

## The Ordinances Part 3: Dismissal, Discipline, Grievance Procedures and related matters pursuant to Statute 7

### 3.9 Probationary Procedure

#### *Part I : Introduction and Definitions*

1. This Ordinance is promulgated in accordance with the provisions of Part V Clause 17 of Statute 7
2. In this Ordinance, unless the context indicates otherwise:-
  - i. 'The Statute' shall mean Statute 7;
  - ii. 'member of staff' shall mean any member of staff as defined by Clause 1(1) of The Statute;
  - iii. in relation to any decision or action that the University is required to make or to perform under this Ordinance, 'the University' shall mean: any member of staff who usually makes such decisions or performs such actions on behalf of the University, or who in the normal course of events may reasonably be expected to do so;
  - iv. a reference to 'clinical staff' shall be taken to mean a reference to any member of staff defined in Clause 20(1) of The Statute;
  - v. references to Deans shall be construed so as to include references to Heads of Professional Services or other equivalent units (and vice versa), and where there is no Dean, Head of Professional Service or equivalent unit, the President and Vice-Chancellor or his or her nominated representative may appoint a member of staff from such Faculty, Professional Service or equivalent unit to undertake the duties required of a Dean or Head of Professional Service by this Ordinance;
  - vi. references to University postholders (including those referred to in sub-paragraph (v) above) shall be construed to refer either to the postholder or to an appropriate member of staff nominated by the postholder to act with full authority on the postholder's behalf;
  - vii. where a post is held jointly by two or more postholders, a reference to the postholder shall be construed as a reference to any or all postholders holding that post, and any action authorised or required under this Ordinance may be taken by any such postholder.

#### *Part II : Application and Scope*

3. This Ordinance applies to members of staff as defined by Clause 1(1) of The Statute with the exception of the President and Vice-Chancellor, namely:-
  - i. members of the academic staff;
  - ii. members of staff with a grade of Level 4 or above in the University's grading structure, or an equivalent grade.
4. The provisions of the Ordinance shall apply to those members of staff ('probationers') who have been appointed subject to review after a period of probation (the 'probationary period'), for the purpose of determining whether, during or at the end of such period, the appointment should be confirmed, or whether the appointment should not be confirmed and in consequence, terminated.
5. For the avoidance of doubt, Ordinance 3.5 (Disciplinary procedure), Ordinance 3.6 (Capability procedure), Ordinance 3.7 (Incapacity on health grounds procedure) and the Personal

Performance and Development Review procedure shall not apply to members of staff during their probationary period.

6. This Ordinance shall not apply to the proposed dismissal of a member of staff where that dismissal would arise from the expiry without renewal of a fixed-term contract.

*Part III : General Principles*

7. The probationary period is designed to:-
- i. support new members of staff while they are settling into the University;
  - ii. give the University time to assess the suitability of new members of staff for continued employment;
  - iii. provide a framework within which any areas of concern can be identified, addressed and resolved.
8. The processes adopted during the probationary period shall be subject to arrangements relating to probation for the relevant staff group which may be issued by the University from time to time (referred to in this Ordinance as 'probation arrangements').
9. For the avoidance of doubt, a decision not to confirm an appointment of a probationer may be made, subject to the procedure set out in Part IV of this Ordinance, during or at the end of the probationary period, if the performance or conduct of the probationer is found to be unsatisfactory, or if for any other substantial reason the probationer is judged unsuitable to be confirmed in post.

**Duration of the probationary period**

10. The duration of the probationary period, if applicable, is set out in the member of staff's contract of employment. The probationary period may in exceptional circumstances (such as described in the probation arrangements) be extended by up to one year.

**Arrangements during the probationary period**

11. The probation arrangements, as issued by the University from time to time, shall include provision for:-
- i. access to advice, support, and feedback on progress during the probationary period from a designated senior colleague, mentor or manager;
  - ii. access to training and development opportunities as agreed with the designated senior colleague, mentor or manager;
  - iii. the member of staff to have a written description of his or her duties and responsibilities, defined targets/objectives during the probationary period and, where appropriate, a description of how progress against these will be monitored and reviewed;
  - iv. written reports on the progress of the probationer in relation to his or her defined targets/objectives to be produced at appropriate intervals;
  - v. confirmation of appointment at the end of a period of probation subject to satisfactory conduct and satisfactory performance in relation to duties and responsibilities and defined targets/objectives as in sub-paragraph (iii) above.

