

SPI Misconduct Policy for Regular Learners

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SPI Misconduct Policy for Regular Learners

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2. Introduction

This policy covers St Padarn's Misconduct procedures in relation to non-academic misconduct by learners registered on accredited and initial ministry programmes. It outlines the procedures that should be followed when an allegation of non-academic misconduct has been made. Academic misconduct will be dealt with under the relevant accrediting body's policy. **Staff misconduct** is covered by the **Representative Body of the Church in Wales Disciplinary Policy**.

The aim of the policy is to foster a culture where non-academic misconduct is not tolerated and to provide an inclusive, supportive, and safe learning environment in which all learners and staff can flourish and reach their full potential. It also aims to ensure procedures for non-academic misconduct are conducted in a fair and transparent manner which complies with equal rights, human rights, and other relevant legislation in this area.

3. Scope

This policy covers alleged non-academic misconduct by a learner occurring on or off St Padarn's premises (including via social media) where the behaviour has affected St Padarn's itself, another learner, a member of staff, or anyone visiting or taking part in St Padarn's activities. Contravention of St Padarn's or related Church in Wales policies may amount to misconduct.

For the purposes of this policy a learner is anyone who is on a programme with St Padarn's rather than a one-off event. This includes academic programmes, Formation for Licensed Ministry, Newly Licensed Ministers, and CMD programmes such as MER.

The St Padarn's Code of Conduct sets out expected standards of behaviour and gives examples of non-academic misconduct. Any behaviour which contravenes this Code of Conduct will amount to misconduct. For **examples of misconduct** please see **Appendix 1** and for **definitions** see **Appendix 2**.

St Padarn's may take action under this misconduct policy against a learner of its own volition if the person who reports an incident does not wish to make a formal complaint.

In the application of this policy, due regard will be given to the obligation to preserve and value freedom of speech within all learning activities within St Padarn's, because of

its nature as an educational institution, as expressed by David Isaac, Chair of the Equality and Human Rights Commission from 2016-2020:

“The free expression and exchange of different views, without persecution or interference, is at the heart of our democracy. In Britain we enjoy significant human rights protections to hold our own opinions and express them freely. These values and protections are also a vital part of higher education. Holding open, challenging debates, rather than silencing the views of those we don’t agree with, helps build tolerance and address prejudice and discrimination.

Freedom of expression in higher education should be upheld at every opportunity and should only be limited where there are genuine safety concerns, or where it constitutes unlawful behaviour.”¹

4. Procedures

St Padarn’s will consider which procedure is most appropriate to be used in relation to an alleged offence. For example, where there are underlying physical or mental health issues then the **Capability to Undertake Academic Study Policy** may be used. Learners will be informed which policy is to be used.

5. Reasonable Adjustments and Mitigating Circumstances

5.1 Reasonable adjustments will be made as appropriate in relation to the process and communicating the outcome for all people involved who have a declared disability or other health issues. Where learners have not already formally declared a disability before the alleged incident, we encourage them to do so as soon as possible during the formal processes so that it is possible to make reasonable adjustments as appropriate.

5.2 The **Disability and Learning Support Advisory Tutor** will make the decision in relation to the exact nature of any reasonable adjustments needed, in consultation with the learners involved and ensuring external advice is taken as appropriate. The process may be suspended until reasonable adjustments have been put in place.

¹ [Statement on implementation of the Higher Education \(Freedom of Speech\) Act | EHRC](#)

5.3 A learner's disability may be a mitigating factor in relation to the alleged offence or incident.

5.4 Learners can present any mitigating circumstances or factors that they believe should be taken into account in relation to the alleged offence. Normally, such circumstances and factors will be presented as part of the investigative procedure
Mitigating factors might include:

- The offence is a minor example of a serious offence
- It is a first offence
- The learner admits to the offence at the earliest opportunity
- The learner has expressed remorse
- The learner has compelling personal circumstances that affected their judgement.

5.5 Mitigating circumstances are not normally relevant to deciding whether a learner committed an offence, but they may be taken into account when deciding on an outcome (the remedial action or the penalty).

6. Support

The welfare of those who are part of the St Padarn's community and those they come into contact within the course of St Padarn's activities is paramount. Any allegation of misconduct is likely to have an adverse impact on all people involved.

St Padarn's will ensure that all people involved in such incidents have access to support, information, advice, and assistance throughout the process, from start to finish. Support will depend on what is needed and appropriate in each individual case. The misconduct process may be suspended until access to appropriate support has been arranged. Learners can contact the **Learning Services Manager, Senior Coordinator** or **Learner Representative directly** to request support.

