3 Student Non-Academic Misconduct: Student Disciplinary Procedure [H3]

Introduction

3.1 The **Student Code of Conduct is provided in section** A to enable students to understand what is **expected of them by way of behaviour and conduct at the RCS**. It is essential that students comply with these standards and understand that, if they fail to do so, this will likely lead to action by the Conservatoire.

3.2 The actions outlined below will be taken when those standards are not met or have been alleged to not have been met by a student (normally referred to as the 'Respondent'). We refer to these actions as the Student Disciplinary Procedure and abbreviate this to 'section H3'.

3.3 This Procedure applies to **all** students of the Conservatoire and is administered by the **Student Community Conduct Officer**.

3.4 This Procedure is not intended to create rights beyond the Conservatoire's statutory and common law obligations.

Timescales related to disciplinary procedures

3.5 The Conservatoire will deal with all disciplinary issues without any unreasonable delay and as soon as is reasonably practicable, in accordance with the individual circumstances of each case. As a starting point, it is advised that a disciplinary investigation normally will take between **4-6 weeks**, with an additional 4 weeks if the case is proceeding to a Hearing. These timescales may be extended, particularly in cases with multiple disclosures and/or criminal proceedings. If the investigating officer, or the convenor of a Hearing requires more time to conclude the case, Complainants and Respondents will be informed as soon as it becomes apparent that more time is needed.

3.6 Disciplinary issues will progress on a case-by-case basis. Measures will be taken, when, possible to ensure the case is progressing at a reasonable pace. In accordance with this, RCS may choose to impose deadlines relating to confirmation of receipt of documents and the review of notes from meetings.

When does RCS apply this procedure?

3.7 This procedure is applied by the RCS when there is an apparent and/or alleged breach of standards and behaviour. Such a breach normally means expectations established in the Student Code of Conduct have not been met. This might be where a student's apparent and/or alleged behaviour has the potential to impact the physical or psychological wellbeing of a student or member of staff, any of our visitors or contractors, or a member of the public and/or the interests of and reputation of RCS.

3.8 The Student Code of Conduct cannot supply an exhaustive list of all standards of behaviour that may fall below the institution's expectation. Consequently, the RCS reserves the right to apply this procedure for alleged breaches of appropriate standards of behaviour not currently explicitly named in the Student Code of Conduct.

What are the practices related to the disciplinary procedure?

3.9 Where a breach of the Conservatoire's expected standards of behaviour and conduct has been alleged or identified, the basic structure for **all** disciplinary procedures is:

- a pre-investigation stage consisting of risk assessment the outcomes of which may include **precautionary measures**
- an investigation stage (except in the case of a criminal conviction for the same incident)
- a disciplinary hearing, if indicated by the investigation
- an outcome which may include penalties

What principles govern the RCS' approach to disciplinary procedures?

3.10 RCS' approach to disciplinary procedures related to student misconduct are underpinned by the following principles:

3.10.1	**3.10.2**	**3.10.3**	**3.10.4**
Procedural fairness	Risk Assessment (and any associated precautionary measures)	Confidentiality	Engaging external agencies where necessary

3.10.5	**3.10.6**
Standard of proof – on the balance of probability	Adapting, where necessary, the process to reflect children's rights

3.10.1 **Procedural fairness:** Every effort will be made to ensure that all parties are treated with fairness and dignity.

3.10.2 **Risk-assessment**: the assessment of risks to the student against whom allegations have been made, the individual/s making the allegations, and the RCS is part of the disciplinary process. Risk assessment is designed to assess the following:

- Risk to safety and wellbeing of all parties (complainant, respondent, institution)
- Risk of repetition or escalation
- Impact on the education of the respondent, the complainant and, where relevant, the associated cohort of students or ensemble pedagogic processes
- Risk to the integrity to any investigation undertaken by RCS

The risk assessment will consider and attempt to identify mitigations of any potential risk to both the reporting and reported parties and the RCS community. Risk assessments will be conducted by the Student Community Conduct Officer and/or the Deputy Registrar, except in cases where the alleged misconduct is of the magnitude of gross misconduct that might also constitute a criminal offence. In this case, the risk assessment will be undertaken by the Head of AAS or their nominated equivalent.

As an outcome of a risk assessment, a student may be suspended by the Conservatoire as a **precautionary measure**, pending an investigation and/or the conclusion of the disciplinary procedure. These measures may include:

CONDITIONS RELATING TO COMMUNICATIONS BETWEEN THE PARTIES

Depending on the outcome of the initial risk assessment, the RCS can require certain measures are put in place to mitigate any risk whilst allowing the student to continue with some or all aspects of their studies. Key to these measures is the following:

- Any such agreement must be agreed between all the parties involved and will require the student to sign an agreement to comply with the measures identified.
- A signed copy of the agreement will be provided to the student and held on the Student's Record.
- Failure to comply with the agreement, will lead to the contract being reviewed and to the issuing of a temporary suspension.

The following mitigations can be applied:

- Imposing **conditions** on both the reporting and reported students not to contact each other during the investigation (no contact order)
- Agreement of a **behavioural contract** between the responding student, the student's school, Student Wellbeing and/or other areas as appropriate;
- **Support provision** for both the student subject to investigation and others involved in the situation.
- In some cases, it may be appropriate that a **professional communications agreement** is put in place as an alternative to a no contact order. A professional communications agreement will outline any restrictions to communication or contact between both parties, the circumstances under which certain types of communication and/or contact are considered appropriate, and what actions each student should take to maintain professionalism and civility while the investigation is carried out. This may also be applied where an investigation has concluded, or where a Complainant has opted not to pursue a disclosure under this policy or H3, and there is a necessity for both students to work in shared spaces in order to progress their studies. A professional communications agreement will apply to both the disclosing student and the student against whom the allegations have been made and is not enforceable under this policy. Rather, both parties are considered to have a mutual responsibility for upholding the terms of the agreement. Where a professional communications agreement is broken by either party, the Head of ASS or their nominee will re-assess the need for precautionary measures and may decide to take further precautionary action.