**Confidentiality**

12. Throughout any proceedings under this Ordinance, the University shall seek to ensure that confidentiality is maintained. However, this shall not preclude the University from disclosing information where necessary for the discharge of duties or as required by law, nor shall this preclude the University, where appropriate, from disclosing information about any outcome under this Ordinance.

13. There may be cases where it is appropriate to preserve confidentiality in relation to the identity of witnesses, where there is reasonably perceived to be a need to protect any member of staff from the risk of intimidation or retribution. Likewise, it may be necessary to adapt these procedures where it is considered undesirable for any one person to give evidence in the presence of another.

#### **Right to be accompanied**

14. At any hearing convened under Part IV:2 or Part V of this Ordinance the member of staff may be represented or accompanied by a workplace colleague or trade union representative. If a member of clinical staff is called to a hearing under this Ordinance in relation to a proposal to terminate his or her employment and the hearing will involve consideration of issues related to the member of staff's clinical conduct or competence, the person conducting the hearing may permit the member of staff to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity.
15. If the member of staff's representative is not available at the time proposed for the hearing, the member of staff may request that the hearing be postponed to another reasonable time and must offer a date which is not later than five working days after the date first proposed for the hearing. The representative may attend the hearing with the member of staff and may speak on the member of staff's behalf, but that representative may not answer questions (relating to the issues in dispute) on the member of staff's behalf.

#### *Part IV : Procedure relating to non-confirmation of appointment for probationary members of staff*

##### **Part IV:1 Meetings and discussion**

16. At any time during the probationary period, where the performance or conduct of a probationer gives cause for concern, the senior colleague, mentor or manager shall discuss the area of concern with the member of staff to identify the nature of the problem and to consider its causes and possible solutions.
17. The senior colleague, manager or mentor shall ensure that the member of staff is aware of the standards of performance, attendance and/or conduct expected, outline in what respect the member of staff's performance, attendance and/or conduct is not meeting acceptable standards, and through discussion with the member of staff, seek to identify ways of resolving the issue in order to meet the standards required within a defined timescale. This may include provision of additional supervisory support, mentoring or training to assist the member of staff.
18. A note should be made of the meetings to record the main areas discussed and any actions agreed.
19. If concerns arise relating to the health of the member of staff, advice should be sought from the Occupational Health Service as appropriate.
20. Where the member of staff's performance, attendance or conduct continues to give cause for concern, further meetings shall be held as necessary with the member of staff to review progress against the defined targets and to determine whether any further guidance or support is needed. Where appropriate, the member of staff should be advised in writing that failure to meet the standards required in the defined timescale may result in either the probationary period being extended or the employment being terminated.
21. The meetings referred to in paragraphs 16 to 20 above may be held in addition to the formal probation reporting process as set out from time to time in the probation arrangements members of staff.
22. In circumstances where:-

- i. meetings and discussions with the member of staff have not resulted in a satisfactory improvement within the defined timescale, and/or
- ii. during the probation period there are reasonable grounds to believe that the member of staff is unsuitable to be confirmed in post, and/or
- iii. the recommendation by the senior colleague, mentor or manager in the final probationary report is that the appointment should not be confirmed,

the matter will be brought by the mentor or line manager to the attention of the Dean or his or her nominee or Head of Professional Service who, with advice from a member of Human Resources, shall review the matter and, having gathered any further information as he or she deems necessary, decide on any appropriate further action.

23. The member of staff may be suspended from duty at the normal rate of pay as a precautionary measure where this is considered appropriate and in the best interests of the University or of its students or staff. Any suspension and its terms shall be confirmed to the member of staff in writing by the Director of Human Resources or his or her nominee.

#### **Part IV:2 Decisions regarding non-confirmation of appointment**

24. A decision regarding non-confirmation of appointment shall be made in accordance with either:
- i. Part IV:2(i) below (following a recommendation in the final probationary report); or
  - ii. Part IV:2(ii) below (during the probationary period).

#### **Part IV:2(i) Following a recommendation in the final probationary report**

25. In the case of proposed non-confirmation of a member of staff following a recommendation in the final probationary report, the Dean (or his or her nominee) or Head of Professional Service, having consulted the relevant Promotion Panel if appropriate, and in conjunction with Human Resources, shall consider whether:-
- i. the member of staff should be confirmed in his or her appointment; or
  - ii. in exceptional circumstances, the probationary period should be extended by up to one year; or
  - iii. the member of staff should not be confirmed in his or her appointment and that the appointment be terminated;

and the Dean (or his or her nominee) or Head of Professional Service shall advise the member of staff in writing accordingly.

