

# MANUAL ON THE CODE OF STUDENT BEHAVIOUR

(Issued by the College Council pursuant to section 1.3 of the Code)

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### NOTES:

1. In this Manual references to “student” are (unless the context indicates otherwise) to the person who is the subject of a complaint, investigation or charge, is answering a charge before the Student Behaviour Panel or is appealing to an appeal panel.
2. References in this Manual in square brackets are to the relevant section of the Code of Student Behaviour.

## 1. Introduction

Every higher education institution has rules governing the behaviour of its students. These rules typically define the conduct that is prohibited, set out procedures for determining whether there has been misbehaviour and provide for penalties. Students accept these rules on entering the institution.

In the case of Christ's College, the College Statutes require the Governing Body to make an Ordinance governing the behaviour of students. The Ordinance which has been made is called the Code of Student Behaviour. It may be found on the College website: <https://www.christs.cam.ac.uk/>. (Other relevant Ordinances govern academic behaviour, health, safety and welfare, and clubs and societies.)

The Ordinance must, under the Statute, ensure that the College acts impartially and fairly in considering complaints of misconduct. Statute F.IV may be found on the College website. It should be noted, however, that, despite some similarities, the College's internal, domestic disciplinary arrangements are not a replica of, or alternative to, the criminal justice system. To this end, the terminology of the criminal law and procedure are for the most part avoided ("defendant", "trial", "guilty" and "not guilty", "convicted" and "acquitted" and "sentence"); the rules at hearings are different; and serious criminal offences are excluded from the scope of the Code. All this is explained more fully below. The non-criminal terminology adopted in the Code includes "hearing", "responsible" and "not responsible" and "penalty". The disciplinary process does, though, adhere to contemporary standards of due process and human rights – in other words, the duty to act fairly.

The purpose of the Code of Student Behaviour is to promote appropriate behaviour by students of the College and thereby ensure the proper functioning of the College and the work of its members and staff. The College is a residential community of scholars and it could not function properly without such a framework of rules. As the Code puts it: "A student, on being admitted a member of the College, assumes the obligation to behave at all times in ways that are consistent with the College as a place of education, religion, learning and research and to do nothing to impede or disrupt the work or life of the College, its members and staff" [section 1.4].

More particularly, students are "expected to uphold the principles of academic freedom and freedom of speech within the law, to observe the Statutes, Ordinances, regulations and rules of the College and University, to study diligently, to behave with civility and integrity and in ways that maintain the good name and reputation of the College and conduce to the work and life of the College as a community of scholars" [section 1.5].

## 2. To whom does the Code apply? [section 1]

The Code governs the behaviour of students of the College, defined (for this purpose) in the Statute as any member of the College, other than a Fellow, whose name appears in the College's Matriculation Register and who is following a course of study for a degree or other award of the University. (The Governing Body may designate other persons or categories as students if it wishes.)

It is thus only students who may be subject to a complaint of misconduct and dealt with under the Code, but complaints may be brought by anyone, whether attached to the College or not.

Where a person, although following a degree course and therefore a “student”, has some other relationship with the College – such as an employee or supervisor – it may be more appropriate for any complaint to be handled under a different procedure, particularly if the alleged misconduct does not relate to that person’s role as a student; that decision will be taken by the Dean.

### **3. What is the purpose and status of this Manual? [section 1]**

Although the Code has been drafted in as clear and simple a way as possible, it is a legal document that, in striving for certainty and precision, may not always be readily accessible and understandable by the reader. It also contains some technical legal terms that are better explained outside the Code itself. Consequently, the Code requires the College Council to issue a Manual “in straightforward, non-technical language for the information of students, complainants and others” [section 1.3]. The Manual is, however, quite a lengthy document. This is because it aims to assist the Dean, panels and all those subject to or using the Code by clarifying and explaining the language in the Code with a view to eliminating uncertainties, avoiding procedural and technical arguments before panels and promoting consistency of interpretation and application.

The Manual does not replace the Code, whose language alone must be authoritative, but it is designed to explain not only the language used in the Code but in some instances the thinking and policy lying behind the drafting. To this end, it is stated that “regard shall be had to the Manual in interpreting the Code” [section 1.3] and so it will also be used as an important aid by the Master, the Dean and panels in exercising their various powers and duties under the Code.

No attempt is made here to summarise or explain every provision in the Code, and anyone involved in proceedings under the Code is strongly advised to refer to the Code itself.

The Manual is also required to set out the normal order of proceedings at hearings before the Student Behaviour Panel and this will be found in Annex 2.

### **4. Striking a balance: the duty to act fairly [section 1]**

As with any disciplinary code, it is important to strike the right balance between the different parties. The College owes a duty of care to all its students. Those making complaints and those subject to complaints have rights. No student may be presumed responsible for misconduct until that has been formally established. The Code seeks to strike that balance and those charged with applying the Code in particular cases will be mindful of the rights of the various parties.

For the Code to work effectively and justly, it is important for students to co-operate fully in investigations and proceedings.

## **5. The Dean [section 8]**

The office of Dean is established by the College Statutes and its principal role is described in an Ordinance as discharging the functions assigned under the Code of Student Behaviour and other relevant Ordinances together with such other functions and duties relating to the conduct of students, clubs and societies and cognate matters as may be assigned. The Dean is a Fellow of the College and is not to be confused with the office of Dean in some other colleges – sometimes styled Dean of Chapel –who is normally a clergyman with religious and pastoral responsibilities. The College may also appoint a Deputy Dean to act where the Dean is unable to do so. One of the Dean’s specific responsibilities is to keep a complainant informed of the complaint’s progress and its outcome.

If the Dean is unavailable to act, or decides to stand down in a particular case owing to a conflict of interest or, for example, on account of one of the grounds listed in section 13.7 of the Code (relating to disqualification for Panel members), the Deputy Dean (if appointed and available) will take over or the Master will appoint someone else to deal with the matter.

## **6. Brief overview of the Code**

The Code is quite a lengthy document. It is divided into 18 “sections”, with each section made up of a number of sub-sections or paragraphs. The following very brief overview will help navigate both the Code and this Manual.

After defining misconduct [section 2], it then deals with making and receiving complaints [section 3] and their investigation or dismissal [section 4]. The next section [5] covers the interim and precautionary steps that may be taken in the more serious cases while a complaint is investigated or working through the system. The next stage is what happens if the investigation leads to the conclusion that the student should face proceedings for misconduct and whether that should be under the relatively simple “summary” procedure or, in more serious cases, under the non-summary procedure [section 6]. There is an even simpler procedure for breach of Regulations [9]. Sections 7 and 8 deal with various technical matters about evidence and proof [7] and further duties of the Dean [8].