All people involved with the incident will be treated fairly and no presumptions will be made about any of the parties involved until the relevant criminal and/or misconduct procedure has been concluded.

Support for the learner and complainant will not be provided by the same member of staff.

Learners have the right to be accompanied by someone of their choosing at any meeting associated with the non-academic misconduct procedure including any misconduct hearings. The learner should let the **Case Officer** (the person investigating the alleged offence) know if they wish to bring someone along.

In exceptional circumstances where a learner is unable to represent themselves, someone may be appointed to represent them. A written request should be made to the Principal in these circumstances.

Some of St Padarn's programmes are accredited by other institutions. As part of St Padarn's agreement with the institution St Padarn's operates under certain policies of that institution. Therefore, where an offence contravenes the accrediting institution's policies, that institution may need to be notified. In such a case, depending on the offence, the accrediting institution's misconduct policy may supersede the St Padarn's misconduct policy, or run alongside it.

7. Immediate Suspension

In some circumstances it may be necessary to immediately suspend a learner. This could be because the nature of the alleged offence means that there is a risk they may cause harm to themselves or others. A member of the **Senior Leadership team (SLT)** of St Padarn's may use their professional judgement to suspend the learner from some or all aspects of study while an investigation is carried out. The SLT member must provide the grounds for suspension **within 48 hours** of the suspension being made, and the suspension will be **reviewed within 2 weeks** by the Principal. During this period, every effort will be made to put in place a risk management strategy to allow the learner to participate partially or fully in their studies. As part of this process the suspended learner will be given an opportunity to challenge the suspension. If after review, where it has been decided the suspension must remain in place the learner will be given an explanation. The suspension will be reviewed periodically, normally every two weeks.

Where the learner is engaged on an accredited course every endeavour will be made to put in place arrangements so that they will not be disadvantaged while a suspension is in place. Registry will work with the relevant accrediting body where necessary. Usually, a learner will be able to submit work for assessment in the normal way. Suspension is a last resort. It is a precautionary measure, it does not mean that St Padarn's has concluded that the learner is guilty of misconduct.

If external criminal processes are happening in relation to the alleged misconduct, the procedures outlined in this policy may need to be adapted. Any adaptations will normally be discussed with all people involved. Criminal proceedings would take priority over St Padarn's procedures. If criminal proceedings are dropped, St Padarn's may still choose to investigate an offence. If a learner is found guilty by criminal proceedings the verdict may be taken into account in issuing penalties under St Padarn's misconduct procedures.

Any alleged offence of a safeguarding nature must be reported to the **Church in Wales Safeguarding team**. St Padarn's will take the advice of the Safeguarding team in dealing with any offences of a safeguarding nature.

8. Confidentiality

All those involved in misconduct procedures should be made aware of the need for confidentiality. Any breach of confidentiality by staff, learners, or any contributors to St Padarn's will be treated seriously. St Padarn's will fulfil its obligations under relevant data protection regulations and the Equality Act 2010 in relation to any information shared about the complaint.

All people involved in the misconduct procedures will be reminded of the confidentiality associated with the procedures outlined below. Information associated with the case will be disclosed on a need-to-know basis.

Where there is risk of harm, or a criminal offence has been alleged, information may need to be referred on to the safeguarding team and/or police, or other relevant body.

For more information about how we process the information you give us please visit our privacy statement [here](#).

9. Process involving more than One Learner

Sometimes a number of learners have committed the alleged offence. In a group complaint, a spokesperson/representative may be appointed to act on behalf of the group.

In cases of a group allegation, care will be taken to ensure that all learners will be able to have an equal opportunity to hear and respond to the allegations made against them. They will also be able to hear and respond to what others have said and to evidence that others have provided.

Where possible and practicable, joint or group allegations will be heard at a single panel meeting with all learners in attendance. All learners will be given the opportunity, normally as part of the investigation, to raise privately confidential or sensitive matters relating to mitigation.

Where it is not possible or practical to hold a single panel meeting for joint or group allegations, normally the same panel will consider the case against all learners involved to ensure that there is a consistent approach.

Decisions cannot be reached by default in the case of joint or group allegations.

An outcome decision will be taken for each learner individually, taking into account their particular circumstances and mitigating factors. However, there will be broad consistency in the penalty given to all learners who commit the same offence in similar circumstances.

