



office of the independent adjudicator

'for students in higher education'

The good practice framework:

Disciplinary procedures



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List of case studies

This guidance contains a number of case studies illustrating examples of good practice.

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Introduction

1. The Good Practice Framework: handling complaints and academic appeals sets out core principles and operational good practice for higher education providers in England and Wales. The core principles are: **accessibility; clarity; proportionality; timeliness; fairness; independence; confidentiality;** and **improving the student experience**.
2. This Section of the Good Practice Framework gives good practice guidance for providers in designing disciplinary procedures and in handling individual cases. It covers:
 - academic disciplinary procedures, for dealing with academic misconduct such as plagiarism, contract cheating, cheating in examinations or formal assessments, falsifying data, breaching research or ethics policies, and collusion; and
 - non-academic disciplinary procedures, for dealing with misconduct such as antisocial, abusive or threatening behaviour, sexual misconduct, violence, harassment, hate crimes, behaviour likely to bring the provider into disrepute, damage to property or abuse of facilities, causing a health or safety concern, and other behaviour that might also be a criminal offence.
3. Higher education providers will have expectations about how students should behave. A provider should set out expected standards of behaviour in its regulations, student codes of conduct, student contracts or other codes of practice. Students on courses leading to a professional qualification may also have to abide by standards of conduct set by professional regulators, and allegations relating to the fitness to practise of such students will normally be dealt with under separate fitness to practise procedures. A provider's rules and regulations should enable it to take action if standards of behaviour fall below what is expected.
4. Providers will normally have separate procedures for dealing with academic and non-academic misconduct. The procedures will normally set out expected standards of behaviour, what types of behaviour are likely to result in the provider taking action, and what action the provider will take. Providers should bring to students' attention the expected standards of behaviour, and the consequences of breaching those standards, for example in codes of conduct or student charters. Students and staff should also be made aware of the support services available both internally and externally, both for students who are accused of misconduct and those making allegations of misconduct.
5. The documents referred to in this Section of the Good Practice Framework, and other useful sources of guidance, are listed under Useful Resources at the end of the Section.

Good disciplinary procedures

Key principles

ACCESSIBILITY

- Are visible and obvious and easy to navigate for students and staff
- Give clear information about how to access advice and support
- Allow students to appoint a representative
- Are responsive to the needs of students

CLARITY

- Are part of a framework that gives clear information to students about expected standards of behaviour
- Are well signposted and easy to understand
- Set out how the provider will respond to alleged misconduct, including details of potential penalties and its approach to mitigating circumstances
- Ensure effective record keeping, in line with published records management and privacy policies

PROPORTIONALITY

- Expect all parties to act reasonably and fairly towards each other, and to treat the processes themselves with respect
- Allow for cases to be resolved informally and as early as possible, for instance if the student admits to a minor offence
- Ensure that, for cases of misconduct which might also constitute a criminal offence, an appropriate distinction is drawn between criminal matters and internal disciplinary matters
- Allow for appropriate precautionary action to be taken, if necessary, whilst the case is considered
- Consist of up to three stages: preliminary investigation stage, formal stage and appeal
- Ensure that penalties are proportionate to the offence and that mitigating factors are taken into account in setting penalties

TIMELINESS

- Are concluded as quickly as possible, and normally within 90 calendar days of the start of the investigation (this time frame would normally exclude the time taken by any criminal investigation or prosecution)
- Allow for the identification of cases which require particularly swift action
- Give reasonable notice of any hearing
- Include time limits within which students are normally expected to make submissions, such as statements responding to the allegation(s) or appeals

FAIRNESS

- Ensure that processes are applied consistently
- Ensure that decision-makers are properly trained, resourced and supported
- Ensure that students are informed of the allegation(s) against them and are given a fair opportunity to respond
- Place the burden of proof on the provider
- Normally decide the case on the balance of probability
- Have fair processes for dealing with cases where more than one student is involved
- In the case of alleged misconduct against another student, provide appropriate support for all those involved
- Ensure that clear reasons are given for decisions reached, including penalties imposed
- Allow a right of appeal

INDEPENDENCE

- Ensure that decisions are taken by people who have had no previous involvement with the case and no reasonable perception of bias

CONFIDENTIALITY

- Ensure an appropriate level of confidentiality to those involved that is sufficient to allow an effective investigation

IMPROVING THE STUDENT EXPERIENCE

- Promote positive behaviours
- Safeguard the interests and safety of students and staff
- Capture learning to ensure that:
 - Decisions are made consistently
 - Decisions are made at the appropriate level
 - Appropriate action is taken on issues identified
 - Information gathered is used to improve guidance and support for students

Straightforward language

6. Providers should write their regulations and procedures clearly and in straightforward language and make them accessible to students. Footnotes should be kept to a minimum and acronyms should be defined.

Procedural fairness

7. Fair procedures follow the principles of “natural justice”:
- “No one should be a judge in their own cause” – decision makers must come to matters without bias or a reasonable perception of bias;
 - “Hear the other side” – each party must have a fair hearing;
 - “Justice delayed is justice denied” – the process must be completed without delay.

In addition, decision makers must make reasonable decisions, and give reasons for their decisions.

8. In disciplinary procedures, this means that:
- Students understand any allegation against them;
 - The student and the person bringing the allegation have a fair opportunity to present their case and to hear and respond to what the other has said;
 - Students are given reasonable notice of any hearing and are given in advance copies of all information to be considered by the decision maker;
 - The burden and standard of proof are clearly explained;
 - Decision makers should be free from bias or any reasonable perception of bias;
 - Reasons should be given for decisions reached and any penalty imposed;
 - There should be a route of appeal; and
 - The investigation, any hearing, and any appeal should be carried out as quickly as possible, consistent with fairness.

9. Providers should work closely with students’ unions and students to design processes or amend existing processes to ensure that they follow the principles of good practice and procedural fairness. The principles of accessibility, fairness and independence are particularly important in disciplinary procedures. A provider’s procedures should be easy to navigate and give clear information about how to access advice and support. Providers should ensure that the procedures are consistently applied, and that staff members making decisions have had no prior involvement in the case, and are properly trained and resourced. It is good practice to include trained student representatives on disciplinary panels where possible, although there must be appropriate separation between the representative on the panel, and those providing advice and support to students.

Burden of proof

10. The “burden of proof” determines whose responsibility it is to prove an issue. In a disciplinary case the burden of proof should be on the provider, that is, the provider must prove that the student has done what they are accused of doing. The student should not have to disprove the allegation. So, for example, if a student is accused of taking a mobile phone into an examination, it will be for the provider to prove that they had the phone with them during the examination.
11. Sometimes the student will need to prove that they have or have not done something, or that something has happened. For example, if two students are accused of plagiarism, and one student provides evidence that the original work was theirs and the other student copied it, the other student will need to rebut that evidence. Students will also need to prove any mitigating factors that they rely on when the provider considers the penalty.

Standard of proof

12. The “standard of proof” is the level of proof required. In legal proceedings the standard of proof in criminal cases is normally “beyond reasonable doubt”, which is a very high standard. In civil cases it is normally “the balance of probabilities”, that is, it is more likely than not that something happened. Although the “balance of probabilities” standard is lower than “beyond reasonable doubt”, decisions must still be supported by evidence. The standard is higher than simply believing that something is likely to have happened.
13. Section 112 of the Health and Social Care Act 2008 says that the civil standard of proof must be used in fitness to practise procedures. This standard should also be used in disciplinary cases which may lead to fitness to practise proceedings against a student.
14. A provider’s regulations should explain clearly the standard of proof required in disciplinary proceedings but, if they do not, it is reasonable to assume that it is “balance of probabilities”.

Confidentiality and anonymity

15. Providers should have regard to their obligations under the data protection legislation regarding sensitive personal information, or “special category data”. Information about students who are subject to disciplinary proceedings should be kept confidential as far as possible. The information should be disclosed to as few people as possible, and only to those involved in investigating or deciding the matter.
16. It is not normally appropriate to keep the identity of witnesses secret during disciplinary proceedings. To do so may undermine the student’s ability to defend themselves. If the witness does not agree to the student knowing their identity it may not be appropriate to rely on their evidence.

