OF PROCEDURE
<p><b>Informal procedures</b></p> <p>Section 4.1 - 4.3</p>	<p>If allegations of misconduct have been made against you, there will normally be an informal investigation. This may result in one or more of the following:</p> <ul style="list-style-type: none"> <li>• An informal warning about future conduct being given;</li> <li>• Targets for improvement;</li> <li>• A timeframe for a further informal review of your conduct</li> </ul>
<p><b>Formal procedures GENERAL OVERVIEW</b></p> <p>Section 4.4</p>	<p>Where the School deems it is not appropriate to resolve an allegation of misconduct under the informal procedures, they may instigate formal procedures. There are 3 parts to the formal procedures:</p> <ul style="list-style-type: none"> <li>• Preliminary Enquiry</li> <li>• Misconduct Panel</li> <li>• Misconduct Appeals Panel</li> </ul>
<p><b>Formal procedures: PRELIMINARY ENQUIRY</b></p> <p>Section 4.5- 4.16</p>	<p>A Preliminary Enquiry is the initial investigation stage when your School needs to look into allegations of misconduct on the part of a student. The Preliminary Enquiry will normally take place and be concluded within 14 days of an allegation being received. As part of the Preliminary Enquiry, you may be asked to attend an interview with the Preliminary Enquiry Officer to explore the allegations with you as part of information gathering, so as to ascertain any necessary next steps.</p> <p>There are 4 potential outcomes to a Preliminary Enquiry:</p> <ul style="list-style-type: none"> <li>• <b>There is insufficient or no evidence of any misconduct</b> No further action will be taken</li> <li>• <b>There is sufficient evidence, on the balance of probabilities, to form the basis of a charge of minor misconduct</b> It is found that a student has committed a minor infringement of the Non-Academic Misconduct policy.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>There is sufficient evidence to form the basis of an allegation of major misconduct</b> This matter will be referred to a MISCONDUCT Panel to investigate the allegation of major misconduct.</li> <li>• <b>There is sufficient evidence and/or reasonable grounds to refer the matter to another policy as appropriate</b> This may mean that no further disciplinary procedures are followed, or it may mean that there is a need to refer the case under another policy (eg Support Through Studies) but that disciplinary proceedings are held in abeyance.</li> </ul>
<p><b>MISCONDUCT PANEL</b></p> <p>Section 6</p>	<p>If it is deemed necessary to hold a panel, you will normally be informed at least 10 days in advance. This information will include the date and time, any documentation or evidence and an attendance list.</p> <p>You will usually be expected to attend the panel hearing in person, however you can also send in a written statement in advance and can request to be accompanied or represented.</p> <p><b>Finding(s)</b> A decision of the Misconduct Panel will be reached by a majority vote of the members of the Panel. Firstly, the Panel will determine whether the alleged misconduct on the part of the student has occurred by making one or more of the following finding(s):</p> <p style="padding-left: 40px;">a) whether the misconduct allegation(s) has/have been proven, on the balance of probabilities</p> <p>whether there are any other or further concerns which should be taken into account, or which require further investigation.</p> <p>The panel will then determine whether there are any relevant action, including any penalties to be given and/or any further actions to be taken by the student of school.</p> <p><b>Penalties</b> See Section 6.18 for factors that will be considered and Section 6.19-6.22 for potential penalties.</p>
<p><b>REQUEST FOR AN APPEAL</b></p> <p>Section 7</p>	<p>You may submit an appeal against a decision(s) of an MISCONDUCT Panel. Appeals must be made under one of the stated grounds (see Section 7 of the Policy).</p> <p>If your appeal request meets at least one of the grounds, a MISCONDUCT Appeal will be organised. The Panel will review whether the original decision by the MISCONDUCT Panel should stand, or be replaced with a new decision.</p>
<p><b>MISCONDUCT APPEAL PANEL</b></p> <p>Section 8</p>	<p>An appeal will initially be reviewed by the MISCONDUCT Appeal Reviewer (this will be a senior member of staff of CDD, normally from your School).</p> <p>The appeal will either be found to be upheld (in which case the original decision will either overturned, and either modified or replaced with a new decision) or not upheld (original decision remains).</p>

## **Completion of Procedures**

Once all internal procedures have been concluded, you will be issued with a Completion of Procedures letter (see Section 9 of the policy). The letter will advise of the option for making an application to the Office of the Independent Adjudicator (OIA), which operates an independent scheme for the review of student complaints. Students can request a Completion of Procedures letter at an earlier point in the process, however, should they wish.