10. Process for Informal Action

Many breaches of rules are minor and can be dealt with most effectively by an informal conversation between the learner and the tutor responsible for the relevant programme. Minor offences are actions that are occasional and that do not have a serious impact on others. This could include occasional unexplained absence, occasional low-level disruption in lectures or minor, careless damage. Informal action will usually be dealt with **within 15 working days of the breach**. A **note** should be made of the **incident and action taken on the learner's file, and removed after 6 months**, if no further breaches occur. Repeated minor breaches of rules could lead to **formal action**. The Programme Leader may decide if the alleged offence is to be referred to the formal action if the matter is not resolved with the informal procedure.

11. Process for Formal Action

A misconduct investigation may happen as a result of the findings of a learner complaint. St Padarn's may also start a misconduct investigation when it becomes aware of an alleged major offence through other means.

The Principal will appoint a member of the senior staff to investigate the offence (**Case Officer**). The Case Officer will have had no previous involvement in the case.

The Case Officer will usually carry an investigation **within 15 working days** of their appointment. The investigation will be to determine whether a formal misconduct hearing needs to happen. The Case Officer will inform the learner of the nature of the investigation, and that it may result in a misconduct hearing.

The Case Officer will meet with the learner at the earliest opportunity. The learner should be given notice of the meeting and given sufficient information to respond to the allegations, and a copy of this policy. They have the right to bring another learner, member of staff or their Learner Representative to that meeting. Notes of the meeting will be provided to the learner after the meeting. The Case Officer may gather other evidence such as emails, and interview, or consult with, other relevant people as part of their investigation.

There may be some occasions when to ensure a fair outcome the investigation will take longer. In this case all people involved should be kept informed of the reasons for the delay.

The Case Officer will produce a report to be given to the Principal including an outline of the process followed, information gathered and their conclusions. The learner or their representative will also be sent a copy of the report. If the learner has any queries about the case, they can contact the Case Officer. They can also contact the Learning Services Manager for support.

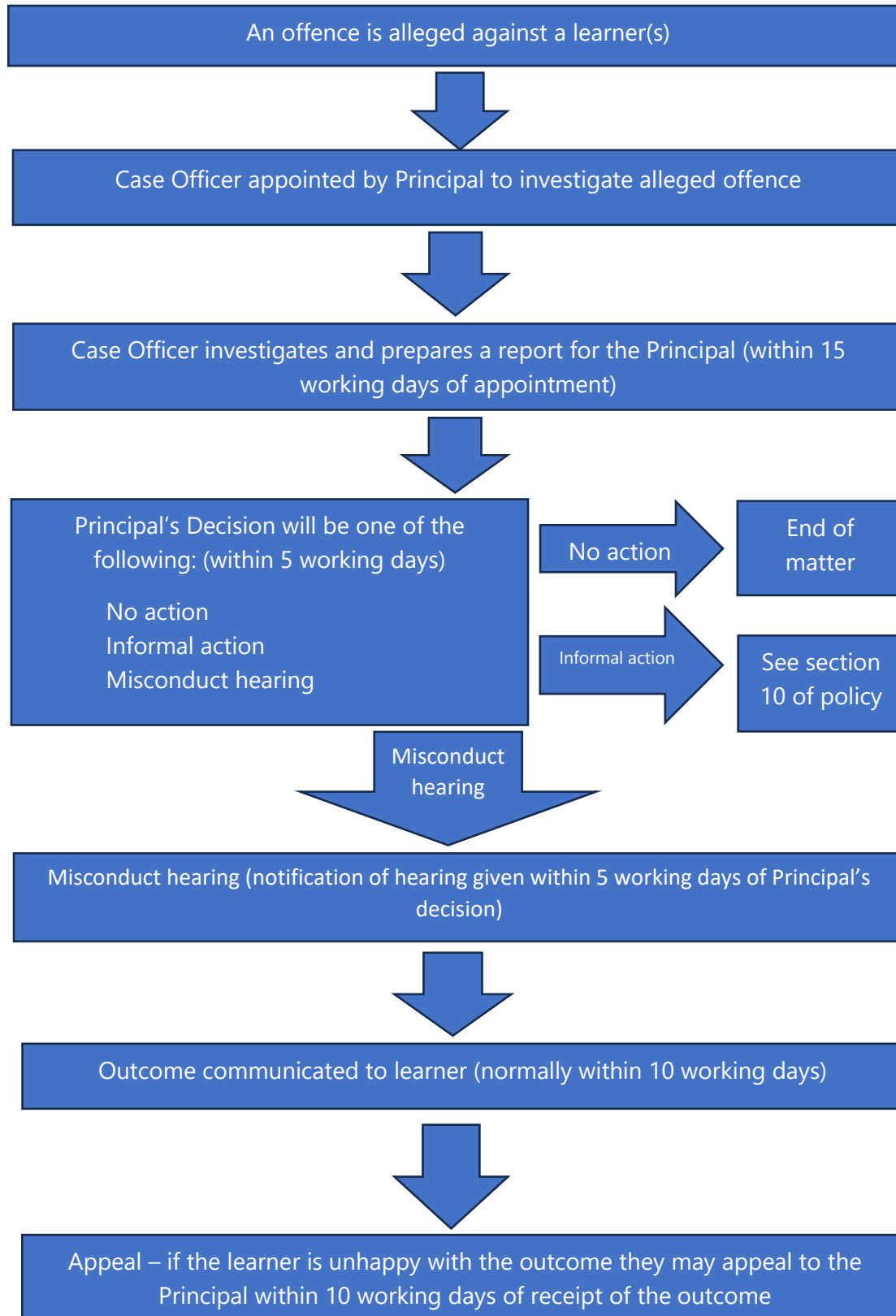
As a result of the report the Principal may decide to:

- Take no action as there is no evidence of a breach of conduct
- Recommend that the matter be dealt with informally
- Recommend a misconduct hearing.

The **learner** will be notified of the course of action **within 5 working days** of the Principal receiving the report.

12. Process for Misconduct Hearings

Formal Misconduct Process Flowchart



If a misconduct hearing is to be held the Principal will appoint an appropriate **senior member of staff to chair** the misconduct hearing, and one other member of staff. These will be people who have had **no previous involvement** with the case.

The learner will be given **written notification** of the misconduct hearing, **no fewer than 5 working days in advance** of the hearing (unless an earlier date has been mutually agreed). This notification will include:

- The specific nature of the issue
- The date, time, and place of the formal hearing
- That the learner may be accompanied by **another learner, member of staff, or learner representative.**
- A copy of the Misconduct Policy
- Information about the evidence against them, and who will be at the hearing
- That the learner may call witnesses or provide evidence. This information must be submitted to the chair **at least 36 hours prior to the hearing.** The number of witnesses and any supporting documentation must be in proportion to the level of misconduct and be of a reasonable quantity. The chair reserves the right to refuse an unreasonable quantity of documentation or number of witnesses.

If a **new matter** that the learner is unaware of is raised at the hearing the **learner will have 48 hours after** the hearing to submit any additional documentation to the chair for consideration as part of the decision-making process.

The **Case Officer** who carried out the investigation and a **note taker** will normally attend.

Appropriate arrangements will be made to meet any special requirements.

Recognising the dispersed nature of St Padarn's learners, and that most are part-time, location and circumstances of the learner will be taken into account when deciding on the date, time, and venue for the hearing. In some circumstances a hearing may be held by electronic means.

If a **learner does not** attend the hearing without good cause, a decision may be taken in **his/her absence.**

The chair will explain the purpose of the hearing and go through the evidence, including any evidence given by witnesses in person. The learner will have the opportunity to set out their case and ask questions, present evidence, call relevant witnesses and to raise points about any information provided by witnesses.

The **outcome** of the hearing is normally communicated to the **learner in writing within 10 working days**, unless agreed otherwise. The details of the complaint, the outcome and where appropriate the actions the learner needs to take in order to improve conduct are included in the communication.

13. Levels of Action

13.1 After consideration of all factors, including any mitigating circumstances, possible outcomes are as follows:

- Written warning
- Restitution of damage
- A requirement to make an apology to any party concerned
- An agreed action plan to improve behaviour
- Mediation
- A requirement to engage with an appropriate support service
- A requirement to attend a workshop or course within a specified time frame
- Removal/deletion of offensive material.

One or more may be applied depending on the offence, circumstances, and any mitigating factors. The outcome must be proportional to the offence.

13.2 Final Written Warning: This is given if the offence is sufficiently serious, or if it is a repeated offence. The details of the complaint and the actions the learner needs to take in order to improve conduct are communicated in writing, and that if there is no improvement that the learner may be removed from the programme.

13.3 Removal from a Programme: The Chair of the panel will present a report to the Principal on the findings of the hearing. Removal from the course will occur if the learner is found to have committed an act of gross misconduct, or if there is continued unsatisfactory conduct. The Principal may meet with the learner and his/her representative, and/or consult as appropriate, for example with a validating partner, before making a final decision. After consideration, the Principal may implement the removal of the learner from the programme.