TEMPORARY SUSPENSION

- The RCS reserves the right to apply a temporary suspension from the Conservatoire and/or exclusion from any of its facilities including accommodation blocks when necessary. Complainants should note that such a suspension will only be applied in those cases in which the risk assessment identifies a **significant risk** related to **an incident of such severity** that it might also fall within the RCS gross misconduct requirements. Only where the student's continued presence represents **a serious threat to themselves or others or the reputation of the institution** as determined by the risk assessment process, can a temporary suspension be applied. With respect to a temporary suspension, the following will normally also apply:

- Such a suspension will be temporary until the student can attend a disciplinary hearing unless the review finds that a suspension is no longer appropriate.
- The fact of being suspended will not itself be used in evidence against the student.
- During a period of suspension, the student may not be entitled to engage with teaching, learning and assessment activities. Entitlement to access some or all Conservatoire facilities may be withdrawn. Where possible, subject to the safety and welfare of staff and other students, efforts will be made to minimise disruption to the student's programme of study.
- During a temporary suspension a key point of contact will be identified for the student. All communication from the student should be via this contact who will also maintain communication with the student on a regular basis ensuring that any external factors affecting the investigation reported by the student are fed into the internal investigator.
- Where the responding student is under the age of 18, the Conservatoire recognises that a suspension may impact them in a way that is different to adult learners. Children experience time differently to adults. As such, the length of time suspended from full-time education may have a disproportionate impact on children. Where this is the case, and where the allegations have been upheld or partially upheld, the Panel may consider the time already spent on suspension when considering what action and/or sanctions are appropriate.
- Fees will not be refundable for the period of the precautionary suspension.

The application of such measures is underpinned by:

(a) **Proportionality in response to level of risk identified**
Is the measure to be applied fair and/or could a less intrusive measure be used to achieve the aim of protections outlined in the risk assessment?

(b) **Needs of all parties** (complainant, respondent, institution)
Does the measure strike a fair balance between the needs of the individuals involved and the needs of the Conservatoire community?

(c) **The right to request a review of the risk assessment and associated outcomes (precautionary measures)** by the Head of AAS or their equivalent. Such a request must be submitted within **10 working days** of the precautionary measures being implemented, by email to the Head of AAS or their equivalent. They will:
  - Review the original risk assessment and its outcomes;
  - Evaluate any changes to material circumstances or new evidence from the complainant and/or respondent and/or the institution that might change the outcomes of the risk assessment;
  - Make a judgement on the merits of the suggested changes to material circumstances and/ or new information.

(d) Updates to the risk assessment following the receipt of information that suggests there has been a material change to the circumstances within which any original precautionary measure was applied.

It might also mean that the RCS opts not to pursue a disciplinary procedure when the following applies:

(a) a party who would be involved in the procedures reasonably believes that such precautionary measures would result in a significant threat to a person or to property or their further harassment; or

(b) it would be contrary to national interests.

In these cases, students must raise the issue with the Student Community Conduct Officer.

3.10.3 **Confidentiality:** So far as is reasonable, confidentiality will be maintained throughout all processes carried out in terms of this procedure. However, students should be aware that it may be necessary to disclose certain information so that the Conservatoire can fully investigate the circumstances of a disciplinary issue.

The principle of confidentiality means that, on a case-by-case basis, the complainant and respondent's right to privacy and information will be carefully balanced. In practice, this means that anonymised summaries may be shared with other parties in a case. Complainants and respondents have the right to personal information about them, but not necessarily documentation (i.e. word for word accounts or statements submitted by other parties). Should a complainant or respondent wish to exercise any of their rights under data protection, they can review the Student Privacy Notice at https://www.rcs.ac.uk/privacy-policy or contact dataprotection@rcs.ac.uk

Confidentiality also means that individuals involved in a disciplinary procedure, whether as a complainant, witness or respondent should not speak with other members of the Conservatoire community **about the disciplinary matter**. The Student Community Conduct Officer (or other appointed investigating officer) will advise on any exceptions to this on a case-by-case basis.

Confidentiality does not prevent an individual from speaking with the RCS counselling and disability service. Confidentiality does not prevent an individual from seeking support from external agencies (e.g. the police, legal services, health services, social services or any other external agency).

3.10.4 **External agency** involvement where necessary: Depending on the nature of the concern, external agencies and legal proceedings may be involved. This principle also refers to safeguarding at the RCS.

3.10.5 **Standard of Proof:** in the case of student misconduct the standard of proof is based on the balance of probability. In other words, to be upheld, the outcome of a case of alleged misconduct must find that *on the balance of probability* the alleged misconduct is more likely than not to have occurred. This is a different – and lower – burden of proof to that within the criminal justice system which must find 'beyond reasonable doubt'.

3.10.6 **Children's Rights:** Section H3 applies to ALL matriculated students in higher education programmes within the RCS whatever their age. In cases where the Complainant or Respondent is under the age of 18, the process outlined in Section I.2 of the Rules and Regulations (Regulations relating to General Complaints, Child Friendly Complaints Handling Process) will be applied to this procedure.

It should be noted that the age of legal capacity in Scotland is 16. Where a Complainant or Respondent has reached the age of 16, RCS cannot inform parents or carers without their explicit consent, except where the situation is considered by RCS to be an emergency and the student has granted permission for their emergency contact to be contacted.

Interrelationships between these procedures and criminal/civil investigations

3.11 The following applies when the police or criminal justice, or civil courts are involved in alleged non-academic misconduct by an RCS student: On those occasions where an allegation of non-academic misconduct which breaches the Conservatoire's Student Code of Conduct and associated regulations might also constitute a criminal offence or where police, criminal, or other legal investigations or legal proceedings are contemplated or underway, the Conservatoire follows a specific set of rules outlined below.

3.11.1 When a student is subject to police investigation or pending criminal or external civil proceedings, RCS will consider whether a breach of the Conservatoire's rules and regulations (i.e. a breach of the student contract) may have occurred.

3.11.2 If an allegation of misconduct is to be or is already under criminal or external civil investigation, RCS postpones its own internal investigations until these other, external proceedings are concluded including any appeal. Where this is the case, the pre-investigation stage consisting of a risk assessment will still be carried out and may result in precautionary measures being applied to the Respondent whilst criminal proceedings are ongoing.

