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1. PURPOSE & SCOPE

This policy and procedure apply to all ABDO College students. As members of the ABDO community, students are expected to adhere to the regulations, procedures and policies of the College, to show respect for people and for the property of the ABDO community, and to behave in a way that does not interfere with the proper functioning or activities of the College. Where there is reason to believe that the behaviour of a student falls below the expected standards set out in the guidance, the *Non-Academic Misconduct Procedure* will be followed.

This policy and procedure outline how the College will respond to concerns about **non- academic conduct**. This policy and procedure extends to alleged misconduct by a student occurring on College premises or off College premises (including via electronic means, such as email and social media) where the alleged victim is the College itself, a member of the College community, or a visitor to the College, or to alleged misconduct occurring during College activities.

The policy has been developed with regard to equal opportunities legislation, which ensures that the rights of students are protected, and judgements are free from prejudice on the basis of protected characteristics. If a student states the behaviour giving rise to the disciplinary concern is related to their disability, the College may consider carefully whether to proceed with disciplinary action under these regulations, or to refer the student to support under other regulations, policies and procedures.

The College uses the term student to cover all learners, including apprentices.

2. POLICY

1 Introduction

1.1 Where any relevant stakeholder believes that non-academic misconduct may have been committed by a student of the College, they should notify the **Head of Operations** in writing as soon as possible.

1.2 All references to misconduct in this policy refer to *non-academic* misconduct (unless otherwise stated). Guidelines on what constitutes misconduct are given in appendix I.

2. Investigating an allegation of misconduct

2.1 All allegations of misconduct will be investigated in accordance with this policy and using the corresponding misconduct procedures.

2.2 There will be a presumption of innocence until a case has been fully considered.

2.3 The College may take safeguarding steps to ensure the fairness of an investigation, and to ensure the safety of all members of the College community.

2.4 Proceedings are not invalidated or postponed due to the absence of the student or the student's failure to respond, provided that the student has been given timely written notice of the relevant misconduct meeting, deadline or Misconduct Committee Hearing date. In the event of a Misconduct Committee, those conducting the Committee must also be satisfied that all the evidence and representations are before it. In the event that a student has indicated they will attend but then cannot do so for good reason, an adjournment may be considered.

3. Preliminary Enquiry Stage

3.1 On receipt of an allegation of misconduct, the Head of Operations (or their nominee) will conduct a preliminary enquiry. It may be deemed necessary to conduct an interview with the student(s) against whom the allegation has been made and the student (s) will be required to attend. Students are expected to engage with the process with honesty and transparency, however, a student will not be obliged to make a statement or give any explanation.

3.2 Students may provide the names of witnesses to be contacted in their defence or mitigation. The Head of Operations/nominee will be responsible for contacting witnesses for statements or interview.

3.3 On completion of the preliminary enquiry, the Head of Operations/nominee will determine, normally within 10 working days, whether:

- a. there is insufficient evidence to form the basis of a charge of misconduct; or
- b. there is sufficient evidence to form the basis of a charge of misconduct that can be resolved at the preliminary enquiry stage; or
- c. there is sufficient evidence to form the basis of a charge of major misconduct.

3.4. The College defines **major misconduct** as an offence which is sufficiently serious enough that it calls into question the student's registration. Instances of major misconduct may include, but are not limited to, repeated or persistent minor offences, multiple concurrent minor offences or refusal to comply with a penalty imposed under this regulation.

3.5. In all cases where the gravity of the offence appears to warrant it, or the appropriate penalty may be beyond the limit for a minor offence, the Head of Operations may refer a case to a Misconduct Committee.

3.6. If the Head of Operations/nominee determines there is insufficient evidence to form the basis of a charge of misconduct, that decision will be sent to the student.

3.7. If the Head of Operations/nominee determines that there is sufficient evidence to form the basis of a charge of misconduct which constitutes a minor infringement, and this can be resolved at the preliminary stage, the Head of Operations/nominee may, at their discretion, issue a one or more of the following penalties:

- A warning.
- Payment of compensation for damages.
- Conditions for the continuation of student status.
- A no-contact order regarding one or more members of the College community.
- Exclusion for a stated period from specified activities or specified parts of the College; conditions for re-admittance may be specified.