## **Definitions of Misconduct**

Section 2 of the policy contains definitions of misconduct, as outlined below. The definitions explain the types of behaviour or conduct which would normally be considered as misconduct by the Conservatoire; allegations of such behaviour or conduct as listed in the definitions below, would normally result in the instigation of the non-academic misconduct procedures.

No student shall engage in conduct either on or off School premises which:

- a) is in breach of any rule, regulation, code of conduct/practice or policy which the Schools make for their students from time to time, or which are established by CDD and the validating university which are applicable to students' studies at the Schools. Examples of such policies include, but are not limited to, the following:
  - the Student Code of Conduct
  - School Attendance Policy
  - Emergency Powers of Exclusion or Suspension of a Student
  - Support Through Studies Policy
  - IT Policy
  - Policy on Sexual Misconduct, Harassment and Related Behaviours
  - Criminal Records Policy
  - Student Complaints Procedure.
- b) constitutes sexual misconduct, harassment or related behaviours as defined in the Conservatoire Policy on Sexual Misconduct, Harassment and Related Behaviours
- c) causes physical harm, or is intended to cause physical harm, to another individual or individuals;
- d) causes psychological harm or distress, or is intended to cause psychological harm or distress to another individual or individuals;
- e) threatens, harasses, intimidates, discriminates, abuses or constitutes an assault or attempted assault of any kind (including sexual harassment and sexual assault) on another member, or employee, or student of the Schools or Conservatoire, or a visitor to the Schools or Conservatoire;

- f) constitutes hostile, threatening or intimidating behaviour (including inappropriate language, and repeatedly contacting another person by phone, email, text or on social networking sites against the wishes of the recipient of the contact);
- g) prevents, or is intended to prevent, any person exercising or intending to exercise his or her right to freedom of speech or freedom of belief within the law on School or Conservatoire premises;
- h) constitutes acts, omissions or statements intended to deceive the Conservatoire and/or its Schools;
- i) causes damage to School and/or Conservatoire property, or the property of students, employees or visitors to the School and/or Conservatoire;
- j) misuses, wilfully damages, defaces, steals or converts to improper use of property of the School or Conservatoire (including IT, specialist and non-specialist equipment);
- k) constitutes taking property belonging to another individual without permission;
- l) does not follow safe practice or is otherwise in breach of the School's health and safety policy, or other Conservatoire health and safety policy;
- m) constitutes anti-social behaviour, including but not limited to anti-social behaviour as a result of intoxication through alcohol or drugs;
- n) involves the unlawful possession, use or supply of drugs or weapons;
- o) is at variance with appropriate standards of conduct or published codes governing conduct whilst engaged in professional practice or training or employment, or whilst on placement forming part of his/her programme of study;
- p) constitutes unauthorised entry onto School and/or Conservatoire property;
- q) disrupts, obstructs or interferes with the activities of the Schools and/or the Conservatoire (including training, administrative or social activities) on School and/or Conservatoire premises or elsewhere, or any attempt to disrupt, obstruct or interfere in this regard;
- r) disrupts, obstructs or interferes with the functions, duties or activities of any student or employee of the Schools and/or Conservatoire, or any visitor to the Schools and/or Conservatoire, or any attempt to disrupt, obstruct or interfere in this regard;
- s) causes damage, or could cause damage, to the reputation of the School and/or the Conservatoire;
- t) failure to disclose relevant criminal convictions or, where directed to do so, cautions or other warnings or sanctions imposed by the police or other law enforcement agencies, in

accordance with the relevant School policies and guidance, including criminal convictions obtained subsequent to registering with the School.

Any reported/alleged behaviour such as is described above will be investigated in accordance with this policy and procedures, to determine whether misconduct has occurred, (and any appropriate resulting action by the School subject to whether the misconduct is deemed to be 'minor' or 'major'<sup>1</sup>). This also includes:

- Misconduct committed by any means or medium including via the internet (including via social media);
- Any offence against the Criminal Law committed by a student whilst on the School premises or whilst engaged in school/programme-related activity.

## **Penalties**

The list of penalties available to the Misconduct Panel (or, where applicable, the Misconduct Appeals Panel) to impose following a finding of non-academic misconduct is listed below, together with an indication of when these might be imposed. The penalties are listed as 'category 1' or '2'. 'Category 1' penalties may be awarded by the Preliminary Enquiry Officer if they make a finding of minor misconduct. Category 1 or 2 penalties can be awarded by the Misconduct Panel or Misconduct Appeals Panel, if they make a finding of misconduct. Penalties will only be considered and applied after a Panel has determined on the balance of probabilities that misconduct has occurred.

