

The Marshall Aid Commemoration Commission Disciplinary Policy and Procedure

1. Purpose

1.1 This Policy and accompanying procedure explains the actions that will be taken when the MACC becomes aware of potential misconduct by a Scholar or Fellow.

1.2 This policy should be read in conjunction with the following MACC policies: Code of Conduct for award holders; Complaints Policy; Anti-Fraud, Bribery and Corruption Policy; and Safeguarding Policy. These policies can be found here: <https://www.marshallscholarship.org/the-commission/policies-and-open-data>

2. Definition of Misconduct

2.1 Misconduct for the purposes of this Policy is improper behaviour, in the broadest sense, towards any individual, the host university, landlord, the MACC or any action which might otherwise damage the reputation of the MACC or its funders.

2.2 Further particulars of misconduct are described below, but, if misconduct is to be proved, paragraph 2.1 must be shown to apply to the conduct complained of. Subject always to the provisions of that paragraph, the following shall constitute misconduct:

- (a) Any breach of the academic or disciplinary regulations of the host university or institution;
- (b) failure to attend the host university or institution in line with regulations or expectations of that university or institution;
- (c) failure to adhere to the conditions of the UK visa;
- (d) sexual or physical harassment;
- (e) violent, indecent, disorderly, threatening, or offensive behaviour or language communicated by any means including electronically;
- (f) fraud, deceit, deception, or dishonesty in relation to the MACC or the host university or institution including, but not limited to, failure to return monies overpaid by the MACC, whether overpayment was due to a false claim by the Scholar or Fellow or by error of the MACC or a change in circumstance;
- (g) failure to repay monies lent to cover rent deposits;
- (h) any conduct which constitutes a criminal offence;
- (i) any intentional action likely to cause injury or impair safety;
- (j) behaviour which damages or has the ability to damage the reputation of the MACC;
- (k) failure to follow rules of the MACC;
- (l) failure to follow the MACC's Code of Conduct;
- (m) failure to follow the MACC's Social Media Terms of Use;
- (n) repeated minor misconduct;
- (n) failure to comply with a penalty previously imposed under this Policy.

2.3 Not all complaints relating to Scholar or Fellow alleged misconduct will result in formal disciplinary proceedings.

Informal resolution of complaints is only likely to be appropriate in instances of alleged misconduct which feature the following:

the misconduct can be described as minor and isolated, and the perpetrator takes responsibility for their actions.

Examples of minor offences include, but are not limited to:

- Anti-social behaviour
- Failing to respond to Commission requirements in a timely manner
- Failure to report travel in timely manner
- Minor disputes between Scholars

3. Penalties

3.1 The penalties available are:

For minor offences of misconduct:

- (a) a formal written warning to the Scholar or Fellow setting out the consequences of any further acts of misconduct;
- (b) a fine up to £200 that may be suspended for up to one year;
- (c) a written apology to any person or persons, organisation or institution affected by the misconduct;
- (d) compulsory attendance at an appropriate workshop, course and/or counselling sessions.

For major offences of misconduct:

- (a) Immediate termination of the Scholarship or Fellowship;

or

- (b) Probation involving monitoring of the Scholar's or Fellow's behaviour or performance for a specified period with further misconduct possibly resulting in termination of the Scholarship or Fellowship;
- (c) Compensation/withdrawal of funds with the Scholar or Fellow being required to repay all, or part of, their Scholarship or Fellowship or the MACC may withdraw part of their Scholarship or Fellowship funding.

3.2 These penalties listed may be combined, as appropriate. Where necessary, the effective period of the penalty shall be specified or a date given for review.

3.3 Penalties will be imposed without an investigation where the complaint results in a criminal conviction, an order of deportation or expulsion from a university or institution. See paragraphs 4.7 and 4.8

PROCEDURE

4. Reporting misconduct

4.1 The Disciplinary Policy and accompanying procedure addresses both complaints received alleging misconduct by a Marshall Scholar or Marshall Sherfield Fellow and also misconduct by a Marshall Scholar or Marshall Sherfield Fellow alleged by the MACC.

4.2 If a Marshall Scholar or Marshall Sherfield Fellow is suspected of misconduct (as described in this policy) by the MACC, the procedure in 4.4 shall also be followed and the complaint will be dealt with in the same manner as if it was an external complaint.

4.3 Any person alleging misconduct as described in section 2 of the policy is the complainant for the purposes of this policy. They should write formally to the Executive Secretary using complaints@marshallscholarship.org clearly outlining the full details of the alleged misconduct and setting out, if appropriate, the outcome that they are seeking. It should also outline whether the complainant has used the complaints processes at their UK University. Such communication will be regarded by the Commission as the making of a complaint under the Disciplinary Policy.

4.4 The Executive Secretary, in consultation with the Chair of the Education Committee, who has responsibility for overseeing the Scholarship processes, has discretion to dismiss without further consideration complaints that they judge to be made after three months after the alleged misconduct was identified and therefore out of time, or to be frivolous, malicious, or vexatious.

4.5 Where a complaint alleges misconduct directed against a named person other than the complainant, and that person refuses to support the complaint or co-operate with inquiries, this policy cannot be applied, unless other misconduct is also alleged which can be so supported

4.6 At any stage of consideration of a complaint, the Chair of the Education Committee may rule, as a matter of absolute discretion, that the complaint should not be the subject of further action under this Policy. This includes recommending that the complainant use their UK University processes rather than the MACC's process.

4.7 Where a complaint has been accepted for investigation or is in the course of being investigated by a university or institution, any action by the MACC will be stayed whilst the university or institution's investigation is ongoing.