3.11.3 If, after Conservatoire disciplinary procedures have started, any criminal or civil proceedings are initiated against the relevant student/s in respect of the same incident, the disciplinary process will be suspended to await conclusion of the criminal or civil proceedings and any appeal.

3.11.4 Suspensions of the internal procedure as outlined in 3.11.2 & 3.11.3 are applied for the following reasons:

- There is a risk that an internal investigation could interfere with or prejudice an official external investigation;
- A student's engagement with an internal investigation could impact on their defence in criminal proceedings and they are, therefore, likely to be advised not to engage with internal proceedings;
- An internal investigation running concurrently with criminal proceedings could jeopardise the successful prosecution on the part of a reporting student.

3.11.5 Where the respondent is found guilty of or pleads guilty to the offence/s relating to the allegations, the Conservatoire will normally accept the outcome of the criminal proceedings as meeting the required standard of proof. This is because the standard of proof required in a criminal process is proof beyond reasonable doubt, which exceeds the standard of proof required by the Conservatoire's procedure. In these circumstances, the case will normally proceed directly to a Hearing without the need for an internal investigation to be carried out, unless the risk assessment process identifies that additional information needs to be investigated in advance of any such a hearing. At this Hearing, the focus is on:

- Whether or not the conviction is such that there is evidence that a breach of the Student Code of Conduct and associated regulations have been broken:

- What the severity of the breach is and, therefore,
- The extent to which trust between the student and the institution has also been broken.

3.11.6 Where the outcome of a criminal case is that the respondent has been acquitted (found not guilty or not proven), RCS retain the right to investigate alleged misconduct under this section H procedure. In these circumstances, the investigation will focus on whether the Respondent has engaged in misconduct that may constitute a breach of their student contract and associated regulations. This is not reinvestigating the crime. It is designed to assess whether a form of conduct has occurred that breaks or otherwise effects the contract.

3.11.7 Where the outcome of a criminal case is that an individual has received an absolute discharge, RCS retain the right to investigate alleged misconduct under this section H procedure, depending on the outcome of our risk assessment. In these circumstances, the investigation will focus on whether the Respondent has engaged in misconduct that may constitute a breach of their student contract and associated regulations. This is not reinvestigating the crime. It is designed to assess whether a form of conduct has occurred that breaks or otherwise effects the contract.

3.11.8 RCS cannot determine whether a crime has or has not happened.

How are disciplinary actions defined?

3.12 The RCS takes disciplinary action for three groupings of misconduct based on level of severity of the breach: minor, serious, and gross. Differences in how this procedure is undertaken are determined by the severity of the breach of discipline. The severity of the breach of discipline is identified as part of the investigation and forms part of the outcome of the disciplinary hearing.

3.13 Thus, procedures for disciplinary action within the Conservatoire divide into three groupings summarised below:

3.13.1 **Minor misconduct** is characterised by minor infringements that can normally be resolved by the **Programme Leader** or **Head of Dept** as relevant through the minor misconduct procedure: I Minor Misconduct (1-5).

3.13.2 **Serious misconduct** is characterised by serious infringements that can normally be resolved by the **Director of the relevant school/Directorate** through the serious misconduct procedure: II Serious Misconduct (1-8).

3.13.3 **Gross misconduct** can be defined as any act or omission on the part of a student, which represents a breach of the contract with the Conservatoire and is so grave that the mutual trust necessary between students and the Conservatoire is destroyed.

3.13.4 Gross misconduct is represented by activities, conduct and behaviours which fundamentally breach the student's contract with the Conservatoire. It is characterised by forms of misconduct considered so serious as to warrant significant penalties and normally requires the involvement of the **Director of the relevant school/Directorate** plus **additional disciplinary panel members** to enable resolution.

What constitutes a breach of our expected standards and behaviours?

3.14 A key tool in assessing whether behaviour falls below the expected standards for the RCS is the **Student Code of Conduct** and thus when a disciplinary procedure needs to be applied. However, further non-exhaustive examples are given in Diagram 2 (examples of types of misconduct by severity) below to help clarify what characterises each level of misconduct in terms of the procedure likely to be followed. When in doubt, a student or member of staff concerned about student behaviour and conduct should refer to the Student Community Conduct Officer.

Non-exhaustive list of types of misconduct by severity	
I **Minor** misconduct	1. Minor damage to, or unauthorised use of, the Conservatoire's property 2. Minor poor attendance/poor time-keeping/ unauthorised absence 3 Single incident of disrupting an ensemble process through careless behaviour 4 Discretionary application: Apparently unconscious behaviour which might otherwise constitute serious misconduct can be dealt with by the Programme Leader. This discretionary application cannot be used in relation to any actions which constitute gross misconduct. 5 Repeated violations relating to minor misconduct will lead to the application of either the serious or gross misconduct procedures depending on the type of misconduct.
II **Serious** misconduct	1. Persistent absenteeism/poor time-keeping/ unauthorised absences; 2. Persistent disruption of ensemble and/or rehearsal processes through careless behaviour 3. Failure to respond adequately to previous disciplinary warnings; 4. Smoking at the Conservatoire 5. Careless disregard of the Conservatoire's rules or a breach of its policies and procedures 6. Careless, single, incidents of student-to-student interpersonal conflicts and incivility within a culture committed to equalities as outlined in the **Dignity at Work and Study Statement** and also specified in the **Student Code of Conduct** (A2.3.4). Where similar incidents continue after initial use of this level of misconduct has been investigated, such misconduct will be adjusted from serious to gross misconduct and the processes for gross misconduct followed. This is due to a failure on the part of the student to alter their behaviour. 7. Being indebted to the Conservatoire, which includes (without limitation) the following debts: outstanding fees and any outstanding arrears of rent for accommodation; 8. Breach of the Conservatoire's IT Acceptable Use Policy or Social Media Policy.
III **Gross** Misconduct	The following is a non-exhaustive list of examples of gross misconduct.