Timeliness

17. Disciplinary matters can be very stressful for students, and the outcomes can have serious consequences for their studies and future careers. It is therefore particularly important that the disciplinary investigations, hearings and appeals are conducted as quickly as possible, consistent with fairness. It is good practice where possible:
 - to tell the student that disciplinary action is being considered as soon as possible after the event giving rise to the allegation;
 - to complete the initial investigation and formal stage of the process within 60 days of the allegation being made to the student; and
 - to hear any appeal within 30 days of the student making the appeal.
18. Delays are likely to occur where the case is complex, the student or witnesses are not available to attend meetings or hearings, or where proceedings are put on hold because of a criminal investigation or the student’s impending assessments. In those cases, the provider should keep the student and any witnesses informed about the progress of the investigation, and when it is likely to conclude.

Promoting positive behaviours

19. Providers should bring to students’ attention the expected standards of behaviour, and the consequences of breaching those standards, for example in codes of conduct or student charters.
20. The Equality Act 2010 requires providers to take steps to eliminate discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. Providers should raise awareness of the behaviour and conduct expected of students, using educational initiatives to challenge negative attitudes and stereotypes, and equip staff and students to identify and challenge unacceptable behaviour.

21. It is reasonable to expect that students, their representatives and staff will act reasonably and fairly towards each other and will treat the disciplinary process with respect. It is good practice for providers to set out that expectation clearly in disciplinary procedures.

Supporting the student

22. Providers should direct students to the support services available, for example the students' union, which can provide independent support and advice. This applies to students who are going through student disciplinary procedures and to students who are providing information about someone else's conduct that is being considered under those procedures. It is good practice to give students access to support and advice and, where it is not practicable to do so internally, providers should consider arranging for students to access support services at neighbouring institutions, partner providers or other local community services.

23. Students who have access to well-trained and resourced student support services will not normally need to seek legal advice, although they may wish to in serious cases. It is good practice for providers to permit legal representation in complex disciplinary cases, or where the consequences for the student are potentially very serious.

24. Providers should be aware of their duties under the Equality Act 2010 to make reasonable adjustments for disabled students. If the student says the behaviour giving rise to the disciplinary concern is related to their disability, the provider should consider carefully whether to proceed with disciplinary action, or to refer the student to support for (or fitness to) study processes.

25. It is good practice to ensure that procedures are available to all students in accessible formats. Providers should consider in each case whether to make reasonable adjustments to procedures to take account of the individual needs of students. It is good practice to keep a record of any adjustments made. In disciplinary procedures, providers may need

to make adjustments to the process followed in individual cases. For example, the provider may need to make adjustments for misconduct hearings, or allow a student longer to respond to allegations.

26. Providers may also need to take into account a student's disability when setting penalties. For example, if the student's conduct was linked to an underlying mental health condition, that might mitigate the seriousness of the offence. In some cases, it might be more appropriate to refer the student to support for (or fitness to) study processes than to apply a disciplinary penalty.

CASE STUDY 1

Student with mental health difficulties

A student is accused of plagiarism in her dissertation. The student accepts that she has copied large portions of the dissertation from another source. The student has anxiety and depression and explains that she has been struggling with her workload. She says she copied the text because she was so worried about handing in the dissertation on time that she panicked.

The provider follows its academic misconduct procedure. The student is supported through the process by a students' union adviser. The provider decides that the student has plagiarised the dissertation. In considering the range of possible penalties, the provider accepts that the student's mental health condition has affected her judgment. It decides to award a mark of zero, but allows her an opportunity to resubmit the dissertation.

27. Providers should tell students who have mental health difficulties about the specific support services available to them, for example counselling services and, where appropriate, services external to the provider. If a student appears unable to engage effectively with the student disciplinary process, the provider may suggest that the student appoints a representative. It may be appropriate to suspend the disciplinary process until the student has accessed appropriate support.

Relationship with other procedures

28. It is good practice for providers to explain how their procedures relate to each other. For example:
- Students on professional courses may be subject to fitness to practise procedures as well as disciplinary procedures;
 - Students who are accused of bullying or harassment, or of behaviour which may be discriminatory, may be referred to a provider's Harassment, Discrimination and Bullying procedures;
 - A complaint about the behaviour of a staff member should be referred to the provider's staff disciplinary process;
 - A student may be able to make a complaint under the provider's student complaints procedure about a provider's handling of a matter dealt with under its Harassment, Discrimination and Bullying procedures;
 - A student's conduct may be both academic and non-academic misconduct;
 - A student who has obtained a financial advantage as a result of misconduct may be referred to the provider's fraud procedures.
29. In each case, the provider should set out clearly how the different processes will be followed and in what order. Where there is an allegation of misconduct, the provider should first check whether the matter should be considered under its disciplinary procedures or under another process.

CASE STUDY 2

Student misconduct and fitness to practise

A nursing student (student A) is accused of posting offensive and threatening messages about another student (student B) on Facebook. The provider writes to student A explaining the allegation and the process that will be followed. The letter explains that if student A is found guilty of misconduct, it is likely that he will be referred to the fitness to practise process at the end of the disciplinary process. It encloses screen shots of the messages, and a copy of a letter from student B who says the Facebook posts frightened and upset him.

Student A attends a disciplinary panel hearing and says that another student posted the messages. The panel does not believe student A's account and decides that he is guilty of misconduct. It goes on to consider what penalty to apply, and student A puts forward some mitigating factors. The panel decides to suspend student A for one year, explaining why it has decided that lesser sanctions such as a small fine or shorter suspension are not appropriate. The provider writes to student A setting out the panel's decision, the penalty it has applied, and the reasons for both. It tells student A that he can appeal the decision and/or the penalty, the appeal process, and the grounds for appeal. It also tells him that the School of Nursing will now consider his case.

After the hearing, the School writes to student A to explain that it is investigating his case under its fitness to practise procedures to decide whether his misconduct has impaired his fitness to practise as a nurse.

Reconsidering the same offence

- 30.** It is good practice for procedures to set out any circumstances in which an allegation of misconduct may be reconsidered (other than through a formal appeal process). For example, it may be appropriate for a provider to reconsider an allegation if new evidence emerges which, for good reason, could not have been obtained by the provider at the time. In deciding whether it is appropriate to consider an allegation for a second time, the provider should weigh up
- Whether the outcome of the first process has been called into question, and if so why;
 - The length of time that has elapsed and the effect of this on the reliability of any evidence to be considered;
 - The severity of the alleged offence;
 - The impact on the student of undergoing a second disciplinary process;
 - Whether leaving the matter unaddressed would impact on matters of fitness to practise, or on any obligations the provider has to professional or regulatory bodies in respect of the particular student's character.

Misconduct that is identified after the student has graduated

- 31.** It is good practice for disciplinary procedures to set out the circumstances in which the provider might take action against a former student, and whether such action is time limited. For example, academic disciplinary procedures may allow the provider to withdraw a person's research degree several years after it is awarded, if the person is found to have plagiarised their thesis.
- 32.** A provider may consider withdrawing a student's qualification if the misconduct has given them an unfair advantage in their studies.

CASE STUDY 3

Former student accused of plagiarism

A provider discovers that a former student may have plagiarised their PhD thesis. The provider writes to the former student setting out the allegation of plagiarism, and explaining that, under its regulations, it can revoke a degree if academic misconduct is identified. It invites the former student to a meeting of a special panel to discuss the thesis. The former student agrees to attend the panel meeting.

At the meeting, the former student is given the opportunity to defend the thesis. The panel decides that the student has plagiarised the thesis and that the plagiarism is very serious. It revokes the former student's PhD. The provider tells the student they can appeal the decision.

Part A: Academic disciplinary procedures

What is academic misconduct?