Where the programme is accredited by another institution, that institution will be

informed, or involved with the decision, depending on the partnership agreement with that institution.

St Padarn's learners may be involved with more than one programme and it should be clear from which programme(s) the learner is being dismissed. For example, an offence which may cause dismissal from the Formation for Licensed Ministry programme may not be a cause for dismissal from an academic programme.

14. Appeals

14.1 Appeals against misconduct outcome (except from Dismissal from a formation or ministerial development programme)

To appeal against misconduct outcome short of dismissal, the learner must **write to the Principal within 10 working days of receipt of the written communication** informing them of the outcome of the misconduct hearing. A learner may appeal on the following grounds:

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

After investigation, the Principal may decide to:

- Uphold the disciplinary action
- Remove the disciplinary action
- Impose a disciplinary action of their own.

The decision of the Principal will be communicated to the learner **within 5 working days**.

14.2 Appeals against Dismissal from a formation or ministerial development programme

Where a decision has been taken to remove a learner from a formation or ministerial development programme, the learner may appeal to the Chair of the Executive Board.

In the case of appeals to the Chair of the Executive Board, after investigation the Chair may decide to:

- Uphold the dismissal
- Recommend a less severe sanction is imposed
- Overturn the sanction.

The decision of the Chair of the Executive Board is final.

14.3 Further right of appeal for accredited programmes

Once the appeal period has expired, or, if a learner has appealed, once the appeal process has been completed, St Padarn's will issue a learner on an accredited programme a **Completion of Procedures letter**. A learner on a higher education accredited course may be able to appeal to the **Office of the Independent Adjudicator for Higher Education**. Any complaint must be submitted **within 12 months** of the Completion of Procedures letter. You can find more information about Completion of Procedures Letters and when you should expect to receive one here: <https://www.oiahe.org.uk/providers/completion-of-procedures-letters> More information about whether a complaint can be made and how to go about making such a complaint can be found on the OIA website [How to complain to us – OIAHE](#).

15. Delays

Every effort will be made to operate within the time frames laid out in this policy. If there are exceptional circumstances which mean it is not possible to respond to your complaint within the timeframe stated in this policy, an explanation will be given for the delay and all parties concerned will be informed when a response can be expected.

Appendix 1

Examples of Misconduct

Acts of misconduct are likely to fall into one of the following categories:

- Actions which cause actual or potential distress or harm to others
- Actions which cause actual or potential damage to property of others
- Actions which may prevent or disrupt the normal functioning of St Padarn's
- Actions which may cause reputational damage to St Padarn's as a result of the misconduct of the alleged perpetrator
- Actions which impede or interfere with the pursuance of work/study of any of the St Padarn's Community, or impact on its normal operations
- Breaches of St Padarn's Code of Conduct
- For those training for ordained ministry in the Church in Wales, breaches of the Church in Wales Professional Ministerial Guidelines.

Examples of **non-academic misconduct** include:

- Antisocial behaviour
- Inappropriate, abusive, or threatening behaviour including on social media
- Compromising the safety or wellbeing of others
- Sexual misconduct
- Violence, discrimination, harassment and hate crimes
- Behaviour likely to bring St Padarn's into disrepute
- Internet access abuse
- Disruptive behaviour on St Padarn's premises, or at any of its activities
- Damage to St Padarn's property or abuse of its facilities
- Causing a health or safety concern
- Fraud
- Behaviour which may also constitute a criminal offence

Appendix 2

Definitions

Bullying may be characterised as:

- Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient.

Consent

- The act of Consent is defined in the Sexual Offences Act 2003 as: a person consents if they agree by choice and they have the freedom and capacity to make that choice.

Harassment is defined in the Equality Act 2010 as:

- Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment for that individual.
- The relevant protected characteristics are: age, disability, gender reassignment, race, religion, or belief, sex, and sexual orientation.
- The Protection from Harassment Act 1997 defines conduct which 'causes alarm or distress' or 'puts people in fear of violence' as harassment.

Please see the St Padarn's Harassment Policy for information on how St Padarn's deals with Harassment.

Hate crimes

- Hate crimes are any crimes that are targeted at a person because of hostility or prejudice towards that person's: disability, race, or ethnicity, religion, or belief, sexual orientation, or transgender identity.

Hate crimes can be committed against a person or property.

Victimisation is defined in the Equality Act 2010 as:

- Subjecting a person to detrimental treatment because the person has complained, or there is a belief that the person will complain about harassment, or if a person has helped someone who has been subjected to harassment.