	1. Breach of the Conservatoire's Cheating and Plagiarism 2. Serious breach of the Conservatoire's IT Acceptable Use Policy, Information Security Policy, or Social Media Policy, including but not restricted to: 3. Sharing personal information about another individual without their express permission/formal consent. 4. The posting of details of complaints/disciplinary and/or legal proceedings/potential legal proceedings involving the Conservatoire on social media in a way that individuals could be identified and the confidentiality assumption in the procedure breach 5. Breach of the Conservatoire's Dignity at Work and Study Statement; 6. Breach of the Conservatoire's Gender Based Violence (GBV) Guidelines 7. The bringing of a complaint which is frivolous, vexatious, untrue or made in bad faith; 8. Unauthorised possession, copying, alteration, destruction or retention of the Conservatoire's records; 9. Serious breaches of safety rules which endanger the life and safety of others; 10. Verbally aggressive behaviour towards a member or members of Conservatoire staff, including excessive or inappropriate use of foul or abusive language or threats made to Conservatoire employees, workers or contractors; 11. Verbally aggressive behaviour towards a student or students of the Conservatoire, including excessive or inappropriate use of foul or abusive language or threats; 12. Conduct likely to bring the Conservatoire into disrepute, including abusive language, violent behaviour, fighting, threatening violence, immoral or obscene conduct, whether within or outside the Conservatoire; 13. Negligence causing or likely to cause unacceptable loss, damage or injury; 14. Disorderly conduct, including being under the influence of substances such as alcohol or drugs, being in possession of unauthorised substances or misusing substances during the course of studies at the Conservatoire; 15. Conviction of a criminal offence considered potentially damaging to the Conservatoire, or preventing the student from performing their studies; 16. Deliberate interference with the Conservatoire's operations, work or service; 17. Unauthorised use of the Conservatoire's telephone; 18. Unauthorised use of the Conservatoire's Internet and e-mail connections. 19. Discriminatory acts or behaviour on the grounds of race, sex, gender, marital status, sexual orientation, religion, belief, disability or age against any person during the course of the student's studies at the Conservatoire; 20. Harassing or victimising acts or behaviour on the grounds of race, sex, gender, marital status, disability, sexual orientation, religion or belief or age; 21. Physical assault on a person or persons, carried out on or off the Conservatoire's premises;

	22. Damage or unauthorised possession of property belonging to the Conservatoire; 23. Deliberately deceiving the Conservatoire for financial or persona gain; 24. Any act or behaviour attempting to draw people into terrorism and/or extremism, see the Conservatoire's Prevent Policy; 25. Knowingly breaching any legislation governing the operations of the Conservatoire's business; 26. Misrepresentation or falsification of any sort, including the Conservatoire's expense claims.

Diagram 2: Types of misconduct

Misconduct which might also constitute a criminal offence

3.15 RCS recognises that some types of misconduct (i.e. behaviours which, if upheld, would represent a breach of the Conservatoire's own conduct standards) might also constitute a criminal offence.

3.15.1 When the alleged or apparent misconduct might also constitute a criminal offence, RCS will proceed in a way that is mindful of the potential of a future police investigation. Where this may be the case, given the significant risks posed when behaviours disclosed might also represent criminal actions, the SCCO (or other appointed investigating officer) will ensure that the **Head of AAS** (or nominated equivalent), undertakes the risk assessment.

3.15.2 In such circumstances and, as a consequence of risk assessment, RCS may apply the **Student Alternative Resolutions Disciplinary (SARD) Policy** to these procedures.

3.15.3 The SARD policy aims to ensure that both the reporting and reported parties are aware of the nature and severity of the allegations, and that they are informed about the implications of an internal investigation in relation to potential future police action (detailed more fully in SARD).

3.15.4 There are certain types of allegations which **always immediately** trigger the application of the SARD policy. This includes any allegations relating to gender-based violence, sexual misconduct, harassment, cyber-bullying, physical violence, and discrimination or misconduct offences towards another individual on the grounds of a protected characteristic. These behaviours are defined more fully in SARD section 3.

3.15.5 The application of the SARD policy does not mean that the Conservatoire has decided that a criminal act has taken place. Only the police can make this determination. Rather, it is an additional caution taken by RCS in the face of misconduct allegations of a potentially sexual, harassing, violent, and/or discriminatory nature.

3.15.6 As part of this investigatory process the RCS reserves the right to assess, where relevant, whether the RCS needs to refer the matter to the police.

Inter-relationship of these procedures with student health and wellbeing

3.16 There are occasions where what at first looks like misconduct is evidence of a student struggling with their studies for undisclosed health and wellbeing related reasons.

Where this is the case, based on the nature and severity of the allegation, the RCS reserves the right to apply its **Enhanced Support to Study Procedure** [G4].

MINOR MISCONDUCT PROCEDURE

3.17 Where the misconduct falls under **minor** misconduct, disciplinary action against students will in the first instance normally be dealt with by the Programme Leader/ Head of Dept of which the student is a member. Programme Leaders / Heads of Dept have delegated authority to undertake this procedure from their relevant Director or Head of School (School of Dance). Directors should ensure that they get a monthly update on where minor misconduct procedures have occurred from the SCCO.

3.17.1 Before a minor misconduct procedure can be recorded as completed, the Programme Leader will normally inform the Student Community Conduct Officer and then investigate:

a. that the infringement is not recorded as having happened before;
b. why the minor infringement is happening;
c. whether there is evidence that it has happened, when relevant (ie when alleged by another student or staff member rather than seen by the programme leader).

3.17.2 If the conditions in 3.17 have been met, the Programme Leader should formally raise the issue with the student. 3.17 & 3.17.1 constitute the investigation/ hearing/ outcome process in minor cases only.

3.17.3 Where the Programme Leader decides not to impose a sanction but, nonetheless, considers misbehaviour to have occurred, an oral warning should be recorded by an email to the student and the Student Community Conduct Officer.

3.17.4 Where the Programme Leader decides to impose a minor sanction or measure, one or more of the following sanctions or measures are available:

a. A written warning, which will be placed on the Respondent's record and will make any subsequent misconduct a more serious matter.
b. To require the Respondent to provide a written apology;
c. To require the Respondent to engage with an educative or reflective session.