- 33.** Providers are required to ensure that their assessments are equitable, valid and reliable.¹ Any form of cheating poses a threat to the academic standards of a provider's qualifications, and to the integrity of qualifications awarded to the vast majority of students who achieve their qualification entirely by legitimate means.²
- 34.** It is up to individual providers to decide what behaviour will constitute academic misconduct. Providers should ensure that their definitions are clear, and communicated clearly to students. An example of a definition of academic misconduct is:
- “Any action by a student which gives or has the potential to give an unfair advantage in an examination or assessment, or might assist someone else to gain an unfair advantage, or any activity likely to undermine the integrity essential to scholarship and research.”
- 35.** Procedures should define each type of offence, and set out the potential penalties that might be applied and the provider's approach to considering mitigating factors.
- 36.** Examples of academic misconduct include:
- Plagiarism - presenting someone else's work or ideas as the student's own;
 - Self-plagiarism - submitting the same work that the student has already submitted for another assessment when this is not permitted;
 - Taking a copy of another student's work without their permission;
 - Falsifying data, evidence or experimental results;
 - Collusion - working with someone else on an assessment which is intended to be the student's own work;
 - Contract cheating - where someone completes work for a student who then submits it as their own (including use of essay mills or buying work online);
 - Arranging for someone else to impersonate a student by sitting their examination;
 - Cheating in examinations (or other formal assessment), including possession of unauthorised material or technology during an examination, and attempting to access unseen assessment materials in advance of an examination;
 - Submitting fraudulent mitigating circumstances claims or falsifying evidence in support of mitigating circumstances claims (this may also be considered a non-academic disciplinary matter);
 - Breaches of research and ethics policies - e.g. carrying out research without appropriate permission.

1 QAA, The UK Quality Code for Higher Education: Chapter B6: Assessment of Students and the Recognition of Prior Learning (October 2013)

2 QAA, Plagiarism in Higher Education: Custom essay writing services: an exploration and next steps for the UK higher education sector (August 2016)

Explaining plagiarism

- 37.** It is important to provide comprehensive education for all students on what constitutes plagiarism. This can be particularly important for international students who may come from different academic traditions. Some international students may arrive late and miss induction, so catch-up sessions should be delivered for them.
- 38.** Students receive a lot of information when they begin their higher education studies. It is good practice for providers to repeat academic misconduct training, and to reinforce messages about academic integrity, at appropriate points throughout their programmes.
- 39.** The training should cover:
- How to reference text correctly;
 - Whether unintentional copying can amount to plagiarism;
 - How to indicate that text is quoted, for example, whether students need to use inverted commas and/or indented text;
 - Whether (and when) extensive paraphrasing might amount to plagiarism;
 - Whether reproducing memorised text in an exam amounts to plagiarism;
 - When self-plagiarism is and is not permitted;
 - That buying essays or text for essays constitutes plagiarism;
 - That video and audio clips, pictures and tables can be plagiarised;
 - How detection software is used and interpreted;
 - The consequences for students if they are found to have plagiarised work.

CASE STUDY 4

Plagiarism or poor academic practice?

A student submits an essay during his first term. The student's tutor notices that the essay contains a small section of text that is quoted directly from the coursework materials. The quoted text is not separated from the other text by quotation marks, italics or indented text.

The tutor tells the student about her concerns and invites him to a meeting to discuss the essay. She says that she is considering whether to refer the student to the academic misconduct procedures.

After a discussion, the tutor decides that the student did not understand how to reference quotations. She decides to take this into account as poor academic practice when marking the work. She explains the referencing requirements and shows the student some training resources on the provider's intranet. She tells him that she will not take any further action, but that she is making a record of their discussions so that if his work is suspected of plagiarism in the future, the incident may be taken into account.

The question of intent

- 40.** Many providers apply the principle of “strict liability” to academic misconduct offences. Strict liability means that a student’s intentions are not relevant to whether or not they have committed the offence. For example, if a student accidentally takes notes into an exam they are still guilty of an examination offence, even if the student did not take the notes out of their pocket during the exam. Whether or not the student intended to use the notes during the exam is not relevant to the offence.
- 41.** Some providers’ procedures require the student to have acted intentionally for an offence to be committed. This is sometimes referred to as “premeditation”, “deception” or “dishonesty”. Whether the student intended to cheat or gain an advantage is something that the decision makers must decide. In such cases the decision makers should consider the evidence regarding intention, including the student’s own account, and record the reasons for their conclusions.
- 42.** The student’s intention may not be relevant to whether they committed the offence, but it is likely to be a relevant consideration when the penalty is decided.
- 43.** It is for the individual provider to decide how to approach the question of intent, but it should explain its approach clearly in its procedures.

CASE STUDY 5

Student brings notes into an exam: question of intent

During an exam, an invigilator sees a piece of paper under a student’s chair. The invigilator approaches the student and asks her about the piece of paper. The student says that she found it in her pocket and dropped it on the floor. The invigilator takes away the piece of paper and writes a report of the incident. The student is allowed to continue with the exam.

After the exam, the provider writes to the student explaining that it is taking disciplinary action for bringing unauthorised material into an exam. The student admits that she brought notes into the exam, and that the notes were relevant to the exam paper. She says that she had forgotten the notes were in her pocket and when she realised she dropped the piece of paper on the floor without looking at it.

The provider accepts that the student did not intend to bring the notes into the exam but concludes that the student has nevertheless brought unauthorised material into the exam. It decides that she is guilty of academic misconduct. The provider takes into account that the student did not intend to cheat, and that it was her first offence. It decides to give the student a mark of zero for the exam but allows her to resit the exam at the next opportunity.

Academic judgment

- 44.** Identifying suspected academic misconduct and making decisions on disciplinary cases will often, but not always, involve academic judgment. Where an academic judgment is made it should be evidence based. For example, an academic member of staff who says that the standard of an assignment is out of line with the student’s other work should be able to support that with examples from the student’s other work.
- 45.** The interpretation of academic misconduct detection software reports will involve academic judgment. It is good practice to share the academic analysis of such a report with the student as well as the report itself.
- 46.** Deciding questions of fact does not involve academic judgment.
- 47.** Decisions on the penalty to apply in academic disciplinary cases will not normally involve academic judgment.

Questions normally involving academic judgment	Questions of fact that do not normally involve academic judgment
Is the standard of work so out of line with the student’s other work that it suggests cheating?	Did the student advertise for someone to do the work for them?
Are the ideas copied from someone else’s work?	Did the student buy an essay online?
Is the plagiarism major or minor?	Did the student take notes into the examination?
Do the student’s working notes support their case that the submitted work is theirs?	Are the quotations marked by indented text or quotation marks?
Are the ideas the student is referring to in such common usage that it is not plagiarism?	Did the student intend to cheat?

Detection software

- 48.** Plagiarism detection software does not identify plagiarism but will usually identify matching text from other electronic sources of work already submitted via that software. Analysing the reports produced by detection software requires academic judgment. A high similarity score does not necessarily mean that work was plagiarised and decisions about whether the sections of the text identified as matching are plagiarised involve academic judgment. For example, has the work been properly referenced, or has the similar work legitimately been submitted as part of group work?

Initial considerations and preliminary investigation

- 49.** It is good practice for providers to offer a student an initial opportunity to respond to the allegation(s) made against them. This may involve a meeting with the provider's academic misconduct officer or other relevant staff member to discuss the allegation. The staff member should decide whether the case can be resolved at that stage or requires formal investigation. In this way straightforward cases can be dealt with without the need for formal consideration. For example, the student might admit the offence, or the allegation might be found to have been made in error. This approach gives the flexibility to deal with cases in a prompt and proportionate way. However it is not good practice to consider a disciplinary matter on an entirely informal basis without keeping any records.
- 50.** In all cases the student must be told in writing at the beginning of the process which academic offence(s) they are suspected of committing and why. The student should be given any available supporting evidence. The student should be given a reasonable opportunity to respond to the allegation and supporting evidence before a decision is made about whether they have committed the offence. If the provider brings additional or alternative charges against the student during the disciplinary process, it is important that the student is told about the new or amended allegations and offered the opportunity to respond.
- 51.** It is good practice to tell the student that concerns have been raised about their work or behaviour even if the provider decides to take no disciplinary action.
- 52.** Where a student admits to a minor offence, their admission should be taken into account when considering what penalty to apply. It is good practice to ensure that students are fully aware of the consequences of agreeing to a penalty at this stage. For example, the student

should be told whether the offence will be recorded on their student record, and whether it will be taken into account in any future disciplinary or fitness to practise proceedings.

- 53.** The preliminary investigation can be conducted at local level or centrally. In either case the student should be provided with a written outcome setting out the decision reached or explaining what will happen next. The student should also have the right to appeal against a decision reached or penalty set at this stage. Where this stage is conducted at departmental level the provider should have a process for ensuring that cases are treated consistently across all departments.