3.8. The student can contest the allegations and penalty within **5 working days**, in which case the Head of Operations/nominee will refer the matter to a Misconduct Committee.

3.9. If a student accepts the outcome as outline in 3.7, the outcome is followed through and a record of this placed on the student file.

3.10. If the Head of Operations/nominee determines that there is sufficient evidence to form the basis of a charge of misconduct which constitutes a major infringement, the matter will be referred directly to a Misconduct Committee.

3.11. Where an allegation of misconduct is referred to a Misconduct Committee, the Head of Operations/nominee will act as the College Representative to present the case to the Misconduct Committee.

Misconduct which is also a criminal offence

3.12 Current students should inform the College of any breaches of the law during their programme of study which fall within the category of those required to be disclosed at admission. Where a specific breach of the law would render the student ineligible for continuing on their programme of study, the student's registration will be terminated without notice.

3.13. Where an incident has resulted in Police involvement, the Head of Operations/nominee must carefully review the case before setting College procedures in motion. If a student has been arrested or is charged with a crime, the Head of Operations/nominee must ensure College procedures do not prejudice the case in any way,

4. Misconduct Committee Stage

4.1. If the incident is referred to **Misconduct Committee**, and that Committee decides that the charge was **not** established, that decision will be communicated to all persons involved in the case, normally within **5 working days** of the date of the Committee.

4.2. Where the Misconduct Committee determines that a charge of misconduct has been substantiated on the balance of probabilities, the Committee may decide one or more of the following measures:

- A warning.
- Payment of compensation for damages.
- Conditions for the continuation of student status.

- No-contact order regarding one or more members of the College community.
- Exclusion for a stated period from specified activities or specified parts of the College.
- Suspension* for an indefinite period, with an agreed review date.
- Expulsion.
- Referral to the GOC for Fitness to Train Procedures.

*Exclusion is selective restriction on attendance at, or access to, the College and on participation in College activities. Suspension is a total prohibition on attendance at, or access to, the College and on participation in College activities. It may be subject to conditions, such as permission to attend an examination.

4.3. The decision and outcome of the Committee will normally be sent to the student **within 5 working days** of the date of the decision of the Committee. Outcomes will be communicated to the student and other College officers as appropriate. A copy of the decision and outcome will be placed on the student's file. A student will also be advised that the case may be taken into consideration in the event of a future substantiated offence.

4.4. The Misconduct Committee may decide that the outcome be imposed immediately or be deferred. The conditions of any such deferment will be clearly stated as part of the decision of the Committee.

4.5. The Misconduct Committee will have the discretion to indicate a point in the future, and the conditions under which, a substantiated allegation of misconduct may be considered spent.

4.6. Where a student has been found guilty of misconduct, the College may inform the student's supervisor and may report the student to the GOC under the Fitness to Practise Policy and Procedure.

5. Appeal

5.1. Students may appeal the decision of a Misconduct Panel on either or both of the following grounds:

- There is new evidence that could not have been, or for good reason was not, made available at the time of the Committee, and the case warrants further consideration.
- Evidence can be produced of significant procedural error on the part of the College before or during the Committee, and the case warrants further consideration.

5.2 The Principal will have the discretion to take into account grounds (including grounds of compassion) other than those stated above in deciding whether to allow an appeal to be heard.

5.3 Students should submit a Misconduct Appeal request to the Head of Operations **within 10 working days** of the date of the Misconduct Committee outcome. Misconduct Appeals received after this deadline will only be accepted at the discretion of the Principal (or their nominee).

5.4 The Principal (or their nominee) will normally advise the student of their decision on the appeal within **30 working days of receipt**. If the appeal is to be heard, an Appeal Committee will be appointed. If the appeal is rejected, reasons will be given.

5.5 It should be noted that a student, who has reported another student under the College Complaints Policy, has no right of appeal to the outcome of another student's outcome under this process.

6. Appeal Outcomes

6.1. The decision and outcome of an Appeal Committee will normally be sent to the student **within 5 working days** of the date of the decision of the Appeal Committee. Outcomes will be communicated to the student and relevant College officers. A copy of the decision and outcome will be placed on the student's file.