3.17.5 In considering whether to impose a minor sanction or measure, or refer the case up to a serious/ gross misconduct procedure the programme leader should consider the following:

a. The seriousness of the breach;
b. The harm or damage caused;
c. The advantage gained or the advantage that could have been gained by the Respondent as a result of the breach;
d. The intent and planning involved in the breach;
e. The impact on the ensemble pedagogy/community at RCS;
f. Whether the Respondent has admitted to the breach and when such an admission took place;
g. Whether the Respondent has expressed remorse and/or shown insight into the impact of the breach;
h. The evidenced personal circumstances of the Respondent.

3.17.6 There may be occasions where minor misconduct is believed to be justified by the student, normally but not exclusively, in the cases related to non-authorised absences to pursue professional auditions and/ or jobs. In these cases, the Programme Leader will assess on a case-by-case basis the relative merits of the student's position and the effect on the student's ensemble/ community of learning before escalating from an oral warning via minor misconduct to sanctions and/or serious misconduct.

3.17.7 Where a Programme Leader is unsure of the level of severity of the alleged misconduct, they will contact the Student Community Conduct Officer to clarify.

3.17.8 If the misconduct is repeated, the Programme Leader must escalate the issue to either the serious or gross misconduct procedure via a report to the Student Community Conduct Officer.

SERIOUS MISCONDUCT PROCEDURE

3.18 Where the misconduct falls within **serious** misconduct, disciplinary action against students will in the first instance normally be dealt with by the Student Community Conduct Officer and Director of the School/Directorate of which the student is a member. However, the Principal may nominate another suitable person to take the place of the Director (references to the Director of School should be read as including the possibility of an alternate being nominated).

Investigation

3.19 Before any disciplinary action occurs the **Student Community Conduct Officer**, or an appropriate person nominated by them in agreement with the Deputy Registrar, will normally undertake an appropriate investigation. This investigation will include a meeting with the student against whom a claim is being made, if the Conservatoire considers that is appropriate.

3.20 A student attending a serious misconduct investigation meeting can be accompanied by a friend or family member, a member of academic staff, a Student Union representative, or a legal advisor. A student may not be accompanied by someone who is a witness or is otherwise involved in the case.

3.21 A person accompanying a student to an investigation meeting will be expected to maintain confidentiality. They may ask questions and may ask to speak privately with the responding student, however, they may not answer questions or speak on behalf of a responding student. A responding student will be expected to answer questions on their own behalf and in their own words.

3.22 Legal advice is not a requirement of the process. Should a student, or anyone else on their behalf, choose to take legal advice, RCS will not be responsible for any legal fees.

3.23 A student may ask the investigating officer to consider any relevant witnesses. The Student Community Conduct Officer (or appointed investigation officer) will determine whether the witness is relevant to the investigation. If it is decided that the witness is relevant, the investigating officer may interview them or ask for a witness statement.

3.24 If at any point during the investigation, the evidence that has been gathered suggests that serious misconduct has not occurred, but that minor misconduct might have occurred, the Student Community Conduct Officer (or appointed investigating officer)

may decide to reduce the level of misconduct and progress the case to be considered under the appropriate minor misconduct disciplinary hearing procedures.

3.25 If at any point during the investigation, new information comes to light to suggest that the alleged misconduct is more serious that it appeared to be on first sight, the Student Community Conduct Officer (or appointed investigating officer) may decide to increase the level of misconduct being investigated from serious to gross misconduct. A respondent will be made aware of this as soon as practicable after the information is received.

3.26 Following the conclusion of the investigation, the investigating officer will submit a report of their findings to a disciplinary hearing and may be required to attend the hearing to present their findings.

3.27 The investigatory report will outline which sections of the Conservatoire's rules and regulations and related policies the allegations, if upheld, might relate to. It will also outline any important context, the steps taken during the investigation, the findings (i.e. whether or not there is sufficient evidence to refer the allegations to a Hearing), and any mitigating circumstances.

Disciplinary hearing

3.28 A 'disciplinary hearing' is convened by the Director of the student's School/Directorate to allow the student to be heard as part of the process towards determining an outcome and identifying whether and what penalties/sanctions should be imposed (See 3.40-3.42).

3.29 However, the Principal may nominate another suitable person to take the place of the Director (references to the Director of School should be read as including the possibility of an alternate being nominated).

3.30 A student attending a disciplinary hearing may be accompanied for support by a friend or family member, a member of academic staff, a Student Union representative. A request for this must be submitted by email to the relevant Director/Head of School 48 hours in advance of the disciplinary hearing. A Hearing will be rescheduled if this is not done.

3.31 A responding student attending a disciplinary hearing may ask the Director to consider witnesses. They must submit this request in writing to the Director within 48 hours of receiving the hearing invitation. This is to allow for suitable notice to be given to witnesses. If the Director determines that it is relevant and appropriate, they may request that the witness attends the hearing.

3.32 The convenor of the Hearing may ask to speak with a witness if the wish to obtain further information about any of the evidence gathered during the investigation stage, or if they feel that further information is necessary to enable them to reach a decision on the outcome and/or sanction. They may do that at any time before or during the Hearing.

3.33 Witnesses will be given the option to attend the hearing remotely. RCS cannot compel a witness, and their attendance cannot be guaranteed.

3.34 A responding student, or anyone acting on their behalf, will not be permitted to directly question or speak with a witness. Questions should be put to the Director for consideration. If the Director deems the questions to be relevant and appropriate, they will put them to the witness. To maintain confidentiality as far as possible, a responding student and anyone else accompanying them to the meeting will be asked to leave the

room while the witness gives evidence. They may request from the Panel a verbal anonymised summary of the evidence given.

3.35 At the conclusion of the disciplinary hearing with the Director, the student, their friend or representative, and all witnesses and/or parties to the allegation shall withdraw the Director shall reach a decision.