The next three sections describe the summary jurisdiction for those offences suitable for the lesser penalties provided for such cases: the hearing [10], the penalties [11] and appeals [12]; and sections 14-16 provide the parallel provisions for the more serious cases that are not suitable for the summary procedure. Section 13 sets out the composition of the panels of Fellows that hear cases and appeals.

The penultimate section [17] deals with the interface between the Code and criminal or University proceedings in respect of the same matter and the final section [18] defines those cases of misconduct that are excluded from action by the College under the Code because of their seriousness, difficulty or complexity.

## 7. Summary of the process

This section of the Manual gives a short description, in bullet point form, of the disciplinary process from complaint to appeal. It should make what follows in this Manual easier to follow and understand. A flow chart representing the same thing in diagrammatic form is contained in Annex 1.

- The Dean receives a complaint or otherwise.
- The Dean decides whether to investigate.
- The Dean conducts investigation.
- The Dean may conclude that the student should face proceedings or that no further action should be taken.
- A breach of Regulations will normally be dealt with under the simple procedure set out in section 9 of the Code.
- In all other cases where the student is to face proceedings, the Dean will decide whether it is a matter suitable for summary jurisdiction or a more serious matter that should be referred to the Student Behaviour Panel (“SBP”).
- The alleged misconduct will be summary if the Dean is of the opinion that the penalties available on being found responsible are adequate. If more severe penalties may be called for, it is a non-summary matter and will go to the SBP.
- A summary matter will normally be dealt with by the Dean, but the student may require it to be referred to the SBP.
- If found responsible for misconduct by the Dean or the SBP, the student may appeal to the Student Behaviour Appeal Panel (“SBAP”).
- There is no further right of appeal, but a student who is dissatisfied may submit a complaint on certain grounds to the Office of the Independent Adjudicator for Higher Education (see para. 24 below).

## 8. Definition of misconduct [section 2]

The Code aims to identify that misbehaviour by students which requires or justifies intervention or action by the College. Some offences therefore have a geographical limitation. Others constitute misconduct only where they have certain defined consequences. There are 21 offences listed in section 2.1 that constitute misconduct. The full list is not reproduced here, but a few points are worth making:

- With regard to the offence of “Improper discrimination”, “discrimination” refers to the so-called protected characteristics listed in section 4 of the Equality Act 2010, namely, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Each of these is further defined in sections 5-12 of the Act. “Discrimination” is treating someone less favourably than another person without that characteristic would be treated in those circumstances.
- Conduct that amounts to a criminal offence (in English law) is also misconduct but only if at least one of the conditions listed in section 2.1(k) is satisfied; and this is also subject to the exclusion of certain serious criminal offences which are

excluded from the operation of the Code by section 18 (as explained below in para. 26).

- Three types of misconduct punishable under the Code are set out in another Ordinance on the Regulation of Clubs and Societies: see the Guide to that Ordinance.
- Breach of College Regulations (made by the Council) will usually be handled under section 9 of the Code (see para. 15 below).

It is important to note that it is explicitly provided (in section 2.3) that self-administered alcohol and non-prescribed drugs afford neither a defence to misconduct nor any basis for mitigation of penalty.

Terms used in the description or definition of misconduct have their ordinary or dictionary meaning and not any technical meaning they may have in law.

## **9. Complaints [section 3]**

Any person may make a complaint to the Dean alleging misconduct by a student or students of the College. The complainant may, for example, be another student, a Fellow or member of staff (such as a porter), a student of another College, a member of staff or teaching officer of the University, or a member of the public. The only formal requirement for a complaint to be valid is that it must contain the name and contact details of the complainant.

The complainant will often be the victim or subject of the alleged misconduct, but that is not a requirement.

Where possible, the complaint should name the student or students said to be responsible, but there will be instances where the complainant does not know their identity beyond believing them to be students of the College.

## **10. Investigation [section 4]**

Once in possession of a complaint, the Dean will decide whether to investigate. (In rare cases the Dean may decide to investigate an event or incident without having received a complaint. The College or the Dean may, for example, learn orally or from a newspaper report of an incident or event which in the Dean's view merits immediate investigation, perhaps in advance of receipt of a complaint or even if no complaint is ever received.) An investigation will normally be instigated, but not if the Dean takes the view that the complaint is "frivolous, manifestly ill-founded or vexatious" or amounts to an "excluded offence" (explained in para. 26 below). A complaint will be manifestly ill-founded if, for example, the allegation does not constitute an offence under the Code; and it will be vexatious if the complainant has made substantially the same complaint (i.e. based on the same facts or incident) in the past. In these circumstances, the complaint will be dismissed.

A complaint will likewise be dismissed if the Dean commences an investigation but at any time comes to the conclusion that it is frivolous, ill-founded or vexatious.

If the matter complained of is subject to a police or University investigation, any investigation by the Dean will normally be deferred. If the police or University take no action, the Dean will resume consideration.

The first step in an investigation by the Dean will normally be an interview with the complainant. If the Dean suspects that a non-summary offence has been committed, the student will normally be allowed assistance as described in para. 21 below.

There may be cases where the Dean is of the view that resolution of the matter lies in a settlement – that is, agreement - between the complainant and the student if that can be accomplished. In other cases of a minor nature –“minor” is not defined but it is not to be taken as synonymous with “summary” – the Dean may deal with the matter informally by way of warning or advice; and may, if the student agrees, include some kind of community service to the College to make amends for the misconduct. Any such service must be constructive and in no way humiliating or embarrassing.

At the conclusion of an investigation, the Dean may decide to dismiss the complaint on any of the grounds mentioned above, or because there is insufficient evidence, or because “further action under the Code is in the circumstances unnecessary or inappropriate”. This last ground clearly confers a broad discretion on the Dean, but is subject to review as explained below. In all cases, the Dean must give the reasons for the decision reached.

The Dean may refer the matter for action under the Ordinance on health and welfare instead of proceeding under the Code if satisfied that there are medical reasons for doing so.

In any case where a complaint has been dismissed or disposed of informally, the complainant may, within 14 days of being informed, request a review by the Master – which the Master may deal with personally or refer to a panel of Fellows - on the ground that the Dean’s decision was not reasonable, i.e. that it was a decision that, judged objectively, no reasonable decision-maker would have reached. Thus, a decision can be set aside only if “unreasonable”: it is not enough that the Master or Panel would have come to a different decision if they had been in the position of the Dean. If the decision is set aside, the investigation will proceed.