6.2. The Appeal Committee may reject or uphold the appeal. Where the Appeal Committee upholds the appeal, the Committee may order one or more of the following measures:

- Modify or reverse the findings of a Misconduct Committee.
- Modify or reverse the order of a Misconduct Committee.

6.3. Where an Appeal Committee rejects the appeal, the findings and decision of the Misconduct Committee stands.

6.4. A decision of an Appeal Committee will be final.

7. Disclosure of information

7.1. All staff members are governed by the requirements of GDPR. All data relating to an individual's physical or mental health is regarded as sensitive personal data.

8. Non-Academic Misconduct Procedure

Representation at Committees and Preliminary Enquiry Meetings

1. A student facing a charge of misconduct may be accompanied at any point in the proceedings by another College member.
2. Additionally, the student may be accompanied by a family member or a friend who will **not** be able to speak on the student's behalf, unless this is a reasonable adjustment, such as a sign language communicator.
3. If the student is to be represented or accompanied, the name of the person attending must be received in writing by the Head of Operations at least 7 days in advance of the Committee. The Chair of the relevant Committee has the discretion to refuse to permit a representative or friend or family member attend with reasonable cause. Committee documentation may be shared with approved representatives.
4. A legal representative will not normally be permitted to attend a Preliminary Enquiry meeting. It is expected that all parties involved in a misconduct investigation will act reasonably and fairly and treat the process in a respectful manner. If inappropriate behaviour is displayed, further action may be taken.

Misconduct Committee Procedure

5. Written notice of the Committee date, including the names of the Committee members, together with all documentary evidence, including copies of witness statements, will normally be sent to the student at least **10 working days** before the Committee date.
6. The student may present documentary material or witnesses in their defence or mitigation. Documentary evidence for consideration by the Misconduct Committee, and/or the names of any additional witnesses and written copies of their evidence, must be sent to the Head of Operations **at least 5 working days** in advance of the Committee. The Head of Operations will ensure this evidence is sent to the Committee, and will contact any witnesses directly. Documentary evidence and/or witnesses received after this deadline will only be accepted at the discretion of the Chair of the Committee.
7. The Chair has the discretion to adjourn the Committee where the above timeframes have not been met. The Chair will determine whether additional witnesses should be invited to attend the Misconduct Committee, or where written evidence shall suffice. Where a witness is required to attend the Committee, it is the student's responsibility to invite the witnesses they wish to attend, to ensure that witnesses can attend. Committee documentation may only be shared with witnesses with prior written approval from the Head of Operations. The Committee will **not** normally be adjourned due to the unavailability of a witness, and any decision to adjourn is the sole discretion of the Chair.
8. The student facing the charge will have the right to be present during the Committee except if the Committee requires private discussions where only the Committee will be present.
9. The Committee may ask questions of all those called before it, and the College Representative and the student may raise questions through the Chair.
10. At the conclusion of the presentations and questions, the student facing the allegation may address the Committee and make a statement.
11. The Committee will deliberate in private and will normally reach a decision and outcome without adjournment.
12. At any time during the proceedings, the Chair may adjourn the Committee for the purpose of reaching a decision, outcome, or for other good cause. The Committee will ensure that any adjournment does not unreasonably delay the misconduct proceedings.
13. A decision of the Committee will be reached by a majority vote of the members of the Committee present at the Committee but will be announced as a decision of the Committee. The votes of the individual Committee members will be treated as confidential. In the event of a tie, the Chair will have the casting vote.

Appeal Committee Procedure

14. Written notice of the Committee date will normally be sent to the student and College Representative, together with the names of the Committee members and all documentary evidence, **at least 10 working days** before the Committee date.
15. The student may present documentary evidence for consideration by the Committee. This evidence must be sent to the Head of Operations **at least 5**

working days in advance of the Committee. This evidence will be sent to the Committee by the Head of Operations.

16. The student facing the charge will have the right to be present during the Committee except if the Committee requires private discussions. Only the Committee will be entitled to be present at such times.

17. The student making the appeal, or their representative, will present their case against the decision or outcome of the Misconduct Committee. The College Representative may also be present at the Appeal Committee and will have the right to respond to the appeal.

18. An Appeal Committee will consider the relevant documents and may call persons connected with the proceedings from which the appeal arises to address the Committee.