The formal stage

- 54.** At the formal stage disciplinary matters are usually considered centrally by the provider.
- 55.** The procedures followed should be proportionate to the nature and complexity of the issues raised. It is good practice for a disciplinary procedure to set out clearly:
- Who the procedures apply to, and whether and in what circumstances the provider can take action against a former student;
 - What process the formal stage will follow;
 - Whether or in what circumstances the staff member investigating the allegation will meet with the student (such meetings are good practice in complex or serious cases);
 - The circumstances in which a hearing or meeting will be held, or a panel convened;
 - Who will sit on the panel;
 - Whether the panel is permitted to conduct its discussions electronically;
 - The process to be followed at any hearing or meeting; and
 - Whether there will be a separate opportunity for the student to present additional representations about the penalty if a finding of misconduct is made.

Formal stage investigations

- 56.** The formal investigation should be carried out by a member of staff who has had no previous involvement in the case. It will not normally be appropriate to keep the name of the staff member investigating the allegation confidential. That would lack transparency and may undermine the student's confidence in the process. Staff members charged with investigating misconduct allegations should be properly trained, resourced and supported.
- 57.** It is good practice for the investigator to meet with the student and they should do so at the earliest opportunity. The student should be given notice of the meeting and provided with sufficient information to allow them to respond to the allegation(s), and a copy of the relevant procedure at that time. The student should also be told how to access advice and support, for example from the students' union, and who can accompany them to the meeting. It is good practice to provide the student with a note of the meeting, but it will not normally need to be a full transcript.
- 58.** It is essential to be clear about exactly what is being investigated to ensure that both the investigator and student understand the purpose and scope of the investigation and the possible outcomes. The investigator may talk to staff or other students and consider documents and other evidence.
- 59.** The investigator should produce a report based on their investigations which outlines the process followed, the information gathered, and their conclusions. The student or their representative should receive copies of the information obtained during the investigation, a copy of the investigation report and information about the next steps in the process. The student should also be made aware of who they can contact with any queries about the progress of the case.
- 60.** The investigator may refer their report to another senior member(s) of staff for a decision to be agreed, or to a disciplinary panel.

Disciplinary hearings or panel meetings

- 61.** Hearings or meetings should always be held in cases where the allegations against the student are serious, or where the potential consequences for the student are severe. Hearings or meetings should also be held when there are questions of fact to be decided.
- 62.** Panel members should be properly trained. It is good practice to include student representation on the panel where possible, although there must be appropriate separation between the representative on the panel, and those providing advice and support to students.
- 63.** The procedures should set out:
 - Who can sit on a panel and who can chair it;
 - That the student can be accompanied and/or be represented and by whom;
 - Whether the student is permitted to attend the hearing or meeting by alternative means (for example by video call);
 - Whether the hearing or meeting will proceed if the student chooses not to or is unable to attend;
 - The process for rearranging the date of the hearing or meeting if the student or other witness is unable to attend for good reason;
 - Whether the student can be questioned directly during the hearing or meeting;
 - That the student can call witnesses;
 - Whether other witnesses will be called and whether the student can ask them questions directly or through the panel's chair;
 - Whether any witnesses can attend by alternative means (for example by video call);
 - Who may attend the hearing or meeting and in what capacity, and whether the panel can seek support from legal advisers or other external people.

- 64.** The hearing or meeting should be arranged promptly, and the student should be given adequate notice of it. This includes informing the student of the purpose of the meeting or hearing; of their right to attend; how to access advice and support; their right to be accompanied and/or represented and what role any representative or companion is permitted to play in the hearing or meeting. If the student is permitted to attend the hearing or meeting by alternative means (for example by video call) the provider should explain how it will arrange and facilitate this.
- 65.** It is essential to provide the student in advance with information about who will be on the panel and a copy of the information to be considered.
- 66.** Fairness requires panels to be free of any bias or any reasonable perception of bias. In the context of a disciplinary process, a perception of bias might arise where the student or the person making the allegation has a close relationship with a panel member, the student has made a formal complaint about a panel member, or a panel member has been involved in previous misconduct allegations against the student. The cultural mix or diversity of the panel may be a relevant consideration in some disciplinary cases. The provider needs to consider the constitution of panels and take steps to ensure that those responsible for reaching a decision come to the matter afresh and are properly trained, resourced and supported.
- 67.** If a provider finds it difficult to convene a panel of people who have no previous involvement with the student, it can consider:
- Using staff from other departments;
 - Using staff from a neighbouring provider; or
 - Consulting with the student about the selection of panel members.
- 68.** Disciplinary procedures are internal to a provider and should not be unduly formal. It will not normally be necessary for a student or the provider to be legally represented at a disciplinary hearing, but it is good practice for the procedures to permit this where there are good reasons.
- 69.** A written record should be kept of any meeting or hearing, setting out who attended, a brief outline of the proceedings, and the reasons for the decisions taken, including any penalty applied. The reasons given should be sufficiently detailed to enable the student to understand the rationale for the decision and for any penalty applied. It is not normally necessary to make an oral recording or full transcript of the meeting or hearing, but it may be helpful to do so, particularly where the case is complex, or there is a significant factual dispute.

Relevance of previous offences

- 70.** A student's previous disciplinary record will not normally be relevant to whether they have committed an offence. However, if the student has previously committed the same or a very similar offence then it may be relevant. For example, the fact that a student has previously been penalised for poor academic practice may be relevant to whether they have committed plagiarism.
- 71.** The student's previous disciplinary record is likely to be relevant to decisions about penalty.
- 72.** If the investigator decides the previous offence is relevant it should consider at what stage this information should be shared with the decision makers to ensure it is not prejudicial to a fair outcome being reached.

CASE STUDY 6**Previous poor academic practice**

A third-year student is accused of plagiarism in their dissertation: some text has been copied from a text book without a reference. The student was penalised for poor academic practice in their second year and at that time the student had to attend a refresher session on academic misconduct. The copied text in the dissertation is not extensive and the provider considers whether the student is guilty of poor academic practice.

The provider decides that the student is guilty of plagiarism even though the copying is not extensive because of the previous incident of poor academic practice which was very similar.

CASE STUDY 7**Penalty reduced because of disproportionate effect**

A student is found to have brought unauthorised material into a practical exam. The Disciplinary Panel considers giving the student a zero mark and requiring him to retake the exam the following year. The student is a final year student whose visa will expire at the end of the academic year. The practical exam cannot be taken in the student's home country. The Panel decides that the effect of that penalty would be to prevent the student from graduating, which would be disproportionate to the offence in this case. It decides to allow the student to resit the exam in the summer resit period instead.

Penalty

- 73.** Providers should include in their procedures information on the possible penalties that can be imposed on students. It should include an indication of the penalties likely to apply in different circumstances, depending on the type of offence and its seriousness.
- 74.** The decision maker should give reasons for the penalty selected. They should explain why any lesser penalty was not suitable. It is good practice for the decision maker to go through the range of lesser penalties available, consider each, and to record that they have done so. If the misconduct is so serious that the most severe penalty is the only option, then the decision maker should explain why that is.
- 75.** Decision makers should bear in mind that some penalties for a disciplinary offence might have more serious implications for some students. For example, a penalty limiting a student's progression may have an unintended impact on a student with a deteriorating health condition or an international student's visa status. The decision maker should explain how they have taken these implications into account, as well as the student's extenuating circumstances and other mitigating factors.
- 76.** Providers should ensure that decision makers apply penalties consistently, for example, by keeping anonymised summary records of offences, mitigating factors, and penalties applied, which decision makers can refer to.
- 77.** Students should have the opportunity to present any mitigating circumstances or factors that they believe should be taken into account. Those factors are not normally relevant to deciding whether a student is guilty of an offence (unless a provider's procedures state otherwise). But they should normally be taken into account when deciding on the penalty if the student is found to have committed an offence. Mitigating factors might include:
- It is a first offence;
 - The student admitted the offence at the earliest opportunity;
 - The student has expressed remorse;
 - The student was found in possession of unauthorised material in an exam but did not intend to gain an advantage;
 - The student has compelling personal circumstances that affected their judgment.