## **Additional Considerations**

The Misconduct Panel and Misconduct Appeals Panel will take account of any mitigating and aggravating factors when considering cases and in determining appropriate penalties.

Penalties listed in the 'Table of Penalties' below are non-exhaustive and will be applied on a case-by-case basis, taking into account the circumstances of each offence, including any aggravating or mitigating factors. For repeated or multiple offences, these will normally be referred to a Misconduct Panel by the Preliminary Enquiry Officer, and where allegations of misconduct are established on the balance of probabilities, 'category 2' penalties will normally be considered. The Misconduct Panel or Misconduct Appeals Panel may determine that both Category 1 and Category 2 penalties should be applied simultaneously for the same offence.

Examples of mitigating or aggravating factors include, but are not limited to, the context surrounding a specific offence, including personal circumstances, and offences for which a student has received a previous warning or sanction.

The Misconduct Panel or Misconduct Appeals Panel may order that any penalties will be imposed immediately, or that the imposition of a penalty should be deferred. The conditions of any such deferment will be clearly stated as part of the decision of the Panel. The imposition of a penalty may be contingent upon the student failing to fulfil any conditions set.

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<sup>1</sup> See 'Suspected Misconduct Concerns: Preliminary Enquiry' in Section 3 of the Policy

The 'Table of Penalties' is shown on the next page.

<b>Table of Penalties</b>
<b>Category 1 Penalties</b> (Penalties that may be applied by the Preliminary Enquiry Officer, the Misconduct Panel, or the Misconduct Appeals Panel)
<ul style="list-style-type: none"><li>a. A formal warning or a final warning (for a repeated offence);</li><li>b. A formal written reprimand;</li><li>c. A requirement to make a verbal/written apology to any party concerned, as, and if, appropriate;</li><li>d. The payment by the student of compensation for damage or loss caused, which shall not exceed the value of any damage caused or loss incurred;</li><li>e. Withdrawal of privileges (particularly any privileges abused by the offender) for a period not exceeding one month</li><li>f. Requirement to remove material published either in hard copy or electronically which is deemed to be inappropriate</li><li>g. Set conditions or expectations for the student's future behaviour.</li></ul>
<b>Category 2 Penalties</b> (Penalties that may only be applied by the Misconduct Panel, or the Misconduct Appeals Panel)
<ul style="list-style-type: none"><li>h. Mandatory attendance at a workshop or course within a specified time period<sup>2</sup>;</li><li>i. Restorative action such as a reflective statement or project</li><li>j. Restricted ability to contact the complainant, where the complainant is a student or member of staff of the Conservatoire</li><li>k. Requiring that the student does not represent their School or the Conservatoire in a paid or unpaid capacity for a specified period of time. This could include employment by the School or Conservatoire on a contractual or casual basis<sup>3</sup>, representing the School or Conservatoire other events, or voluntary roles such as student ambassador or similar.</li><li>l. Conditions for the continuation of student status;</li><li>m. Exclusion from, or restrictions concerning, participation in specified activities (including external programme-related activities) or use of specified facilities of the student's School for a stated period. Conditions for return to those activities may be specified;</li><li>n. The suspension of the student's studies, in whole or in part, for a specified period or until an agreed review date;</li><li>o. permanent exclusion / removal of student status<sup>4</sup> with or without the right to re-register for any further programme of study with the School;</li><li>p. Such other penalty as may be deemed appropriate, provided that the penalty is both proportionate and relevant to the offence.</li></ul>

<sup>2</sup> Where a student is required to complete a workshop, course or restorative exercise, this may result in a delay to graduation. The Misconduct Panel and Misconduct Appeals Panel will consider potential additional consequences when determining penalties and will ensure that sanctions remain proportionate.

<sup>3</sup> Where a student is contracted to undertake paid employment for their School or for the Conservatoire, action may also be taken under School staff disciplinary procedures.

<sup>4</sup> In such cases, the Panel will determine whether there is just cause to deprive the student of any credits already achieved and any award to which they may lead.

**Category 1 penalties** may be imposed by the Preliminary Enquiry Officer as well as by the Misconduct Panel or the Misconduct Appeals Panel.

The Preliminary Enquiry Officer may apply more than one Category 1 penalty simultaneously, taking account of the circumstances of the case and of any mitigating/aggravating factors.