19. An Appeal Committee will normally reach its decision without adjournment but may adjourn for the purpose of reaching a decision. The Committee will ensure that any adjournment does not unreasonably delay the misconduct proceedings.

20. The decision of an Appeal Committee will be reached by a majority vote of the members of the Committee and will be announced as the decision of the Committee. The votes of individual Committee members will be treated as confidential. In the event of a tie, the Chair will have the casting vote.

9. General Optical Council (GOC) Fitness to Train Referrals

The [*Standards of Practice for Optical Students*](#) sets out the minimum standards of behaviour and performance that is expected of registered students to remain on the GOC register. A breach of these standards may give rise to concerns about a student's fitness to train. More information can be found by following the link.

A student's *Fitness to Train* is called into question when their misconduct raises a serious or persistent cause for concern about their ability to continue to study an approved qualification.

The College, as per GOC guidance, will consider the following questions on a case-by-case basis when considering whether a student's conduct has crossed the fitness to train threshold:

- a. Has the student's behaviour deviated from the expectations set out in the *Standards for Optical Students*?
- b. Has the student's behaviour harmed patients or put patients at risk?
- c. Has the student shown a deliberate or reckless disregard for professional or clinical responsibilities towards patients, tutors/coaches, other students, or colleagues?
- d. Has the student behaved dishonestly or in a way designed to mislead others?
- e. Could the student's conduct or behaviour undermine public confidence in the sector more generally if the provider did not act?
- f. Is the student's health or activity and participation limitations compromising the safety of patients, tutors/coaches, other students, or themselves?

The College will consider these specific grounds and questions, and consult the [*GOC's Acceptance Criteria*](#) protocol, including the non-exhaustive list of allegations which are unlikely to result in a formal investigation. This list includes 'concerns that

would have been appropriately addressed at a local level and regulatory intervention would be disproportionate’.

The *Opticians Act 1989 Section 13D* also provides the specific grounds upon which the fitness to undertake training of student registrant can be impaired:

- a. Misconduct,
- b. A conviction or caution in the British Isles for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales would constitute a criminal offence,
- c. The registrant having accepted a conditional offer under s302 Criminal Procedure (Scotland) Act 1992 or agreed to a penalty under s115A of the Social Security Administration Act 1992,
- d. The registrant, in proceedings in Scotland for an offence having been the subject of an order s246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him [sic] absolutely,
- e. Adverse physical or mental health, or,
- f. A determination by a body in the United Kingdom responsible for the regulation of Health and Social Care profession to the effect that his [sic] fitness to practice as a member of that profession is impaired.

The GOC’s ‘triage’ function will be utilised for all Fitness to Train referrals.

The Standards for Optical Students do not expressly require a student to refer themselves to the GOC for any Fitness to Train concern outside of the annual registration /renewal period. However, this should be considered in line with the expectations in respect of standards of behaviour and performance, and the duty of candour which requires students to be ‘open and honest...with relevant organisations’.

Appendix I: Examples of Misconduct

General Misconduct: persistent misconduct where a student repeatedly fails to respond to a reasonable informal request.

Examples of behaviour (non-exhaustive) include:

- Persistent disruption of own/others' learning.
- Persistent breaches of health and safety requirements.
- Smoking/vaping outside of designated areas.
- Use of foul language.
- Littering.
- Spitting.
- Persistent (and unexplained) absence or lateness.

Serious Misconduct: with the clear and deliberate intention to cause upset or disruption to others.

Examples of behaviour (non-exhaustive) include:

- Abusive and offensive language towards other staff, students or visitors.
- Threats of physical violence towards others.
- Deliberate disruption of own/others' learning.
- Intentional breach of health and safety requirements.
- Deliberate damage of College property.
- Misuse of College ICT systems.
- Failure to adhere to any conditions set in a preliminary enquiry.

Gross Misconduct: actions which clearly harm the student or others or put the student/others at risk of harm or loss. This includes deliberate breaches of our EDI policies.

Examples of behaviour (non-exhaustive) include:

- Physical assault.
- Sexual harassment.
- Discriminatory behaviour and language.
- Bullying.
- Acting in an intimidating and hostile manner.
- Repeatedly following another person without good reason.
- Significant damage to property.
- Criminal offences, including the use or possession of controlled drugs.