A student must be given an opportunity to make representations to the Dean before being charged (explained below) with an offence.

#### **11. Misconduct by students of the College who cannot be identified**

Cases may arise where there is sufficient evidence to conclude that misconduct took place and that students of the College were responsible for it, but it is not possible to identify the actual culprits. Although the individual or individuals cannot be punished, the College may nevertheless wish to acknowledge formally and publicly that misconduct by its students has occurred and express its disapproval, abhorrence or condemnation. The Code provides for this in several situations:

- Where the Dean concludes that misconduct has taken place for which a student or students of the College are responsible but those responsible cannot be identified and charged, a reasoned report will be submitted to the Master who may issue a formal announcement of the Dean's finding [section 4.15].
- Where a charge is dismissed by a Panel, the Panel may if it is appropriate to do so declare that misconduct by an unidentified student or students did take place [section 7.7].
- If the Panel declines to make such a declaration, the Dean may ask the Appeal Panel to make the declaration [section 16.8(b)].
- The Student Behaviour Appeal Panel may also make such declarations on appeals in both summary and non-summary cases where the finding of responsibility is quashed [sections 12.5(c) and 16.8(b)].

If the misbehaviour in question was connected to an event of a College club or society, action may also be taken against the club or society and its officers and members under the Ordinance regulating clubs and societies.

## 12. Interim precautionary measures [section 5]

There may be cases where, despite the presumption of innocence, some action has to be taken in respect of a student once a complaint has been made or where the student is being investigated by the police or the University or is the subject of criminal or University disciplinary proceedings. The available measures are described below. Any representations made by the complainant or the person claiming to be the victim must be considered.

The purpose of any measures applied in this context must not be punitive and every effort must be made to minimise any prejudice to the student. They may be applied only to the extent that is necessary for the purposes of good order and discipline or to protect the health, safety or welfare of members and staff of the College and must be reasonable and proportionate.

Examples of where such measures might be indicated would be where it is alleged that the complainant has been the victim of violence or threats or harassment and is fearful or anxious about coming into contact with the student.

It is for the Dean to decide whether any interim measures are called for. The student will be given the opportunity to make representations to the Dean – written or oral, as the student prefers – before any measures are applied, unless the matter is urgent, in which case the opportunity must be given as soon as possible thereafter. The Dean must review the situation in the event of any relevant developments.

The measures available are *exclusion* and *restrictions and conditions*:

- *Exclusion* allows the student to be excluded from such College property, premises, facilities or activities and on such terms and conditions as the Dean prescribes.
- *Restrictions and conditions* may be imposed on the student's actions and activities and must be clearly specified.



A student who has been excluded may apply within 7 days to have the exclusion reviewed by a panel of Fellows and then every 3 months, and may submit written representations.

Interim measures lapse automatically 14 days after the conclusion of the relevant proceedings or investigation if not already cancelled.

### **13. Charge [section 6]**

Where the Dean concludes that the student should face disciplinary proceedings, the student will be “charged”. The “charge” is the written statement setting out the alleged misconduct with brief particulars of the alleged behaviour.

It will also state whether it is a summary offence or a non-summary offence. It is a summary offence if the Dean is of the opinion that the penalties listed in section 11 of the Code would be adequate if the student is found responsible; it is non-summary if the section 11 penalties are not adequate and those in section 15 may be required. The difference between summary and non-summary jurisdiction is explained below.

The Dean will provide to the student charged the evidence that will be presented at the hearing; relevant evidence collected during the investigation that is not being presented will also be provided. The student then has 3 days in which to inform the Dean whether responsibility is accepted and whether the Dean’s jurisdiction is accepted. If no reply is received, the Dean will assume that both are accepted.

The student must provide to the Dean at least 5 days before the hearing - or, if not available then, as soon as it is available – any written or other material which the student wishes to introduce at the hearing and the names of any witnesses.

A student charged with offence X may, at the hearing or on appeal, be found responsible for offence Y, but only if all the elements of Y are contained in X. In other words, a student cannot be found responsible for an offence unless all its constituents featured in the offence originally charged. For example, a student charged under section 2.1(h) with intentional damage to property might be found responsible for misuse under section 2.1(i) [sections 7.6, 12.5(b) and 16.2(b)].

### **14. Evidence and proof [section 7]**

Hearings under the Code are not court proceedings. In courts, complex, technical rules govern the evidence that may be put before the court for its consideration. These are called the rules (or law) of evidence. The best known is the rule that excludes hearsay evidence. Hearsay is where, for example, a witness A says B told me that she saw C enter the house. That evidence should obviously be given by B herself so that it can be tested and verified. Hearsay has its dangers, though it is not always excluded even in courts and there are exceptions to the hearsay rule. At its worst or weakest, hearsay may be no better than mere gossip or rumour and will be disregarded.

The strict, formal rules of evidence are not normally applied even in tribunals, which are part of the justice system, or in professional or other domestic or disciplinary contexts.

Accordingly, the Code provides that the English law of evidence does not apply, but that does not mean that all evidence is of equal value or weight.

It will be for the Dean or Panel hearing the case to use common sense and sound judgment in appraising and assessing the quality of any evidence advanced and in determining the weight to be given to it. In some instances, the conclusion will be that the prejudice caused to the student compared to its probative value is such that it should be entirely disregarded. In other instances, the evidence will be accorded minimal weight. In other words, in place of possibly complex and lengthy technical arguments about whether any particular evidence, written or oral, is admissible, attention can be focussed on its quality: what weight, if any, should be attached to it. In practice, this means deciding on its relevance, significance and reliability.

It will be for those deciding a case to assess whether, for example, a witness is telling the truth, or has perhaps misremembered something or is otherwise mistaken. Identification evidence, for example, is notoriously unreliable and must be treated with caution, but it may in a particular case be found compelling. The test to be applied is the balance of probabilities, as explained below. Hearsay, referred to above, may be utterly worthless as evidence or it may lend support to other evidence and be helpful. It would, however, be wholly exceptional for a charge, let alone a finding of responsibility, to rest entirely on hearsay evidence.

The written statement of a person unable or unwilling to attend may be admitted at the hearing, but if its contents are disputed it must be treated with caution because its author cannot be questioned and the evidence tested.