Disciplinary Hearing outcome

3.36 The Director shall determine whether or not the student has committed the alleged offence on the balance of probabilities. To reach the decision, the panel will:

a. Determine whether or not the student has committed the alleged offence on the balance of probabilities;
b. Determine what level of misconduct has been committed
c. Consider mitigating circumstances;
d. Address evidence of prior misconduct in those cases where persistent violation of the Code of Conduct should lead to an escalation to a gross misconduct procedure.

3.37 If the Director upholds or partially upholds the allegations against the student, it shall then decide on the appropriate penalty. The decision of the Director shall normally be notified to the student orally in the first instance (if appropriate), and subsequently in writing. The written notification shall include a summary of the reasons for the decision and the reasons for the penalties, this shall be sent within 10 working days of the hearing.

3.38 There may be times where the nature of the evidence makes it difficult for the Director to make a decision one way or the other. This may be where different pieces of evidence are particularly contradictory or inconclusive. In this case, the Director may choose to issue an undetermined outcome without applying a sanction. Where possible, a conclusive decision will be reached.

3.39 The Conservatoire will endeavour to provide the reporting person with as much information about the outcome of an investigation as is reasonably possible. In determining what information to provide to the reporting person, the Conservatoire will take account of the need to balance the interests of the respondent, the reporting person, any other witnesses, and the Conservatoire's obligations under relevant data protection legislation.

Appeals and complaints

3.40 Where a reporting student does not agree with the outcome of the disciplinary panel they may appeal using the disciplinary procedure appeals process (outlined in H5).

3.41 In cases where the student is dissatisfied with the way the disciplinary procedure was undertaken (investigation/ panel functioning), they may take the complaint to the Scottish Ombudsman, http://www.spso.org.uk/contact-us

VISUAL SUMMARY OF PROCEDURES RELATING TO NON-ACADEMIC MISCONDUCT

<table>
<tr><th>Process</th><th>Description</th><th>Adjacent processes</th></tr>
<tr><td>An allegation is made</td><td>RCS receives a disclosure of conduct which falls below its expected standards as set out in the institutional regulations.</td><td>An initial exploration of the circumstances can be undertaken to establish the level of severity associated with the disclosure. A judgement can be made at this point to escalate or de-escalate through an informal process where an incident is triaged as minor.</td></tr>
<tr><td>Risk assessment undertaken

(Can be regularly updated throughout the process and outcomes adapted as relevant)</td><td>This is to establish the risks to all parties. Where there is police involvement and/or criminal or external civil proceedings, the outcome of the risk assessment will be to suspend any RCS internal process associated with the external processes until they have been concluded.</td><td>At this point an assessment of the need for precautionary measures is made.</td></tr>
<tr><td>Investigation: done by Student Community Conduct Officer</td><td>This is to establish what happened in a way that engages with all the relevant parties.</td><td rowspan="3">(As a precautionary measure, the student against whom an allegation of misconduct is made may be suspended, pending an investigation and/or the disciplinary procedure)

On basis of the nature and severity of an allegation/identification of misconduct, RCS reserves the right to apply an alternative policy such as Enhanced Support for Study</td></tr>
<tr><td>Disciplinary hearing IF required:
Serious: Director of School or equivalent
Gross: Disciplinary panel</td><td>This is to hear a response to the investigation from the student who has been accused of a breach of discipline and determine what to do (i.e. identify appropriate sanctions, impose sanctions).</td></tr>
<tr><td>Outcome and penalties (as relevant)</td><td>Panel concludes with judgement of level of misconduct and whether the outcome is upheld, partially upheld, not upheld. Panel clarifies, as relevant, any sanctions to be imposed.</td></tr>
<tr><td>Appeal (if required/ as relevant) [H4]</td><td></td><td></td></tr>
</table>

GROSS MISCONDUCT PROCEDURE

3.42 Where the misconduct falls gross misconduct, disciplinary action against students will in the first instance normally be dealt with by the Student Community Conduct Officer and the Director of a School/Directorate of which the student is a member.

3.43 However, the Principal may nominate another suitable person to take the place of the Director (references to the Director of School should be read as including the possibility of an alternate being nominated).

Investigation

3.44 Before any disciplinary action occurs the Student Community Conduct Officer, or an appropriate person nominated by them in agreement with the Deputy Registrar, will normally undertake an appropriate investigation. This investigation will include a meeting with the student against whom a claim is being made, if the Conservatoire considers that is appropriate.

3.45 This investigator, where relevant, will meet with the student against whom the claim is made, interview relevant parties, look into the claims, gather evidence for misconduct, and conclude whether a disciplinary hearing is necessary (i.e. whether evidence suggests that one of RCS' policies has been breached).

3.46 A student attending a gross misconduct investigation meeting can be accompanied by a friend or family member, a member of academic staff, a Student Union representative, or a legal advisor. A student may not be accompanied by someone who is a witness or is otherwise involved in the case. A person accompanying a student to an investigation meeting will be expected to maintain confidentiality. The accompanying person may ask questions and may ask to speak privately with the responding student, however, they may not answer questions or speak on behalf of a responding student. A responding student will be expected to answer questions on their own behalf and in their own words.

3.47 Legal advice is not a requirement of the process. Should a student, or anyone else on their behalf, choose to take legal advice, RCS will not be responsible for any legal fees.

3.48 A student may ask the investigating officer to consider any relevant witnesses. The Student Community Conduct Officer (or appointed investigating officer) will determine whether the witness is relevant to the investigation. If it is decided that the witness is relevant, the investigating officer may interview them or ask for a witness statement.

3.49 If, during the investigation, the evidence that has been gathered suggests that gross misconduct has not occurred, but that serious or minor misconduct might have occurred, the Student Community Conduct Officer (or appointed investigating officer) may decide to reduce the level of misconduct and progress the case to be considered under the appropriate minor or serious misconduct disciplinary hearing procedures.