Cases involving more than one student

- 78.** It is important that joint or group allegations are dealt with in a manner that is fair to all the students involved. Providers should think carefully about how formal stage processes and panels are conducted:
- Is there an equal opportunity to hear and respond? It is good practice to ensure that all students involved hear and can respond to what the others have said or evidence they have provided. For panel hearings, it is good practice to consider joint or group allegations at a single hearing with all students in attendance. Students should also be given an opportunity to speak to the panel privately so that they can raise confidential or sensitive matters relating to mitigation.
 - Is there consistency of decision making? Where it is not possible or practical for matters to be considered at a single hearing, steps should be taken to ensure there is a consistent approach to all the students involved. It is good practice for the same panel to consider the case against all the students involved whether at a joint hearing or individually.
 - Is there consistency of penalty? A decision should be made for each student individually, taking their particular circumstances into account. However, there should be broad consistency in the penalty given to all students who commit the same offence with similar circumstances.
- 79.** It is important to ensure that decisions are not reached by default. Providers should ensure that where cases are heard separately, a conclusion that one student has not committed the offence does not lead to the conclusion that another student must have committed it before their case has been heard.

Concluding the formal stage

- 80.** The provider should write to the student setting out the outcome of the formal stage, giving a clear explanation of, and setting out the reasons for, each decision and any penalty in straightforward language. This will help the student decide whether to appeal.
- 81.** The decision letter should also give information about:
- The student's right to appeal;
 - The grounds on which they can do so;
 - The time limit for submitting an appeal;
 - The appropriate procedure; and
 - Where and how to access support.
- 82.** If the student does not appeal within the time limit for doing so, the provider should close the matter and notify the student in writing. It is good practice to issue a Completion of Procedures Letter at this stage if the student asks the provider to do so, but the letter should explain that the student has not completed the provider's internal processes. The OIA publishes guidance on issuing Completion of Procedures Letters.
- 83.** The provider should keep records of disciplinary processes and their outcomes.

The appeal stage

- 84.** The student should be permitted to appeal against a decision that they have committed a disciplinary offence, and/or against the penalty imposed. The appeal should be considered by a member of staff who has not been involved at any previous stage. Providers can require a student (or their representative) to submit an appeal in writing, by email or online by completing the appropriate form.

- 85.** The appeal stage may involve a review of the formal stage, or a complete rehearing of the case. It is good practice to set out the grounds on which a student may appeal. Those grounds might include:
- That the procedures were not followed properly;
 - That the decision maker(s) reached an unreasonable decision;
 - That the student has new material evidence that they were unable, for valid reasons, to provide earlier in the process;
 - That there is bias or reasonable perception of bias during the procedure;
 - That the penalty imposed was disproportionate, or not permitted under the procedures.
- 86.** It is important to be clear about the remit of an appeal to ensure that students understand its purpose and scope. If the student's expectations appear to exceed the scope of the appeal stage, the provider should explain this to the student as soon as possible in writing so that they understand the possible outcomes. The procedures should say whether the decision maker can overturn the outcome of the formal stage and substitute its own decision, or whether the matter needs to be referred back to the formal stage for reconsideration.
- 87.** If the student successfully appeals the outcome of an academic misconduct process, the student's case may need to be reconsidered by a board of examiners.
- 88.** If the procedures allow for an appeal hearing then the procedures should comply with the principles set out in paragraphs 61 to 69, above.

Concluding the appeal stage

- 89.** If the appeal is not upheld, or is not permitted to proceed under the grounds of appeal, a Completion of Procedures Letter should be sent to the student within 28 days. This should include, or be accompanied by, an explanation of the decision reached and the reasons for it, in straightforward language. This will help the student decide whether to pursue the matter further.
- 90.** The decision should also advise the student about:
- Their right to submit a complaint to the OIA for review;
 - The time limit for doing so;
 - Where and how to access advice and support.
- 91.** The time limit for bringing a complaint to the OIA is 12 months. It is good practice to draw the student's attention to any factors of which the provider is aware that mean that it is particularly important for the student to bring the matter to the OIA promptly (for example because the course is being discontinued).
- 92.** Where an appeal is upheld, the provider should provide the student with a written outcome that explains what action the provider will take. It is good practice to issue a Completion of Procedures Letter if requested by the student. If the outcome involves referring the case back to the formal stage for reconsideration, it is good practice to ensure that reconsideration is concluded as soon as possible and, where practicable, within the 90 calendar days timeframe.

Independent external review (OIA)

- 93.** Once the appeal stage has been completed, the student is entitled to ask the OIA, the independent ombuds service, to review their complaint about the outcome of the provider's disciplinary process. The complaint needs to be submitted to the OIA within 12 months of the date of the Completion of Procedures Letter.

Part B: Non-academic disciplinary procedures

What is non-academic misconduct?

- 94.** It is up to individual providers to decide what types of behaviour constitute non-academic misconduct. Providers should ensure that their definitions are clear, and communicated clearly to students. Examples could include:
- Antisocial behaviour;
 - Inappropriate, abusive or threatening behaviour, including on social media;
 - Compromising the safety of and/or wellbeing of staff, other students, or visitors;
 - Sexual misconduct;
 - Violence, harassment and hate crimes;
 - Behaviour likely to bring the provider into disrepute, such as disruptive behaviour in the community;
 - Internet access abuse, such as visiting inappropriate websites, uploading/downloading inappropriate content, propagation of computer viruses;
 - Disruptive behaviour on the provider's premises, such as setting off fire alarms or obstructing access to buildings or rooms;
 - Damage to the provider's property or abuse of its facilities;
 - Causing a health or safety concern;
 - Relying on forged, falsified or fraudulent documentation, and other forms of deception that are intended to gain an advantage, for example submitting fraudulent mitigating circumstances claims or falsifying evidence in support of mitigating circumstances claims (the last may also be considered an academic disciplinary matter);
 - Other behaviour which may also constitute a criminal offence.
- 95.** Procedures should clearly define each type of offence, and set out the potential penalties that might be applied and the provider's approach to considering mitigating factors.
- 96.** A provider's non-academic disciplinary procedures are intended to address misconduct by students rather than to resolve disputes between individuals. Generally, a provider may take disciplinary action against one of its students in connection with its facilities or services, or student activities. This may include:
- Misconduct that interferes with the academic or administrative activities of the provider;
 - Misconduct in or near any premises managed by the provider; and
 - Misconduct that has an impact on the interests and reputation of the provider.
- 97.** A provider may take disciplinary action where the behaviour has affected:
- The provider itself;
 - A student or employee of the provider;
 - Others visiting, working or studying at the provider; or
 - A member of the public.
- 98.** A provider may also take disciplinary action in response to misconduct which:
- Happens during off-campus activities such as placements and field trips;
 - Happens whilst studying at partner organisations, such as associate schools;
 - Affects the provider's reputation in the local community or more widely; or
 - Happens on social media.

Harassment, discrimination and bullying

- 99.** Providers should have procedures in place to deal with allegations of harassment, discrimination and bullying. Providers have obligations under the Equality Act 2010 and other legislation to ensure that staff, students and others engaging with the provider are protected from discrimination, harassment and victimisation.
- 100.** The Protection from Harassment Act 1997 states that harassment includes causing a person alarm or distress. The Act states that harassment consists of a course of conduct (on at least two occasions) only “if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other”.
- 101.** Providers may consider allegations of harassment, discrimination and bullying under their non-academic disciplinary procedure, or a separate procedure. In either case, the procedure should clearly define what the provider means by harassment, discrimination and bullying and give examples of the types of behaviour that fall under each definition. Some examples are:
- Behaviour that is unwelcome, uninvited and causes a detrimental effect;
 - Verbal or physical aggression;
 - Sending abusive or threatening messages on social media;
 - Using discriminatory language;
 - Sexual or physical abuse or assault.
- 102.** Providers should take care to ensure that students understand their options when they report behaviour that may amount to a criminal offence, and support the student whatever action they choose to take. Options available to the student might include reporting the matter to the police, asking the provider to take disciplinary action, or taking no further action. If the student decides to report the matter to the police, the provider should help and support the student to do so. The provider should itself

consider reporting the incident(s) to the police where the safety of students or staff may be at risk.

- 103.** In designing procedures to deal with harassment, discrimination and bullying, providers should consider the following:
- The recipient’s perception of the behaviour in question is of considerable importance;
 - Behaviour does not have to be directed against a person or be intended, for it to amount to harassment;
 - All students (the accuser and the accused) should be signposted to sources of advice and support from appropriately trained staff.