Two legal concepts necessarily apply in proceedings under the Code: *burden of proof* and *standard of proof*.

*Burden of proof* refers to the person who bears the duty of proving the case that has been brought to the necessary standard. It is the Dean who brings the charge and in effect initiates the formal proceedings and it is therefore the Dean upon whom that duty or burden rests. In other words, the Dean must satisfy the Panel that the student is responsible for the misconduct charged.

*Standard of proof* sets the threshold that must be reached before a student may be found responsible. English law recognises two different standards. The criminal courts employ the standard of proof beyond reasonable doubt – the judge or jury must be “sure” of guilt – while the civil courts employ a lower standard known as the balance of probabilities – is it more probable than not? The Code adopts the civil standard, but because a finding of responsibility in the more serious cases may have severe consequences the Code adds a rider: “the cogency of the evidence relied upon being commensurate with the seriousness of the misconduct charged” [section 7.5]. This in effect signals to the SBP that additional caution must be exercised in a serious case and the evidence will be scrutinised with particular intensity.

As explained above, the burden of proof rests on the Dean. No student may be found responsible solely on account of failing to give an explanation, or giving it late or incompletely or refusing to give evidence at the hearing or answer questions. There must be other incriminating evidence. But where there is such evidence, the student's failure to offer an explanation or give evidence may lead to the drawing of inferences adverse to the student. Any such inferences must be reasonable and appropriate.

#### **15. Breach of Regulations [section 9]**

Regulations are the rules made by the College Council to govern the everyday aspects of collegiate life. A breach of Regulations constitutes misconduct under the Code, but because of their nature, the Code in section 9 prescribes a simple and expeditious procedure and lesser penalties. If, however, there are aggravating features, or there is a history of offending, the Dean may proceed as if it were a more serious offence. The Dean is not precluded from treating the misconduct as a breach of Regulations under this section even if the conduct in question also amounts to another offence of misconduct under section 2 of the Code.

The simple procedure is as follows. The Dean informs the student of the substance of the complaint; invites written representations from the student; and indicates that, subject to any such representations, is minded to impose a penalty as provided in section 9.7.

Appeal is to the SBAP and may be against the finding or the penalty or both. The appeal will be considered on the basis of written representations unless the SBAP decides to hold an oral hearing.

#### **16. Summary jurisdiction [section 10]**

It is for the Dean to decide whether alleged misconduct is summary or non-summary: if the penalties listed in section 11 are thought to be adequate, it is summary; if not, it is non-summary. Misconduct that would otherwise be summary ceases to be so if it is aggravated because it is motivated by or associated with the race, religion, sex or certain other defined characteristic of the victim [section 10.2]. It is not aggravated misconduct merely because the victim asserts that it is.

A summary offence may be dealt with by the Dean personally, but only where the student agrees to this or accepts responsibility. This is because the Dean has investigated the matter and decided to bring the charge. Provided that the student agrees, there can be no objection to the Dean deciding the matter and imposing the penalty. If the student does not agree, the case goes to the SBP, which is limited to the same range of penalties as the Dean (except that the Panel is entitled to express the view that in their view a penalty under section 15 would have been more appropriate). This is to ensure that that the student cannot feel pressured or coerced into accepting the Dean's jurisdiction.

Hearings before the Dean are less formal and elaborate than before the SBP. The student is entitled to be assisted or represented by a member of the College, must be made aware of the evidence and be given an adequate opportunity to present a defence or mitigation,

to cross-examine witnesses and call evidence. But the student will only be present in the following circumstances:

- a student who admits responsibility will be present only if the Dean considers it necessary or the student wishes to present oral mitigation;
- and a student who has not accepted responsibility will be present only if the Dean considers the student's presence necessary or the student wishes to be present.

#### **17. Penalties in summary cases [section 11]**

The penalties are set out in section 11 of the Code and are not reproduced here.

#### **18. Appeals in summary cases [section 12]**

A student may appeal from the Dean or SBP in a summary case to the Student Behaviour Appeal Panel ("SBAP"). Notice must be given to the Dean within 14 days of receiving the written decision of the Dean or the SBP. A student who has accepted responsibility can appeal only against the penalty. There are 3 grounds of appeal:

- A student who did not accept responsibility but was found responsible may appeal on the ground that there was some irregularity or unfairness at the hearing or during the investigation. The student must show that any such defect affected the "safety" of the finding.
- In addition, where the student was found responsible by the Dean, the appeal may be on the ground that the finding is not supported by the evidence. (The reason why a finding by the SBP cannot be appealed on this ground is that the SBP will have been composed of at least 2 and usually 3 Fellows and, as a summary matter with a simple procedure, an appeal to a further 3 Fellows would be disproportionate.)
- The student may appeal against the severity of the penalty.

On an appeal challenging the finding, the SBAP may confirm or quash the finding. If it is quashed, the Panel may direct that no further action be taken, or it may substitute a different finding of misconduct – i.e. for a different offence – or a new hearing will be ordered. Any new hearing will be by the SBP.

Where the appeal is against the penalty, the SBAP will either confirm the penalty or substitute another, but any substituted penalty or penalties must not be more severe (in the SBAP's opinion) than the original penalty. In other words, on appealing against the penalty, the student is not at risk of an increased penalty.

An appeal by the SBAP in a summary matter is normally dealt with on paper, without an oral hearing; but it may hold an oral hearing in the presence of the Dean and the student if it wishes.

There is no further appeal from the SBAP, but there is the possibility of a complaint to the Independent Adjudicator for Higher Education: see para. 24 below.

## 19. Composition of panels [section 13]

The SBP and the SBAP are (with rare exceptions explained below) made up of the Master and Fellows of the College, the Fellows being drawn from a list compiled by the College's Governing Body. This Fellows List must contain the names of at least 18 Fellows who are neither members of the College Council nor Tutors.

Panels are constituted afresh for each case.

The SBP has 3 members. If one member falls out after a hearing has begun, it may continue with 2 so long as the presiding member agrees. The Master may decide to chair the SBP; otherwise it will be chaired by the President; and if the President is unavailable the chair will be taken by the most senior Fellow on the Fellows List who is available.

It is then for the presiding member (Master, President or Fellow) to select the other members by lot. At least one member should be a former Tutor or a current or former Director of Studies ("DoS"). (If the presiding member has not been a Tutor and is neither a former nor current DoS, this is accomplished by using 2 hats or receptacles: one contains the names of all the Fellows on the List; the other contains the names only of those who have been Tutors or are or have been Directors of Studies. The presiding member draws 1 name out of the first hat; if that is a former Tutor or current or former DoS, the next name is drawn from the first hat; if not, the final name is drawn from the second hat.)