26. Where paragraph 25(iii) applies, the Dean (or his or her nominee) or Head of Professional Service shall advise the member of staff in writing that circumstances are such that his or her appointment may not be confirmed, and that as a result, his or her employment may be terminated. The member of staff will be advised of the grounds that have led to the action contemplated, together with any supporting information and evidence. In the same letter, he or she will be invited to a meeting with the Dean (or his or her nominee) or Head of Professional Service to discuss the matter before any decision is made, at which he or she may make oral and/or written representations and be accompanied by a workplace colleague or trade union representative. A member of Human Resources will be present at the meeting in an advisory capacity.

#### **Part IV:2(ii) During the probationary period**

27. Where during the probationary period there are reasonable grounds to believe that the member of staff is unsuitable to be confirmed in post, the Dean (or his or her nominee) or Head of Professional Service, having consulted the relevant Promotion Panel if appropriate and in conjunction with Human Resources, shall consider whether:-

- i. the member of staff should continue in his or her period of probation; or
- ii. the member of staff's appointment should not be confirmed and the member of staff should be dismissed;

and the Dean (or his or her nominee) or Head of Professional Service shall advise the member of staff accordingly.

28. Where paragraph 27(ii) applies, the Dean (or his or her nominee) or Head of Professional Service shall advise the member of staff in writing that circumstances are such that his or her appointment may not be confirmed, and that as a result, his or her employment may be terminated. The member of staff will be advised of the grounds that have led to the action contemplated, together with any supporting information and evidence. In the same letter, he or she will be invited to a meeting with the Dean (or his or her nominee) or Head of Professional Service to discuss the matter before any decision is made, at which he or she may make oral and/or written representations and be accompanied by a workplace colleague or trade union representative. A member of Human Resources will be present at the meeting in an advisory capacity.

#### **Part IV:3 Confirmation of Decision to Dismiss**

29. Where the decision is taken not to confirm the appointment, the Director of Human Resources or his or her nominee shall write to the member of staff to inform him or her that his or her appointment has not been confirmed and will therefore terminate, and the reasons for the decision, and to give notice of dismissal as appropriate. The member of staff will be informed of his or her right to appeal against that dismissal under Part V below and of any applicable time limits for the making of such an appeal.

#### *Part V : Appeals*

30. A member of staff (in this Part referred to as the 'Appellant') may appeal under this Part against a decision to dismiss under Part IV above.
31. Any appeal shall be made in writing to the Director of Human Resources within ten working days of receipt of the written notification of the decision concerned. The Appellant shall set out in full the grounds of his or her appeal and, if the Appellant is proposing to rely upon new evidence, he or she should provide details and a copy of any relevant documentation.
32. The appeal shall be heard:-
- i. in the case of a decision made by a Dean (or his or her nominee) or Head of Professional Service, by a person drawn from a list of persons approved by the President and Vice-Chancellor to hear appeals;
  - ii. in the case of a decision made by a Vice-President, a Pro Vice-Chancellor or the Chief Operating Officer: by another Vice-President or by the President and Vice-Chancellor;
  - iii. in the case of a decision made by the President and Vice-Chancellor, by the Chair of the Council or his or her nominee.

A member of Human Resources appointed by the Director of Human Resources or his or her nominee shall be present in an advisory capacity.

33. The person hearing the appeal shall have full discretion to decide on the conduct of the appeal hearing. Without limitation, the person hearing the appeal shall have power to continue a hearing in the absence of a party, witness or representative if no good cause (in the opinion of the person hearing the appeal) is put forward in support of a request for an adjournment.
34. The Appellant shall be given written notification of the date and time of the appeal hearing and shall be notified of his or her right to be represented or accompanied in accordance with paragraph 14 above.

35. Where the Appellant fails to attend the appeal hearing without good cause, the appeal may proceed in the Appellant's absence.
36. The appeal shall not normally take the form of a re-hearing of the evidence and witnesses other than the Appellant and the person who made the decision being appealed may only be heard with permission of the person hearing the appeal. However, if there is evidence that could not reasonably have been presented at the hearing, and/or if new evidence has emerged since the hearing, this may be presented at the appeal.
37. Following the appeal hearing, the Appellant will be advised in writing, normally within five working days, of the outcome of the appeal which, without limitation, may be to uphold or to overturn the decision to dismiss.
38. The decision of the person hearing the appeal shall be final.
39. Any dismissal under this procedure shall remain in force pending the outcome of an appeal. If the decision to dismiss is overturned, continuity of employment shall be restored.