Upon the conclusion of the investigation by the university or institution, if the person against whom the allegation of misconduct is found not guilty and no further action is taken by the university or institution, the Chair of the Education Committee will then consider whether there are any further reasons for the MACC to investigate.

If the party against whom the allegation of misconduct is found guilty of all or any of the matters investigated by the university or institution and they impose a warning or sanction, the Chair of the Education Committee shall decide what further action including the imposing of penalties as stated in section 3 above the Commission should take, if any, with regards to the same matters investigated by the university or institution without undertaking any further investigation.

4.8 It is the MACC's policy to report all serious criminal offences to the police for investigation. Notwithstanding the above, any person has the right to report any matter to the police, irrespective of the MACC's Disciplinary Policy and procedures.

4.9 The MACC will maintain a register of cases considered under this Policy in a Discipline Register. The Discipline Register will maintain the confidentiality of the parties involved. The case-specific details will be recorded on the Scholar's or Fellow's secure electronic file.

5. Receipt of a Formal Complaint of Misconduct under the Disciplinary Policy

5.1 The Executive Secretary will acknowledge receipt of the formal complaint of misconduct within 10 working days of receipt and will make the Chair of the Education Committee and the Assistant Secretary aware of the formal complaint.

The Executive Secretary shall notify the complainant as soon as reasonably practical as to whether the formal complaint of misconduct has or has not been accepted for consideration under the Disciplinary Policy. Where the complaint is dismissed the reasons for this will be explained in the Executive Secretary's response to the complainant.

5.2 Not all complaints relating to Scholar or Fellow misconduct will result in formal disciplinary proceedings. If the offence is considered to be minor (see section 2.3), the Chair of the Education Commission has the discretion not to investigate but to communicate with the person accused of misconduct about the issue raised and ask them to respond in writing. If the response contains information that meets the requirements outlined in section 2.3, then the Chair of Education Committee can decide whether or not to treat the misconduct as minor and apply an appropriate sanction.

5.3 If an investigation is undertaken, the person accused of misconduct will be notified of the details of the misconduct alleged so that they can respond in writing.

5.4 Anonymous allegations of misconduct will not usually be considered as those made anonymously may be difficult to investigate or resolve. Exceptionally, such an allegation may be considered if the MACC accepts that there is a compelling reason to do so and the allegation is supported by sufficient evidence.

5.5 The MACC may, where it considers it appropriate, appoint an impartial third party to undertake the investigation.

5.6 The Chair of the Education Committee or the appointed third-party investigator will consider the evidence of the allegation of misconduct and investigate, as appropriate. Following which they will recommend one of the following courses of action:

- A that the complaint of misconduct is not justified and is not a disciplinary matter and should be rejected.
- B that the complaint of misconduct is justified or partially justified and recommend the action to be taken.

If the allegation of misconduct is upheld, all or in part, then the Chair of the Education will consider what actions, if any, will be taken in accordance with section 3 of the Policy.

5.7 The Executive Secretary shall inform the person making the allegation of misconduct and the party against whom the allegation was made within 10 working days of the decision in writing. That communication will confirm if the allegation has or has not been upheld, all or in part, and, if upheld all or in part, any action that will be taken including any sanctions that will be imposed.

5.8 If the complaint of misconduct is upheld, any action to be taken must wait either until the party against whom the allegation of misconduct has been made confirms in writing that they do not wish to appeal and explicitly waives their right to do so or the time period for making an appeal has passed.

6. APPEAL PROCEDURE

Right of Appeal by Party Against Whom the Allegation Was Made

6.1 If the party against whom the allegation of misconduct was made remains dissatisfied with the decision reached, they have the right to appeal, formally in writing, to the Chair of the Commission on Chair@marshallscholarship.org within 21 working days of the decision. Appeals received after 21 working days will not be considered.

The Chair of the Commission will acknowledge receipt of the appeal within 10 working days of receipt.

6.2 The Chair will instruct the Executive Secretary to convene a panel of three Commissioners, with no previous involvement in the allegation, to consider the appeal. The panel will be led by the Chair.

6.3 Within 21 working days from the receipt of the appeal the Chair will convene the selected panel to which the party against whom the allegation of misconduct was made will be invited to submit a statement in writing outlining their reasons for appealing the decision. The Executive Secretary will arrange for any evidence to be delivered on behalf of the MACC in response. The complainant shall have the right to submit a written statement to the panel in response to the statement provided by the party against whom the allegation of misconduct was made.

6.4 The Panel will aim to issue its decision to the party against whom the allegation of misconduct was made within seven working days of its decision. In the event of a justified or partially justified decision, the Panel will instruct the Executive Secretary to action any required outcomes.

6.5 The decision of the Panel will be final and will conclude the disciplinary procedure of the Commission.

Right of Appeal by the Complainant Against Process

6.6 The only circumstance under which an appeal will be considered from the complainant is if the policy above has not been followed, in full or in part. In those circumstances, the complainant must explain formally in writing, within 21 working days of the decision, the basis for their appeal by identifying the part or parts of the procedure that they believe were not followed.

The Chair will consider the grounds put forward by the complainant and decide if the appeal should be allowed. If allowed, paragraph 3.2 will apply and the Executive Secretary will arrange for any evidence to be delivered on behalf of the MACC in response. The Panel will aim to issue its decision within seven working days of its decision. In the event of a justified or partially justified decisions, the Panel will instruct the Executive Secretary to action any required outcomes. The decision of the Panel will be final and will conclude the appeal by the complainant.