Changing the culture

- 104.** In October 2016, UUK published its “Changing the culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students.”³ The report summarises the evidence considered by the Taskforce during its review and highlights points of good practice and recommendations for how universities can develop their practices/respond to issues more effectively in future. The report highlights the importance of having:
- Ongoing engagement with students;
 - An institution-wide approach to promoting positive behaviour and ensuring appropriate support is in place for students;
 - Visible and accessible reporting mechanisms for students;
 - Appropriately trained staff and contact with specialist partners.
- 105.** Providers may find it useful to refer to this guidance when considering their approach to student disciplinary cases.

3 UUK Changing the culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students

Cases involving allegations by a student against another student or staff member

- 106.** When a student has complained to their provider about the behaviour of another student, the provider owes the same duties and obligations to each of the students involved and needs to balance the interests of each student when considering what action to take. Providers should take all reasonable steps to ensure that they treat each student fairly. It is likely that the evidence of the student making the allegation will be a key part of disciplinary proceedings against the other student and care must be taken to ensure that each of them is treated fairly, has a proper opportunity to put their case, and a proper opportunity to challenge the evidence of the other. It is not normally appropriate for one student to be given the opportunity to cross examine the other and questions should usually be asked through the disciplinary panel rather than directly, unless the student is represented.
- 107.** At the conclusion of the disciplinary process the student who made the complaint should be given some resolution to their complaint. If the other student's behaviour is found to have had an adverse impact on the student who made the complaint then the provider should offer them a remedy for that impact.
- 108.** When a student makes a complaint about a staff member that complaint should normally be referred to the provider's staff disciplinary process. The outcome of the process will normally be confidential to the staff member, although the staff member may consent to information being shared with the student who made the complaint. Nevertheless, the student making the complaint should be given some resolution to their complaint. If the staff member's behaviour is found to have had an adverse impact on the student who made the complaint then the provider should offer them a remedy for that impact.

CASE STUDY 8

Student complains about a staff member

A student complains that a tutor has repeatedly commented about her piercings and tattoos in a way which made her feel uncomfortable. The matter is considered under the provider's staff disciplinary process. The provider writes to the student assuring her that her concerns have been taken seriously. It apologises for the distress caused, and says that it intends to use an anonymised case study based on her experience in its guidance to staff. The provider reassures the student that all assessments for the module concerned are submitted anonymously and independently marked by two members of staff, so it would not be possible for the tutor to affect her marks. The student is also told that she will not be allocated the tutor as a dissertation supervisor in the following academic year.

The provider does not give the student details of the tutor's disciplinary record or of any disciplinary action taken.

Initial considerations and preliminary investigation

- 109.** Many providers give named staff members the power to take decisions on disciplinary cases at a local level or to refer a case for full formal consideration. For example, a hall warden may be able to consider minor disciplinary issues arising in student accommodation. In this way, straightforward minor cases can be dealt with without the need for formal consideration. For example, the student might admit a minor offence, or the allegation might be found to have been made in error. Such an approach gives providers the flexibility to deal with cases in a prompt and proportionate way. However, it is not good practice to consider a disciplinary matter on an entirely informal basis without keeping any records.
- 110.** In all cases, the student must be told in writing at the beginning of the process about the allegations against them and how their behaviour is considered to have breached expected standards. The student should be given any available supporting evidence. The staff member carrying out this initial investigation should not have been involved in making the allegation against the student. The student should be given a reasonable opportunity to respond to the allegation and supporting evidence before a decision is made about whether they have committed the offence. If the provider brings additional or alternative charges against the student during the disciplinary process, it is important that the student is told about the new or amended allegations and offered the opportunity to respond.
- 111.** It is good practice to tell the student that concerns have been raised about their behaviour even if the provider decides to take no disciplinary action.
- 112.** Mediation or conciliation can be particularly helpful in resolving disputes involving students at an early stage, provided the students agree to try it. It will not be appropriate for the resolution of all disciplinary matters.
- 113.** Where a student admits to a minor offence, their admission should be taken into account when considering what penalty to apply. It is good practice to ensure that students are fully aware of the consequences of agreeing to a penalty at this stage. For example, the student should be told whether the offence will be recorded on their student record, and whether it will be taken into account in future disciplinary or fitness to practise proceedings.
- 114.** Following any preliminary investigation, the student should be given a written outcome setting out the decision reached. If the investigator has concluded that the student's behaviour was misconduct, the student should have a right to appeal against a decision reached or any penalty set at this stage. Where local resolution is not appropriate or possible and a formal investigation is needed, the student should be told what will happen next. Providers should signpost students to sources of advice and support, for example from the students' union or the student advice centre. Where this stage is conducted at departmental level the provider should have a process for ensuring that cases are treated consistently across all departments.

When immediate action is required during a disciplinary investigation

- 115.** Providers have a duty of care towards all staff and students. Some disciplinary matters may need the provider to take particularly swift action. These may include, but are not limited to:
- Cases involving a threat of serious harm to the student and/or others;
 - Cases where the student's mental health is at risk or where the student displays significant distress;
 - Issues of a highly sensitive nature;
 - Cases involving an ongoing threat of serious disruption to other students or to the provider's activities.
- 116.** Disciplinary procedures should set out what action a provider can take and in what circumstances. Examples might be limiting access to the provider's services, temporary exclusion from accommodation, or a period of temporary suspension.
- 117.** Taking this sort of action does not indicate that the provider has concluded the student is guilty of misconduct; it is a precautionary measure while a full investigation is completed. This should be made clear in disciplinary procedures and to the individual student.
- 118.** Where the provider intends to exclude the student from their accommodation, it will need to consider the student's rights under the legislation protecting tenants and licensees, and the relevant codes of practice.⁴ It is good practice to ensure that, when it is necessary to remove a student from their accommodation, suitable alternative accommodation is in place.
- 119.** Suspension should be a last resort, when the risk of harm to others (or the student themselves) outweighs the potential disadvantage to the student. The provider should consider other steps that it might take so that the student's studies are not disrupted unnecessarily. The provider should consider the effects of a suspension on a student approaching assessments, or where time limits apply to the student's course of study or visa arrangements.
- 120.** The provider should explain to the student why they are being suspended, and for how long. The student should be able to challenge the decision to suspend them. The provider should review the suspension periodically, even if the student does not challenge it, particularly if it is necessary to extend the period of suspension beyond the initial period.
- 121.** It can be difficult to manage complaints that involve allegations made by one student against another. Providers owe the same duties and obligations to all students involved and need to balance the interests of each student when considering what action to take. Providers should take all reasonable steps to ensure that they treat each student fairly. It may be possible to take steps to safeguard the student making the allegation without suspending the other student, for example, measures to ensure that students are not in the same teaching groups or accommodation, and access facilities at different times.
- 122.** If the suspended student successfully challenges the suspension, it may be necessary to notify the student or staff member who has made the allegation that the student has been permitted to return to their accommodation or department.

⁴ For information about the Accommodation Codes of Practice see Useful Resources

Behaviour that amounts to a criminal offence

- 123.** 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. Criminal behaviour may also be a breach of the provider's disciplinary procedures and a provider may reasonably take action against a student whether or not they have been convicted of a criminal offence. It is not reasonable for a provider to decline to take disciplinary action simply because the allegation made might also be a criminal offence.
- 124.** Providers should take care to ensure that students understand their options when they report behaviour that may amount to a criminal offence, and support the student whatever action they choose to take. The student's options might include reporting the matter to the police, asking the provider to take disciplinary action, or taking no further action. If a student reports a sexual assault to the provider, it should give the student information about the nearest sexual assault referral centre. If the student decides to report the matter to the police, the provider should help and support them to do so.
- 125.** If the police or courts are involved, providers should normally await the outcome of those proceedings before conducting an internal investigation. The provider should keep in touch with the students involved, and with the police during this process. The provider may need to take some form of temporary action against the accused student, in order to protect other students and staff members. For example, a student may be suspended while a full investigation is conducted. Providers should consider each case individually, weighing up the risk to others against the potential disadvantage to the student of a potentially lengthy suspension while the criminal investigation proceeds.
- 126.** Where a student is acquitted of a criminal offence, or where the criminal investigation has been dropped, the provider may still take action against them under its disciplinary procedures. The provider should specify precisely how the student's behaviour is said to have breached its disciplinary policy, and what action it intends to take.
- 127.** If the student is convicted of a criminal offence, the provider may still take action against them. If the student has been imprisoned then the provider will need to consider whether it is possible for the student to continue with their studies, and whether disciplinary action is necessary or proportionate.
- 128.** It is not normally appropriate to apply an academic penalty, such as withholding or withdrawing a degree, for a disciplinary offence that is unconnected with the student's academic studies.
- 129.** Disciplinary procedures should give guidance on how staff should support those accused of serious crimes as well as those making the allegations. It is good practice for staff members to record details of any initial allegation and what they told the student. This can be particularly important when the alleged misconduct may also be a criminal offence. The record will also be available to those investigating a formal complaint at a later stage.
- 130.** UUK and Pinsent Masons have produced guidance for higher education providers on "How to handle alleged student misconduct which may also constitute a criminal offence."⁵ Providers may find it useful to refer to this guidance when considering their approach to disciplinary cases.