3.50 If at any point during the investigation, new information comes to light to suggest that the alleged misconduct is more serious that it appeared to be on first sight, the Student Community Conduct Officer (or appointed investigating officer) may decide to initiate SARD procedures. The responding student will be made aware of this as soon as practicable after the information is received. SARD procedures are outlined below. Where gross misconduct that also might constitute a criminal offence is alleged, relevant precautionary measures are detailed in Student Alternative Resolution Disciplinary (SARD) policy. The investigator will assess whether or not the gross misconduct might also constitute a criminal offence and implement the Student Alternative Resolution Disciplinary (SARD) policy process as relevant. The Conservatoire's Safeguarding

Policy and Associated Procedures document (Understanding Gravity, p6) is of particular relevance to this assessment.

3.51 Where gross misconduct includes an allegation of activities which might also constitute a criminal offence, the Student Community Conduct Officer will ensure that the Head of AAS (or nominated equivalent), if deemed necessary/relevant, undertakes a risk assessment prior to introducing a precautionary suspension and/or implementing a Student Alternative Resolution Disciplinary (SARD) policy process.

3.52 As part of this investigatory process the RCS reserves the right to assess, where relevant, whether the RCS needs to refer the matter to the police.

3.53 Following the conclusion of the investigation, the investigating officer will submit a report of their findings for a disciplinary hearing panel and may be required to attend the hearing to present their findings.

Disciplinary Hearing Panel

3.54 A 'disciplinary hearing panel' is convened by the Director of the student's School including: the Director, to allow the student to be heard as part of the process towards determining an outcome and identifying whether and what sanctions should be imposed.

3.55 A student attending a disciplinary panel hearing may be accompanied by a friend or family member a member of academic staff, a Student Union representative, or a legal advisor. A request for this needs to be submitted by email to the Panel 48 hours in advance of the disciplinary panel hearing.

3.56 Where a case is proceeding to a Disciplinary Hearing by Panel, the complainant(s) will be given the opportunity to submit an impact statement to the Panel for consideration.

3.57 A responding student attending a disciplinary panel hearing may ask the Panel to consider a witness. They must submit this request in writing to the Panel within 48 hours of receiving the hearing invitation. This is to allow for suitable notice to be given to witnesses. If the Panel determines that it is relevant and appropriate, they may require that the witness attends the hearing.

3.58 The convenor of the Hearing may ask to speak with a witness if they wish to obtain further information about any of the evidence gathered during the investigation stage, or if they feel that further information is necessary to enable them to reach a decision on the outcome and/or sanction. They may to this at any time before or during the Hearing.

3.59 Witnesses will be given the option to attend the hearing remotely. RCS cannot compel a witness, and their attendance cannot be guaranteed.

3.60 A responding student, or anyone acting on their behalf, will not be permitted to directly question or speak with a witness. Questions should be put to the Panel for consideration. If the Panel deem the questions relevant and appropriate, they will put it to the witness. To maintain confidentiality as far as possible, as responding student and anyone else accompanying them to the meeting will be asked to leave the room while the witness gives evidence. They may request from the Panel a verbal anonymised summary of the evidence given.

Disciplinary Panel Outcome

3.61 At the conclusion of the disciplinary hearing panel, the student, their friend or representative, and all witnesses and/or parties to the allegation shall withdraw and the disciplinary panel shall reach a decision.

3.62 The disciplinary panel determines whether or not the student has committed a breach of contract due to the likelihood that the alleged offence took place. To reach the decision, the disciplinary panel will:

- Determine whether or not the student has breached the regulations in terms of the behaviour/ conduct alleged where the evidence demonstrates within the balance of probability that such misconduct did occur;
- Determine the severity of the breach;
- Consider mitigating circumstances;
- Address evidence of prior misconduct in those cases where persistent violation of the Code of Conduct should be taken into consideration.

3.63 If the disciplinary hearing upholds or partially upholds the allegations against the student, the panel shall then decide on the appropriate penalty. The decision of the disciplinary panel shall normally be notified to the student orally in the first instance (if appropriate), and subsequently in writing. The written notification shall include a summary of the reasons for the decision and the reasons for the penalties, this shall be sent within 10 working days of the hearing.

3.64 There may be times where the nature of the evidence makes it difficult for the Panel to make a decision one way or the other. This may be where different pieces of evidence are particularly contradictory or inconclusive. In this case, the Panel may choose to issue an undetermined outcome without applying a sanction. Where possible, a conclusive decision will be reached.

3.65 The Conservatoire will endeavour to provide the reporting person with as much information about the outcome of an investigation as is reasonable possible. In determining what information to provide to the reporting person, the Conservatoire will take account of the need to balance the interests of the respondent, the reporting person, any other witnesses and the Conservatoire's obligations under relevant data protection legislation.

Appeals and complaints

3.66 Where a reported student does not agree with the outcome of the disciplinary panel they may appeal using the disciplinary procedure appeals process (outlined in H4).

3.67 In cases where the student is dissatisfied with the way the disciplinary procedure was undertaken (investigation/ panel functioning) and has exhausted all internal Conservatoire processes, they may take the complaint to the Scottish Ombudsman, Full details are available at: http://www.spso.org.uk/contact-us

Student Non-compliance with the investigation and hearing procedures

3.68 Where the student does not attend the required meeting/s with the investigating officer (either the Programme Leader /Dept Head of the relevant school if minor or the appointed investigator if serious/gross misconduct) without 48 hours prior notice, the process will be escalated directly to a Disciplinary Hearing of the relevant type.

3.69 Where a student deliberately does not attend a disciplinary hearing of any type, the hearing will continue in the student's absence and it will determine whether there is

sufficient evidence to prove, on the balance of probabilities, that the alleged misconduct took place.

DISCIPLINARY HEARINGS AND OUTCOMES

Disciplinary Hearings for serious and gross misconduct

3.70 Where an investigation finds that a disciplinary hearing is required (ie if the investigation demonstrates that there is sufficient evidence to progress to Hearing), the following will happen depending on the level of seriousness of the misconduct:

3.70.1 Minor misconduct will normally be overseen by the Programme leader.

3.70.2 For serious and gross misconduct, however, once an investigation into misconduct has concluded that there is sufficient evidence, a disciplinary hearing will be convened. At RCS there are two types of disciplinary hearing – a normal disciplinary hearing over which a single Director presides and an alternative disciplinary hearing by panel as follows:

(a) **Normal disciplinary hearings (serious misconduct):** This is taken by the Director of the investigated student's School. At the disciplinary hearing, evidence will be heard from the student, any relevant witnesses identified by the student and any other person or body whom the Director of School/Directorate considers relevant. The student may identify witnesses for the Director to consider. The Director will decide if the identified witnesses are relevant to the hearing, and if so, they will consider their evidence. At or after the disciplinary hearing, a decision will be issued to the student informing them as to whether the disciplinary allegation(s) are upheld and, if so, of the sanction to be imposed.