The SBAP has 5 members, including the presiding member, who will be the Master unless the Master served on the SBP or is otherwise unavailable. The President will preside if the Master is not available; and if the President cannot serve, then the presiding member will be the most senior Fellow on the Fellows List who is available to serve. If the student bringing the appeal has been expelled, the presiding member will be an Honorary Fellow or alumnus of the College with judicial or legal experience selected by the Master. The remaining members are selected by lot as with the SBP (described in the preceding paragraph).

The Master may appoint an Honorary Fellow or alumnus of the College with legal or judicial experience to chair the SBP or SBAP in a particular case. That person takes the place of the Master, President or Fellow as the case may be.

An Appeal Panel which has begun to hear a case may continue if one or two of its members drop out provided at least 3 remain.

Certain persons are precluded from serving on the SBP and SBAP, and it is for the presiding member of the Panel to determine in the event of any doubt or challenge:

- Anyone who has had any prior involvement in the case;
- Anyone who is or has been the student's or complainant's Tutor;
- Anyone who has some other close relationship with either the student or complainant;
- Anyone in respect of whom there is a real risk of actual or perceived bias.

## 20. Hearings by panels [section 14]

This section of the Manual summarises the various principles governing panel hearings expressed in section 14 of the Code. It does not set out the usual order and detail of proceedings, which will be found in Annex 2.

Subject to the statutory requirement for panels to act impartially and fairly, they determine their own procedure: what is set out in Annex 2 is therefore indicative, but is likely to be departed from only if there is good reason in the circumstances to do so. A panel is entitled to call evidence on its own initiative and direct inquiries: it is not limited to what is placed before it by the parties (the Dean and the student). A panel may also take its own independent legal advice.

The powers to determine their own procedure and to control and regulate proceedings enable panels, for example, to do the following:

- Make special arrangements to reduce a witness's distress or discomfort in giving evidence or being questioned, such as not being questioned directly by the student charged with misconduct;
- Exclude or cease to hear a witness on grounds of relevance or repetition;
- Curtail or terminate particular submissions or remarks by or on behalf of a party;
- Impose reasonable time limits and terminate or shorten submissions and questioning of witnesses;
- Exclude any person present for improper or disorderly conduct.

The Code cannot envisage or provide for every eventuality; hence panels' power to determine their own procedure. This they will do with common sense in the interests of justice, mindful of the overriding duty to act impartially and fairly.

Hearings take place in private, but in a non-summary case where the complainant is a member of another college, the Master *may* invite the head of the complainant's college to nominate one of that college's fellows or honorary fellows to attend the hearing as an observer.

A hearing will continue if the student charged with misconduct fails without a reasonable excuse to attend or if the student is ejected from the hearing because of disorderly behaviour.

The Panel may decide to hear charges against two or more students if the misconduct arose out of the same event.

Panels reach their decisions by majority vote. Where a two-member panel is unable to agree, a fresh hearing will take place before a differently constituted three-member panel, unless the two members agree that no further action should be taken. In that case, a decision of not responsible will be recorded.

Decisions will be issued in writing, together with the panel's reasons. This applies also to the penalty imposed.

## **21. Representation [sections 4.5, 10.4 and 14.5]**

A student may be assisted or represented by another member of the College in a summary matter before the Dean.

In a summary hearing before the SBP or summary appeal before the SBAP, the student may be represented by a member of the College or University.

In non-summary matters before the SBP and SBAP, and at an interview conducted by the Dean where the student is suspected of a non-summary offence, the student may be assisted or represented by any member of the College or University or a barrister, solicitor or advocate qualified in the United Kingdom. The lawyer need not be a member of the University.

The Dean will normally present a case before the SBP or SBAP personally, but may nominate another member of the College or University to do so; and where the student is legally represented, the Dean may appoint a lawyer (as defined above), who may be from outside the University, as representative.

Proceedings will not normally be delayed, especially in summary matters, because a preferred representative is not available.

## **22. Penalties in non-summary cases [section 15]**

The penalties are set out in section 15 of the Code and are not reproduced here.

In determining penalty, the panel will have regard to the student's disciplinary record, conduct since the complaint was made, whether responsibility was admitted, the impact on the victim, and any mitigating factors. In the case of any substantial financial penalty, regard will also be had to the student's financial situation.

## **23. Appeals in non-summary cases [section 16]**

There are four grounds of appeal available to a student dealt with by the SBP for a non-summary offence. Three of them arise only where the student did not accept responsibility but was found responsible. The fourth, open to all regardless of whether the student accepts responsibility, is an appeal against the penalty.

There is no right of appeal by the Dean or the complainant.

The 3 grounds where the student has been found responsible and seeks to question that finding are as follows:

- An irregularity or unfairness in the procedure at the hearing or during the investigation affects the "safety" (i.e. reliability) of the finding;
- The finding is not adequately supported by the evidence;
- The facts as found by the Panel do not constitute the offence of misconduct charged.

The fourth ground is that the penalty was too severe. In this instance, the Appeal Panel may confirm the penalty or substitute a less severe one. It has no power to increase the penalty, but if it thinks a more severe penalty should have been imposed, it may state that and indicate what the correct penalty would have been. This offers guidance to a future SBP in a similar case. It may also be asked to do this by the Dean in a case where the student has not appealed against the penalty. Again, any penalty so announced is for future guidance only and is not applied to the student in the instant case.

In respect of appeals against the finding of misconduct itself, the SBAP may quash the finding of misconduct and order that no further action be taken, substitute a finding of a different offence of misconduct, or direct a new hearing before an SBP with a different membership. A different offence may be substituted where the SBAP concludes that, while the facts do not amount to the offence actually charged, they do amount to another offence of misconduct under the Code provided that the new offence contains no significant element that does not form part of the offence charged. In other words, a student cannot be found responsible for an offence of misconduct unless the student was aware of every significant ingredient of that offence prior to the hearing.

An appeal heard by the SBAP is not a re-run of the original case. The starting point is the finding or decision of the SBP and it is for the student appellant to make out the grounds and satisfy the SBAP that the appeal should be allowed. It is thus for the student to identify the failings, defects or irregularities which bring the finding or penalty into question.