**Category 1 and Category 2 penalties** may be applied simultaneously where it is deemed appropriate by the Misconduct Panel or Misconduct Appeals Panel.

## **FAQs**

### **I'm under investigation under the Non-Academic Misconduct procedures; can I still attend classes?**

This will depend on the nature of the allegation which has been made against you. In all cases, you can expect to be informed of the allegation and to be given an opportunity to respond before a final decision is reached, so continue attending classes in the meantime. An exception to this is where the Principal of your School and/or the CEO of the Conservatoire decides that an immediate suspension is necessary to protect other students and staff. Such a suspension would be treated as a precautionary measure, pending further investigation. If you are unsure of the implications for your continued attendance, ask for clarification from the person who has notified you of the investigation.

### **What penalties could be given as a result of action under the Non-Academic Misconduct Policy?**

The penalties that could be given, should allegations of misconduct be upheld, are listed in Section 6.21 of the policy and range from a written warning or compensatory action, through to exclusion, suspension or expulsion. The Table of Penalties is reproduced in this guidance, above.

### **Do all allegations of misconduct go to a Misconduct Panel?**

Not all allegations of misconduct will need referring to a Panel. The Conservatoire and Schools' policy is always to seek an early resolution wherever possible. As part of the Preliminary Enquiry process you may be asked to attend an interview with one or more members of staff to inform you of an allegation against you and to invite you to respond. To conclude the Preliminary Enquiry, the Preliminary Enquiry Officer will determine whether the case needs referring to a Misconduct Panel.

### **What would a Misconduct Panel hearing involve?**

You will be invited in writing to attend a Panel hearing. You can submit a written statement and/or supporting documents in advance of the hearing. You will receive a copy of the same documentation which is distributed to the Panel members (all participating parties in a hearing receive the same documentation). During the hearing itself you will be invited to respond to the allegations, and the Panel will ask you questions. Normally, a member of staff from your School (the 'School Representative') will attend the hearing too to present the allegations against you and answer questions on behalf of the School. For more information, see Section 6 of the Policy and also Appendix 3.

### **Can I bring anyone with me to a Misconduct Panel?**

Yes, you have the right to be represented, accompanied and to call witnesses, but you must make a request for them to attend to the panel secretary at least 48 hours prior to the meeting. The Panel Chair has the ultimate discretion to allow to admit or refuse any representative.

### **Can I appeal against a decision of a Misconduct Conduct Panel?**

The Non-Academic Misconduct Policy allows you to appeal a decision provided it meets one of the grounds in Section 7 of the Policy. Your appeal submission will be initially reviewed to see whether there are sufficient grounds for your case to proceed to a hearing. If there are, an Appeal Panel will be arranged and you will be invited to attend and/or provide evidence (see Section 8 of the Policy). If you do not feel you meet the grounds for an appeal but still wish to take the matter further, you have the right to request a Completion of Procedures letter (see Section 9 of the Policy).

### **How do I make an appeal?**

You should submit an appeal by using a 'Non-Academic Misconduct Appeal Form' (this is Appendix 6 to the Non-Academic policy and can be found at <http://www.cdd.ac.uk/policies/student-related-policies/>).

To make an appeal, you should complete the Non-Academic Misconduct Appeal Form, and submit it together with any supporting documentation/evidence that you wish to be taken into account. Your appeal should be submitted to your Principal, who will either act as the Misconduct Appeal Reviewer, or they will nominate another senior member of staff to undertake this work. You must include with your appeal submission all supporting documentation/evidence that you wish to have considered as part of your appeal.

### **What is the deadline for submitting an appeal?**

You must submit your appeal within 14 calendar days of the date of your Hearing Outcome letter. If you do not submit it by this deadline, your appeal may be rejected for being out of time, without being considered. If you fail to state the ground(s) upon which you are appealing, your appeal may also be summarily rejected.