(b) A **Disciplinary Hearing by Panel (gross misconduct)**: This is taken by the Director of the relevant School an in (a), plus another Director (who hasn't been involved previously), and a Head of programme/department from another school. These hearings are by panel to reflect the seriousness of the sanctions likely to be imposed. At the disciplinary panel hearing, evidence will be heard from the student and any other person or body whom the Panel considers relevant. The student may identify witnesses for the Panel to consider. The Panel will decide if the identified witnesses are relevant to the hearing, and if so, they will consider their evidence.

(c) **Disciplinary Hearing** where allegations sit within our regulations **relating to racism and equalities**: The Conservatoire takes a zero-tolerance approach to racism. In cases where the allegations relate to racism, and in accordance with the Conservatoire's Anti-Racism Action Plan, the Hearing will include a member of staff who identifies as a person of colour. Whether this person attends to assist a Director in a Serious Misconduct Hearing, they will not make any decisions about the outcome of the case. Rather, the Director may consult them to ensure that the decisions that are reached are considered fair and appropriate in all of the circumstances. In a Gross Misconduct Panel Hearing, this person may attend either as a Panel member (if this is appropriate), or as an additional person with whom the Panel may consult as outlined above.

(d) **Disciplinary Hearing** where the Complainant or Respondent are **under 18,** or where the allegations relate to child protection issues: The Conservatoire is legally required to take all reasonable steps to protect

children from harm or abuse. In accordance with the Conservatoire's Child Protection Policy, all concerns relating to child protection must be referred to a Designated Child Protection Contact. In these circumstances, it is appropriate for the Hearing to include a Child Protection Officer (CPO). Where a CPO attends to assist a Director in a Serious Misconduct Heather, they will not make any decisions about the outcome of the case. Rather, the Director may consult them to ensure that the decisions that a reached are considered fair and appropriate in all of the circumstances. In a Gross Misconduct Panel Hearing, the CPO may attend either as a Panel member (if this is appropriate), or as an additional person with whom the Panel may consult as outlined above.

Disciplinary outcome: sanctions

3.71 If, following a disciplinary procedure, it is found that a student has committed serious or gross misconduct, the RCS has a range of sanctions (penalties) it can apply.

3.72 The penalty to be imposed will be that which is fair and reasonable in all the circumstances.

3.73 The disciplinary panel will consider the following in assessing the type and level of sanction:

3.73.1 The seriousness and nature of the breach;

3.73.2 Whether or not there is a pattern of misconduct evidenced by previous misconduct procedures;

3.73.3 The harm or damage caused;

3.73.4 The advantage gained or the advantage that could have been gained by the Respondent as a result of the breach;

3.73.5 The intent and planning involved in the breach;

3.73.6 The impact on the ensemble pedagogy/community at RCS;

3.73.7 The reputational impact on RCS

3.73.8 Whether the Respondent has admitted to the breach and when such an admission took place;

3.73.9 Whether the Respondent has expressed remorse and/or shown insight into the impact of the breach;

3.73.10 The evidenced personal circumstances of the Respondent.

3.74 The Conservatoire reserves the right to omit any stage if it considers that is appropriate to the individual circumstances.

Sanctions

3.75 The following is a non-exhaustive list of these sanctions:

- A reprimand as an oral or written warning advising the student of the likely consequence of a further breach of conduct;
- Disqualification from undertaking exams;

- Repetition of a course;
- Making good any damage caused by the student or making payment to the Conservatoire in order to meet the cost of repairing any such damage;
- Conditions of continuity of study – e.g. attendance at a required programme of activity or community service on campus;
- No contact orders or other restrictions on access to the RCS estates
- Withholding the student's parchment;
- Suspension with conditions;
- Suspension without conditions
- Expulsion.

3.76 Summary of the different types of procedure is visualised below:

Level of disciplinary activity	Investigation	Composition of Hearing, if necessary	Indicative (non-exhaustive list) sanctions
Minor misconduct	Investigation (if necessary) by Programme Leader/ Head of Dept student is in.	Programme Leader/ Head of Dept student is in	• Oral warning • Written warning • Written apology • Engagement in personal/professional development
Serious misconduct (When serious misconduct accumulates because of subsequent incidents, it is likely to move into gross misconduct)	Investigation by Student Community Conduct Officer.	Director of School student is in and note taker Director can nominate Head of Department or Programme Leader to act for them.	• Oral warning • Written warning • Written apology • Engagement in personal/professional development • Disqualification from exams • Paying for material damage; • Relevant additional conditions of remaining in study • Limitations to assess to RCS property • Suspension • Expulsion
Gross misconduct (professional standards) Gross misconduct (which might also constitute a criminal offence): Normally applied in conjunction with SARD	Investigation by Student Community Conduct Officer.	**Alternative Disciplinary Panel** • Director of School the student is in • Director from another area with no previous involvement in the relevant School • Head of Dept/Programme from the School student is not in • Note taker	

Student Misconduct when raised through RCS complaints handling procedure

3.77 Where allegations of student misconduct are raised as a complaint under the Complaints Handling Procedure, the Complainant will be advised that their complaint has been diverted into the Student Disciplinary Procedure (H3). This is because the

procedures and timelines outlined here are designed to handle the complexities of such allegations.

3.78 While both procedures follow a similar process (i.e. a concern is raised, an informal resolution or investigation is caried out, and an outcome is provided), the H3 and CHP comparison chart below identifies some key areas of difference between the two procedures.

3.79 For further details of the RCS complaints handling procedure, please see section I.