5 Universities UK and Pinsent Masons: Guidance for Higher Education Institutions: How to Handle Alleged Student Misconduct Which May Also Constitute a Criminal Offence (October 2016)

The formal stage

- 131.** At the formal stage disciplinary matters are usually considered centrally by the provider.
- 132.** The procedures followed should be proportionate to the nature and complexity of the issues raised. It is good practice for a disciplinary procedure to set out clearly:
- Who the procedures apply to, and whether and in what circumstances the provider can take action against a former student;
 - What process the formal stage will follow;
 - Whether or in what circumstances the staff member investigating the allegation will meet with the student (such meetings are good practice in complex or serious cases);
 - The circumstances in which a hearing or meeting will be held or a panel convened;
 - Who will sit on the panel;
 - The process to be followed at any hearing or meeting; and
 - Whether there will be a separate opportunity for the student to present additional representations about the penalty, if a finding of misconduct is made.

Formal stage investigations

- 133.** The formal investigation should be carried out by a member of staff who has had no previous involvement in the case. It will not normally be appropriate to keep the name of the staff member investigating the allegation confidential. That would lack transparency and may undermine the student's confidence in the process. Staff members charged with investigating misconduct allegations should be properly trained, resourced and supported.
- 134.** It is good practice for the investigator to meet with the student and they should do so at the earliest opportunity. The student should be given notice of the meeting and provided with sufficient information to allow them to respond to the allegation(s), and a copy of the relevant procedure at that time. The student should also be told how to access advice and support, for

example from the students' union, and who can accompany them to the meeting. It is good practice to provide the student with a note of the meeting but it will not normally need to be a full transcript.

- 135.** It is essential to be clear about exactly what is being investigated to ensure that both the investigator and student understand the purpose and scope of the investigation and the possible outcomes. The investigator of the case may talk to staff or other students and consider documents and other evidence. If the allegation has been made by another student, it is good practice for the investigator to also meet with the student making the allegation promptly in order to clarify the facts and explain the remit of the investigation and to answer any questions.
- 136.** The investigator should produce a report based on their investigations which outlines the process followed, the information gathered, and their conclusions. The student or their representative should receive copies of the information obtained during the investigation, a copy of the investigation report and information about the next steps in the process. The student should also be made aware of who they can contact with any queries about the progress of the case.

- 137.** The investigator may refer their report to another senior member(s) of staff for a decision to be agreed, or to a disciplinary panel.

Disciplinary hearings or panel meetings

- 138.** Hearings or meetings should always be held in cases where the allegations against the student are serious, or where the potential consequences for the student are severe. Hearings or meetings should also be held when there are questions of fact to be decided.
- 139.** Panel members should be properly trained. It is good practice to include student representation on the panel where possible, although there must be appropriate separation between the representative on the panel, and those providing advice and support to students.

140. The procedures should set out:

- Who can sit on a panel and who can chair it;
- That the student can be accompanied and/or be represented and by whom;
- Whether the student is permitted to attend the hearing or meeting by alternative means (for example by video call);
- Whether the hearing or meeting will proceed if the student chooses not to or is unable to attend;
- The process for rearranging the date of the hearing or meeting if the student or other witness is unable to attend for good reason;
- Whether the student can be questioned directly during the hearing or meeting;
- That the student can call witnesses;
- Whether other witnesses will be called and whether the student can ask them questions directly or through the panel's chair;
- Whether any witnesses can attend by alternative means (for example by video call);
- Who may attend the hearing or meeting and in what capacity, and whether the panel can seek support from legal advisers or other external people.

141. The hearing or meeting should be arranged promptly, and the student should be given adequate notice of it. This includes informing the student of the purpose of the meeting or hearing; of their right to attend; how to access advice and support; their right to be accompanied and/or represented and what role any representative or companion is permitted to play in the hearing or meeting. If the student is permitted to attend the hearing or meeting by alternative means (for example by video call) the provider should explain how it will arrange and facilitate this.

142. It is essential to provide the student in advance with information about who will be on the panel and a copy of the information to be considered.

143. Fairness requires panels to be free of any bias or any reasonable perception of bias. In the context of a disciplinary process, a perception of bias might arise where the student or the person making the allegation has a close relationship with a panel member, the student has made a formal complaint about a panel member, or a panel member has been involved in previous misconduct allegations against the student. The cultural mix or diversity of the panel may be a relevant consideration in some disciplinary cases. The provider needs to consider the constitution of panels and take steps to ensure that those responsible for reaching a decision come to the matter afresh and are properly trained, resourced and supported.

144. If a provider finds it difficult to convene a panel of people who have no previous involvement with the student, it can consider:

- Using staff from other departments;
- Using staff from a neighbouring provider; or
- Consulting with the student about the selection of panel members.

145. Disciplinary procedures are internal to a provider and should not be unduly formal. It will not normally be necessary for a student or the provider to be legally represented at a disciplinary hearing, but it is good practice for procedures to allow for this where there are good reasons.

146. A written record should be kept of any meeting or hearing, setting out who attended, a brief outline of the proceedings, and the reasons for the decisions taken, including any penalty applied. The reasons given should be sufficiently detailed to enable the student to understand the rationale for the decision and for any penalty applied. It is not normally necessary to make an oral recording or full transcript of the meeting or hearing, but it may be helpful to do so, particularly where the case is complex, or there is a significant factual dispute.

CASE STUDY 9

Good practice arranging a hearing

A student is accused of disruptive behaviour in her hall of residence. Other students have complained that the student drinks heavily and often causes a disturbance at night. After an informal investigation, the provider writes to the student to say that her case has been referred for a disciplinary panel hearing. The letter:

- Sets out the precise allegation against the student, referring to the relevant section of the disciplinary process;
- Encloses copies of all the evidence that the misconduct panel will have;
- Gives the proposed date of the hearing, which is two weeks away;
- Explains what the student should do if she cannot attend the hearing;
- Lists the names of the people who will be on the panel, and who will be presenting the case against her;
- Tells the student that she can bring someone with her to the hearing and what that person is permitted to do; and
- Tells the student that she can expect the panel to ask her questions, and that she can ask questions of the other witnesses through the panel's chair.

Relevance of previous offences

- 147.** A student's previous disciplinary record will not normally be relevant to whether they have committed an offence. However, it is likely to be relevant to decisions about penalty.
- 148.** If the investigator decides the previous offence is relevant it should consider at what stage this information should be shared with the decision makers to ensure it is not prejudicial to a fair outcome being reached.

CASE STUDY 10

Previous disruptive behaviour

A student is accused of disruptive behaviour at campus sports facilities. The student denies the allegations and attends a panel hearing. Having heard all of the evidence, the Panel decides that the student has behaved in a disruptive manner, contrary to the disciplinary regulations.

After making its decision, but before applying a penalty, the Panel asks for information relating to previous disciplinary offences.

The student had previously been issued with a written warning due to disruptive behaviour.

The Panel concludes that, because the student has already been warned about their behaviour, it is appropriate to apply a more severe penalty. It decides to suspend the student for two weeks, and to give the student a final written warning, noting that any further findings of disruptive behaviour would be likely to result in permanent exclusion.

Penalty

- 149.** Providers should include in their procedures information on the possible penalties that can be imposed on students. It should include an indication of the penalties likely to apply in different circumstances, depending on the type of offence and its seriousness.
- 150.** The decision maker should give reasons for the penalty selected. They should explain why any lesser penalty was not suitable. It is good practice for the decision maker to go through the range of penalties available for the type of misconduct, consider each one, and record that they have done so. If the misconduct is so serious that the most severe penalty is the only option then the decision maker should explain why that is.
- 151.** Decision makers should bear in mind that being found guilty of a disciplinary offence might have more serious implications for some students. For example, a penalty that involves a period away from their studies may have an unintended impact on a student

with a deteriorating health condition or an international student's visa status. The decision maker should explain how they have taken these implications into account, as well as the student's extenuating circumstances and other mitigating factors.