This will normally be done by written and oral submissions, but exceptionally the SBAP may decide to hear or call a witness from the original hearing and may also accept new evidence if it was not available at the SBP hearing. Both the Dean and the student are entitled to be present and to contribute to the proceedings. If the student fails without reasonable excuse to attend, the SBAP has a choice: it may either dismiss the appeal or proceed with the hearing and reach a decision. The points made in para. 20 above on "Hearings by panels" apply to Appeal Panels.

There is no further right of appeal beyond the SBAP, but there may be a right to complain to the Office of the Independent Adjudicator for Higher Education (OIAHE), as explained in the next paragraph.

#### **24. The Independent Adjudicator for Higher Education (OIAHE)**

A student who has been subject to proceedings under the Code will be given a Completion of Procedures Letter by the Dean, but only once the proceedings have been concluded and all rights of appeal exhausted. The Letter will explain the role of the role of the Independent Adjudicator. Any student considering making a complaint should visit [www.oiahe.org.uk](http://www.oiahe.org.uk).

#### **25. Criminal (and University) proceedings [section 17]**

This section of the Code deals with various situations where a student of the College is involved with the criminal justice system or disciplinary proceedings in the University. It covers the following situations:



- Where a student is subject to investigation by the police, the prosecuting authorities or the criminal courts, or is being tried or about to be tried for a criminal offence. Any action for misconduct under the Code in this situation will normally be deferred or adjourned pending the outcome. Interim precautionary measures under section 5 of the Code may, however, be taken, as explained above (see para. 12).
- Where a student has been convicted of a criminal offence. There is no rule that prevents the College from taking disciplinary action in respect of substantially the same conduct that underlies the conviction. The principle of double jeopardy applies only in the criminal courts where, subject to some exceptions, a person may not be tried twice for the same offence. Employers, professional bodies and regulatory authorities frequently follow up criminal convictions with action of their own such as dismissal, striking off, erasure from the register or suspension from practice. So-called double punishment is not therefore objectionable in principle, but such action may be taken under the Code only with the permission of the Master on the ground that the interests of the College or its members or staff require it. If internal action is taken, the conviction cannot be questioned but must be accepted as correct. Any College penalty must take into account the punishment imposed by the court.
- Where a student has been sentenced to imprisonment for 12 months or more (whether in the UK or elsewhere). (This refers to an immediate custodial sentence and thus excludes a suspended sentence.) The College Council will invite written representations by or on behalf of the student. The student's membership of the College will normally be terminated, which is the same as being expelled, but the Council may decide not to do so, in which case it may direct the Dean to bring a charge of misconduct before the SBP. The Council has a broad discretion whether to terminate. For example, it may refuse to do so if it is of the view that the sentence was grossly excessive or the conviction inappropriate, and it may be expected to exercise particular caution in respect of criminal proceedings in certain countries. No right of appeal arises in the event of termination. A decision to terminate will be rescinded if the sentence of imprisonment is subsequently reduced to less than 12 months or the conviction is quashed.
- Where a student has been acquitted in a criminal court. Just as a conviction must be accepted, so too an acquittal. No disciplinary action may follow an acquittal in respect of substantially the same conduct.
- Where a student has been arrested and either remanded in custody or released on bail, summonsed for, charged with or convicted of a criminal offence. In all these situations, the student is required to make a report, with explanatory details, to his or her Tutor, who will pass the information to the Dean.

The substance of the above also applies, with appropriate modifications, to action under the University's disciplinary procedures.

## 26. Excluded offences [section 18]

The unifying theme of section 18 is that there are criminal offences so serious, difficult and challenging that they are beyond the scope of the College to deal with them. These crimes are termed “excluded offences” and are removed from the Code other than for the purposes of section 5 (Interim precautionary measures), where the student admits responsibility, and taking consequential action in the event of a conviction in the criminal courts.

To take the most extreme example, no one would expect the College to take internal action against a student for murder or manslaughter in the absence of primary action by the police and the courts. An investigation into serious crime requires considerable skill and experience, access to forensic and other resources, powers to search, gather evidence and interview under caution and to arrest, to say nothing of the challenges presented by the hearing of such a serious charge. These are pre-eminently the domain of the police, the Crown Prosecution Service and the courts.

The College and its personnel do not have the skills, experience or powers to undertake such an investigation. The Code accordingly seeks to define those serious crimes which the College is ill-equipped to deal with. It therefore identifies several categories of criminal offence removed from the scope of the Code.

It is not, however, straightforward to identify the boundary of those offences suitable for College action and those beyond its capacity, which is why section 18 is quite long and complex. Although English law does classify offences according to their seriousness, these classifications are not always ideal for the purposes of the Code, as they are often the product of history rather than coherent contemporary analysis.

Possible distinctions are between offences that carry a sentence of imprisonment and those that do not or between those punishable by a particular maximum sentence of imprisonment and those with lesser maxima. These distinctions were not found suitable for the purpose of defining excluded offences.

The other categories in law, which offer a better basis for the purposes of the Code, are (i) “indictable only offences”; (ii) “either way offences”; and (iii) “summary only offences”. A summary only offence is one that can be tried only in the magistrates’ court before a district judge or bench of lay magistrates (Justices of the Peace) without a jury. Some of these offences carry sentences of imprisonment, but they are crimes at the less serious end of the spectrum. At the other end are offences that can be tried only on indictment, i.e. before a judge and jury in the Crown Court. These are the most serious offences, such as murder, manslaughter, robbery and rape. The great majority of offences, however, are triable “either way”, i.e. they may be tried either summarily in the magistrates’ court or on indictment in the Crown Court depending on the facts of the particular case.

It is clear that misconduct amounting to a crime that is a summary only offence is suitable for handling under the Code. It is equally clear that offences that are indictable only are too serious and difficult for the College. It is the intermediate category that poses difficulties, because some “either way” offences are within the capacity of the

College and others are not. Section 18 seeks to capture the necessary distinctions, partly by conferring discretion on the Dean in the light of prescribed criteria.

The first category of excluded offence is thus misconduct that amounts to an offence which is triable only on indictment. These are always excluded. There are no exceptions, and there is no discretion. If, in the Dean's view, the alleged misconduct amounts to an indictable offence, it is not permissible to disregard the full offence and proceed under the Code with some lesser offence or offences that may be included within the major offence but are not indictable only, such as assault [see final words of section 18.3].