### **I haven't got all of my evidence – should I still submit my appeal?**

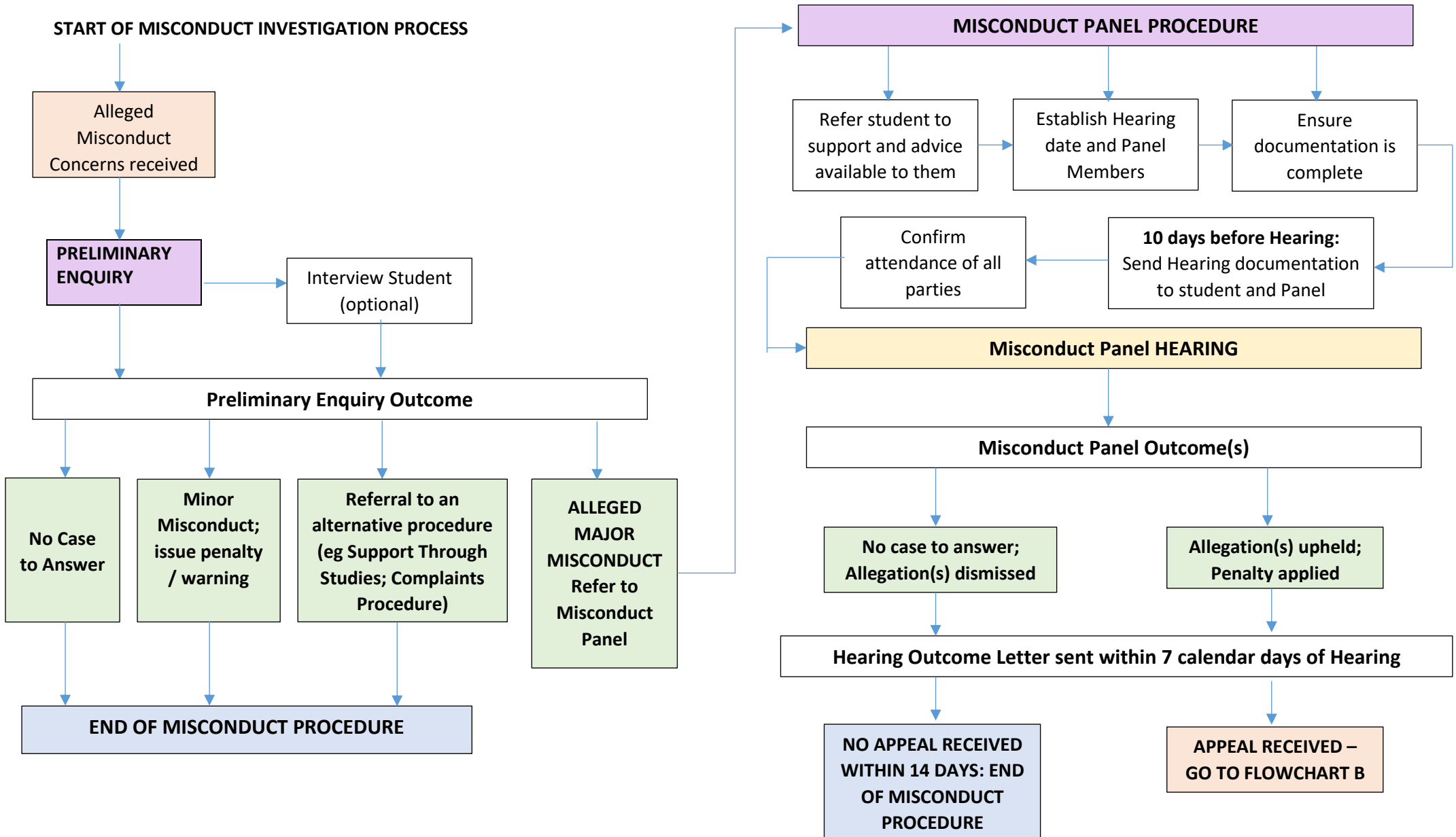
You should submit your appeal together with all the documentation you wish to have considered. Where you wish to make an appeal but have not got all of the supporting evidence/documentation you want to submit, you should contact your Principal in writing (by email) as early as possible, to request an extension to the 14 day deadline, stating the reason(s) why you are unable to meet the deadline. Extensions are discretionary, and you will need a good reason for one to be granted, so you must state the reason why you require an extension.

### **What can I do if my appeal is unsuccessful?**

If your appeal is rejected by the Misconduct Appeal Reviewer or the Misconduct Appeals Panel, you have the right to take your case to the Office of the Independent Adjudicator (OIA), which is the ombudsman for student complaints in Higher Education (see Section 9 of the policy). Following the outcome of your appeal (whether successful or not), the Conservatoire will issue you with a Completion of Procedures (CoP) letter, and you will have 12 months from the date of your CoP letter in which to lodge a case with the OIA. Visit <http://www.oiahe.org.uk/> for more information.



**APPENDIX 2: FLOW CHART A – Formal Misconduct Procedures**



**APPENDIX 2: FLOW CHART B – Misconduct Appeal Procedures**