152. Providers should ensure that decision makers apply penalties consistently, for example by keeping anonymised summary records of offences, mitigating factors, and penalties applied, which decision makers can refer to.

153. Students should have the opportunity to present any mitigating circumstances or factors that they believe should be taken into account. Those factors are not normally relevant to deciding whether a student is guilty of an offence (unless a provider's procedures state otherwise). But they should normally be taken into account when deciding on the penalty if the student is found to have committed an offence. Mitigating factors might include:

- The offence is a minor example of a serious offence, for example, minor damage to property;
- It is a first offence;
- The student admitted the offence at the earliest opportunity;
- The student has expressed remorse;
- The student has compelling personal circumstances that affected their judgment.

CASE STUDY 11

Mitigating circumstances/ admitting the offence

Two students are accused of setting off a fire alarm in their student accommodation. Student A admits his involvement straightaway and writes a letter of apology. Student A is given a written warning.

Student B says she was not involved, but other students give evidence that she was. Student B is found to have breached the provider's disciplinary regulations at a disciplinary panel and is given a written warning and required to pay a small fine.

Cases involving more than one student

154. It is important that joint or group allegations are dealt with in a manner that is fair to all the students involved. Providers should think carefully about how formal stage processes and panels are conducted:

- Is there an equal opportunity to hear and respond? It is good practice to ensure that all students involved hear and can respond to what the other/s have said or evidence they have provided. For panel hearings, it is good practice to consider joint or group allegations at a single hearing with all students in attendance. Students should also be given an opportunity to speak to the panel privately so that they can raise confidential or sensitive matters relating to mitigation.
- Is there consistency of decision making? Where it is not possible or practical to hear cases together, steps should be taken to ensure there is a consistent approach to all the students involved. It is good practice for the same panel to consider the case against all the students involved whether at a joint hearing or individually.
- Is there consistency of penalty? A decision should be made for each student individually, taking their particular circumstances into account. However, there should be broad consistency in the penalty given to all students who commit the same offence with similar circumstances.

155. It is important to ensure that decisions are not reached by default. Providers should ensure that where cases are heard separately, a conclusion that one student has not committed the offence does not lead to the conclusion that another student must have committed it before their case has been heard.

Concluding the formal stage

156. The provider should write to the student setting out the outcome of the formal stage, giving a clear explanation of, and setting out the reasons for, each decision and any penalty in straightforward language. This will help the student decide whether to appeal.

157. The decision letter should also give information about:

- The student's right to appeal;
- The grounds on which they can do so;
- The time limit for submitting an appeal;
- The appropriate procedure; and
- Where and how to access support.

158. If the student does not appeal within the time limit for doing so, the provider should close the matter and notify the student in writing. It is good practice to issue a Completion of Procedures Letter at this stage if the student asks the provider to do so, but the letter should explain that the student has not completed the provider's internal processes. The OIA publishes guidance on issuing Completion of Procedures Letters.

159. The provider should keep records of disciplinary processes and their outcomes.

The appeal stage

160. The student should be permitted to appeal against a decision that they have committed a disciplinary offence, and/or against the penalty imposed. The appeal should be considered by a member of staff who has not been involved at any previous stage. Providers can require a student (or their representative) to submit an appeal in writing, by email or online by completing the appropriate form.

161. The appeal stage may involve a review of the formal stage, or a complete rehearing of the case. It is good practice to set out the grounds on which a student may appeal. Those grounds might include:

- That the procedures were not followed properly;
- That the decision maker(s) reached an unreasonable decision;
- That the student has new material evidence that they were unable, for valid reasons, to provide earlier in the process;
- That there is bias or reasonable perception of bias during the procedure;
- That the penalty imposed was disproportionate, or not permitted under the procedures.

162. It is important to be clear about the remit of an appeal to ensure that students understand its purpose and scope. If the student's expectations appear to exceed the scope of the appeal stage, the provider should explain this to the student as soon as possible in writing so that they understand the possible outcomes. The procedures should say whether the decision maker can overturn the outcome of the formal stage and substitute its own decision, or whether the matter needs to be referred back to the formal stage for reconsideration.

163. If the student successfully appeals the outcome of a disciplinary process, the provider may need to consider whether there has been an adverse impact upon the student, and whether it should provide a remedy.

164. If the procedures allow for an appeal hearing then the procedures should comply with the principles set out in paragraphs 138 to 146, above.

Complaint from another student

- 165.** If the disciplinary processes were initiated following a complaint from another student, it is good practice to inform that student when the formal stage has been completed. If the other student's behaviour is found to have had an adverse impact on the student who made the complaint then the provider should offer a remedy for that impact.
- 166.** If the student who made the complaint is dissatisfied with the outcome of the disciplinary process, the provider should inform them what steps they can take. A witness in a disciplinary process cannot appeal the outcome of that process, but they may be able to make a complaint under the student complaints procedure if they have concerns about how the matter was handled, or the outcome. At the end of the complaints procedure, the provider should issue the student who made the complaint with a Completion of Procedures Letter.

Concluding the appeal stage

- 167.** If the appeal is not upheld, or is not permitted to proceed under the grounds of appeal, a Completion of Procedures Letter should be sent to the student within 28 days. This should include, or be accompanied by, an explanation of the decision reached and the reasons for it, in straightforward language. This will help the student decide whether to pursue the matter further.
- 168.** The decision should also advise the student about:
- Their right to submit a complaint to the OIA for review;
 - The time limit for doing so;
 - Where and how to access advice and support.

- 169.** The time limit for bringing a complaint to the OIA is 12 months. It is good practice to draw the student's attention to any factors of which the provider is aware that mean that it is particularly important for the student to bring the matter to the OIA promptly (for example because the course is being discontinued).
- 170.** Where an appeal is upheld, the provider should provide the student with a written outcome that explains what action the provider will take. It is good practice to issue a Completion of Procedures Letter if requested by the student. If the outcome involves referring the case back to the formal stage for reconsideration, it is good practice to ensure that reconsideration is concluded as soon as possible and, where practicable, within the 90 calendar days timeframe.

Independent external review (OIA)

- 171.** Once the appeal stage has been completed, the student is entitled to ask the OIA, the independent ombuds service, to review their complaint about the outcome of the provider's disciplinary process. The complaint needs to be submitted to the OIA within 12 months of the date of the Completion of Procedures Letter.

Useful resources and footnote document reference

The Accreditation Network UK Accommodation Code:

http://www.nationalcode.org/Upload/File/NationalCode_Edu.pdf

Disability Rights advice sheet:

<https://www.disabilityrightsuk.org/making-complaint>

Information Commissioner's Office Guide to the GDPR:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

NUS, A Degree of Risk: Essay Mills and Contract Cheating:

<https://www.nus.org.uk/degreeofrisk>

OIA Guidance Note regarding Completion of Procedures Letters:

<http://www.oiahe.org.uk/media/100365/oia-guidance-note-may-2016.pdf>

The Quality Assurance Agency for Higher Education (QAA) guidance on how to address contract cheating: 'Contracting to Cheat in Higher Education':

https://www.qaa.ac.uk/docs/qaa/quality-code/contracting-to-cheat-in-higher-education.pdf?sfvrsn=f66af681_8

QAA, Plagiarism in Higher Education: Custom essay writing services: an exploration and next steps for the UK higher education sector (August 2016)

https://www.qaa.ac.uk/docs/qaa/quality-code/plagiarism-in-higher-education-2016.pdf?sfvrsn=308cfe81_2

Unipol Accommodation Codes:

<https://www.unipol.org.uk/the-code>

Universities UK Accommodation Code of Practice:

<https://www.universitiesuk.ac.uk/policy-and-analysis/Pages/accommodation-code-of-practice.aspx>

Universities UK, Changing the culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students:

<http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/changing-the-culture-final-report.aspx>

Universities UK, How to handle alleged student misconduct which may also constitute a criminal offence:

<http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/guidance-for-higher-education-institutions.pdf>

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