Similarly, a student will not be able to circumvent the Code by asserting that the conduct was graver than it really was. To illustrate the point with an implausible example: the student is alleged to have negligently or recklessly caused a fire in his room after lighting candles and leaving them unattended. This would not on its face amount to an indictable only offence, but the student claims it was in fact the offence of arson being reckless as to whether life was endangered, which is. If this assertion were accepted, the student would escape the reach of the Code and College discipline, while the police would have no interest in minor damage caused by candles in a College room. The Dean will not treat this as an excluded offence.

The second category slightly enlarges the first by adding any criminal offence designed to facilitate or lead to an offence against the person (which includes a sexual offence) triable only on indictment. An example of this would be administering a drug with a view to committing rape (which is an offence under section 61 of the Sexual Offences Act 2003 and carries a maximum prison sentence of 10 years). But it is also triable summarily, with a maximum sentence of 6 months' imprisonment. Nevertheless, while not an indictable only offence, it is closely related to one that is and presents the same reasons why the College is in no position to investigate and adjudicate.

The third category is misconduct that amounts to the offence of sexual assault contrary to section 3 of the Sexual Offences Act 2003 (described more fully in Annex 3). This covers a wide variety of conduct and the maximum penalty is 10 years' imprisonment, but some sexual assaults may be tried summarily in the magistrates' court. The Code wishes to exclude those offences that would merit trial in the Crown Court, but wishes to include those judged to be within the capability of the College to investigate. A sexual assault within section 3 of the Act will therefore be suitable for action under the Code if the Dean is satisfied of the following:

- The assault has no aggravating features;
- If prosecuted in the courts, it would be regarded as suitable for trial in the magistrates' court;
- If convicted, the student would be likely to receive a non-custodial sentence; and
- Handling the complaint would not exceed the College's resources, powers or capacity.

The Dean may take legal advice to help with applying these criteria. This provision will ensure that the College is able to deal firmly and decisively with certain kinds of unacceptable and inappropriate behaviour that do not call for elaborate investigation or

forensic inquiry and indeed in which the police might not be interested. For example, in the College Buttery student A, perhaps having had a number of drinks, puts a hand on the thigh of student B, who does not consent. There are independent witnesses. There is every reason why the College should deal with this and it will not be regarded as an excluded offence.

The fourth category is a residual one but based on the same premise. It covers any criminal offence where a prison sentence may be imposed and the Dean reasonably considers that the investigation or handling of the allegation “would exceed the resources, powers or capacity of the College such that justice could not be done” [section 18.2(d)]. In coming to a view, the Dean will have regard to the seriousness, difficulty or complexity of the matter and all the relevant circumstances.

A fifth category is any misconduct that will be handled by the University [section 18.2(e)], including the following:

- Harassment involving students who are members of two or more colleges;
- Disrupting or impeding the activities of the University or attempting to do so;
- Impeding freedom of speech within the University;
- Occupying University buildings for the purpose of protesting;
- Damaging University buildings, fixtures or fittings;
- Cheating or plagiarism in University examinations;
- Misconduct occurring in the context of University societies or sports clubs.

The University may also be willing to take action in respect of such sexual misconduct which the College is unable to deal with under this Code.

For further information, consult: <https://www.studentcomplaints.admin.cam.ac.uk/>

It is for the Dean to determine whether any alleged misconduct constitutes an excluded offence. Legal advice may be obtained. However, the Dean’s conclusion that it is an excluded offence may be challenged by the complainant in the SBAP. Notice of the wish to appeal must be given to the Dean within 14 days of being informed of the Dean’s decision.

If the complaint cannot be pursued under the Code, the complainant will be offered full advice as to the other options available for pursuing the matter and other sources of advice and support.

Action may, however, be taken under the Code in respect of an excluded offence in two situations (apart from interim measures under section 5):

- Where the student has been convicted of the offence in a criminal court or found responsible in University proceedings;
- If the student accepts full responsibility and does not substantially dispute the allegation.

**27. Further advice and information**

Further information and advice about the Code and disciplinary matters may be obtained from the Dean: [dean@christs.cam.ac.uk](mailto:dean@christs.cam.ac.uk).

There may be circumstances in which it is felt inappropriate to consult the Dean, in which case a student may approach the Senior Tutor or any other Tutor.

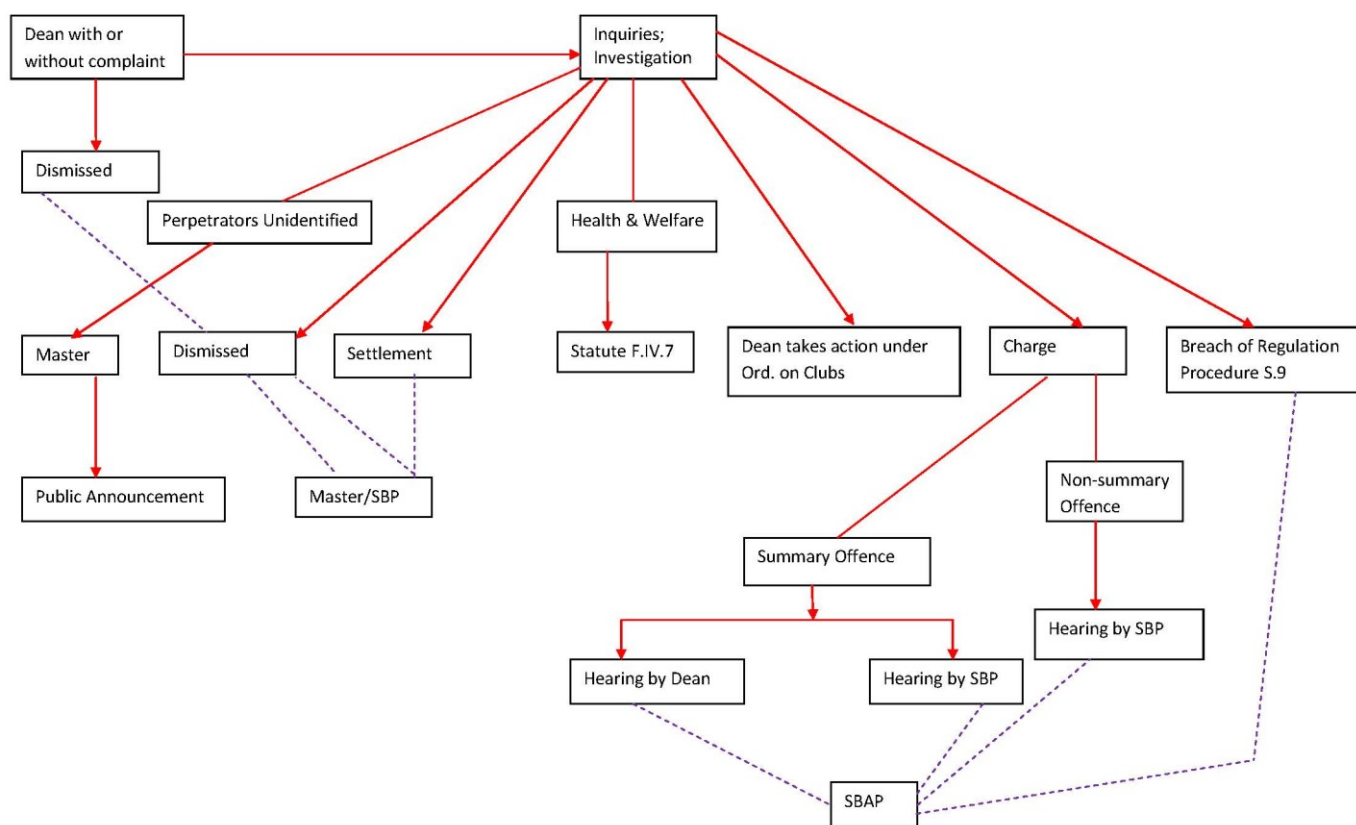
### Flowchart

This chart shows the flow of a case from first complaint to final appeal. It contains no explanatory detail or commentary and must be read in conjunction with this Manual and the Code itself. The diagram does not include interim precautionary measures, provided for in section 5 of the Code (para. 12 of the Manual), which may be applied at any time.

Key:

----- = appeal/review

#### Code of Student Behaviour (Ordinance under Statute F.IV.2)



### **Indicative Order of Proceedings in the SBP**

It is for each Panel to determine its own procedure, but the following is the typical or indicative order of proceedings at a hearing before the SBP:

- The Dean opens the case.
- The Dean calls witnesses and questions them.
- The student questions the witnesses.
- The panel may put questions to the witnesses.
- The student outlines the defence to the charge and makes any arguments of a legal nature, e.g. that the conduct alleged does not amount to misconduct under the Code.
- The student calls witnesses and questions them.
- The Dean questions the witnesses.
- The panel may question the witnesses.
- The Dean makes closing remarks.
- The student makes closing remarks.
- The panel retires to consider its decision.
- The panel announces its decision.
- If the student is found responsible, the panel will invite the Dean to make any observations on the appropriate penalty.
- The student will be asked to make comments on penalty.
- The panel will retire to consider the penalty and on returning will announce the penalty.

The panel may put questions at other times, particularly to clarify points made or answers given.

The panel has the power to ask for other witnesses to be called, evidence produced or inquiries undertaken.

References above to the Dean and the student include their representatives.

The panel may wish to take time to consider either decision or penalty; and further information may be required from the student (e.g. financial means) before the penalty can be imposed.

### **SBAP**

A hearing before the SBAP will normally open with the student outlining the grounds of appeal and developing the arguments in support of those grounds, to which the Dean will respond.

### Meaning of “Sexual Assault” and “Sexual” in the Sexual Offences Act 2003

Rape is covered by section 1 of the Act. It is triable only on indictment and the maximum penalty is life imprisonment. Rape involves penetration of the vagina, anus or mouth by a penis. Section 2 deals with assault by penetration, which is similar to rape except that the penetration is by another part of the body or “anything else”. It is also indictable only and punishable by life imprisonment.

Sexual assault is the offence created by section 3. It involves the intentional touching of another person where the touching is sexual, the other person does not consent and the person doing the touching does not reasonably believe that the other person consents. It may be tried in the magistrates’ court, where the maximum punishment is 6 months’ imprisonment, or in the Crown Court, where it is 10 years. It thus covers an enormously wide range of conduct from the relatively minor to the extremely serious.

“Consent” is defined in section 74 as follows: “. . . a person consents if he agrees by choice, and has the freedom and capacity to make that choice.”

Touching is, according to section 78, “sexual” “if a reasonable person would consider that – (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual”.

This is a complex piece of legislation and a difficult area of law. The above references to and extracts from the Act are designed to give no more than the basic features of the law as relevant to the concept of an excluded offence in the Code.



## GLOSSARY

Principal terms used in the Code	Principal section/s in Code where that term is defined or explained	Relevant paragraph/s in this Manual
Adverse inferences	7.4	Para. 14
Appeals (summary)	12.1	Para.18
Appeals (non-summary)	16.1	Para. 23
Assistance and representation	4.5; 10.4; 14.5	Paras. 10,16,21
Balance of probabilities	7.5	Para. 14
Bias	13.7	Para. 19
Burden of proof	7.3	Para. 14
Charge	6.1	Paras. 13-4
Complaint	3.1; 3.2	Paras. 2, 7, 9
Criminal conviction	17.3; 18.4	Para. 25
Criminal offence	2.1(k); 18.2(d)	Paras. 12, 17-8, 25-6
Discrimination	2.2(c)	Para. 8
Equality Act 2010	2.2(c)	Para. 8
Excluded offences	18.2	Paras. 10, 26
Exclusion	5.5; 15.1(j)	Para. 12
Expulsion	15.1(l); 17.4(d)	Paras. 19, 25
Fellows List	13.1	Para. 19
Hearing	6.2	Paras. 14, 16, 20
Imprisonment	2.1(k); 17.4	Paras. 25-6
Indictable-only offence	18.2(a)	Para. 26
Interim precautionary measures	5	Paras. 12, 25
Investigation	4	Paras. 10, 25
Law of evidence	7.1	Para. 14
Manual	1.3	Paras. 3, 6
Misconduct	2.1	Paras. 8, 11
Non-summary offence	6.7	Paras. 7, 16 21-3
Panels (composition)	13	Para. 19
Penalties (summary)	11.1	Para. 17
Penalties (non-summary)	15.1	Para. 22
Regulations	2.1(m); 9	Para. 15
Restrictions and conditions	5.6	Para. 12
Settlement	4.7	Para. 10
Sexual assault	18.2(c)	Para. 26
Sexual Offences Act 2003, s. 3	18.2(c)	Para. 26
Standard of proof	7.5	Para. 14
Student	1.1	Para. 2
Student Behaviour Appeal Panel	13.5	Paras. 7, 11, 18
Student Behaviour Panel	13.2; 13.3	Para. 7
Summary offence	6.7	Paras. 7, 16
Unidentified students	4.15; 7.7; 16.2(b); 16.8	Para. 11