

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

### 3.11 Procedure for Clinical Staff

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

1. This Ordinance is promulgated in accordance with the provisions of Part V Clause 20 of Statute 7 and sets out the procedures for handling the suspension and/or dismissal of members of clinical staff.
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. 'member of clinical staff' shall mean any member of staff defined in Clause 20(1) of The Statute, who is required to engage in clinical work or activities, and for that purpose to be registered with the General Medical Council, Dental Council, Health Professions Council or similar body, and/or to have an honorary or substantive contract or status with a National Health Service Trust or similar body;
  - iv. 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;
  - 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 in 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;who also fall within Clause 20(1) of The Statute: namely members of clinical staff.
4. Where such registration, contract or status referred to in paragraph 2(iii) above is (a) suspended or (b) has lapsed or is terminated, withdrawn or revoked, this Ordinance shall apply for the purpose of determining whether the contract of employment between the

University and the member of staff should be (a) suspended, with or without pay, or (b) terminated. Suspension shall be without pay where the registration, contract or status has been suspended as a substantive disciplinary measure.

5. Nothing in this Ordinance shall prevent the University from taking action before the hearing of any appeal by the member of staff against the termination, withdrawal, revocation or suspension of the registration, contract or status, or during any re-application process where registration has lapsed.
6. Where the registration of a member of clinical staff has lapsed due to non-payment of fees or failure to apply for re-registration, action under this Ordinance shall only commence if the member of staff has failed to produce evidence of re-registration within a period of fourteen days after receiving written request from the University (during which period the member of staff may be suspended with or without pay). If re-registration takes place after procedures under this Ordinance have commenced, any further action under this Ordinance shall cease from the date that the member of staff is reinstated on the appropriate register.

### *Part III : General Principles*

#### **Confidentiality**

7. Throughout any proceedings taken 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.
8. 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**

9. At any hearing convened under this Ordinance the member of staff may be represented or accompanied by a workplace colleague or trade union representative. If the hearing will involve consideration of issues related to the member of staff's clinical conduct or competence, the person conducting the hearing (or chair of the panel as appropriate) 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 staff in any legal capacity.
10. 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*

#### **Delegation of functions, duties and powers**

11. Where the circumstances are such that this procedure should be instituted, the functions, duties and powers of the President and Vice-Chancellor under Clause 20(2) of The Statute shall normally be delegated to the Dean of the Faculty (or his or her nominee) to which the member of staff belongs, and the Dean (or his or her nominee) shall be deemed to be the President and Vice-Chancellor's nominated representative for the purposes of this Part.

### **Stage One : Investigation**

12. The Dean or his or her nominee shall appoint an appropriate person ('the Investigator') to conduct an investigation and shall inform the member of staff that an investigation is to take place under this Ordinance. The Investigator shall gather such information as may be required and shall, normally within fifteen working days of his or her appointment, prepare a report detailing the findings of his or her investigation (the 'Investigation Report'). The investigation may be extended if necessary and where this occurs the member of staff shall be advised accordingly.
13. The Dean or his or her nominee may, as a precautionary measure where this is considered appropriate and in the best interests of the University or of its students or staff, suspend a member of staff from duty at the normal rate of pay pending the outcome of an investigation or hearing under this Ordinance. 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. Such suspension shall not amount to a disciplinary measure.
14. Following receipt of the Investigation Report, the Dean or his or her nominee shall decide, taking into account advice from Human Resources, whether:-
  - i. no further action will be taken under this Ordinance and the member of staff is to be advised accordingly; or
  - ii. the University should consider suspending the member of staff, as a substantive measure, with or without pay; or
  - iii. the University should consider terminating the contract of employment between the member of staff and the University.

### **Stage Two : Hearing**

15. If the Dean or his or her nominee decides that it is appropriate to consider suspension or dismissal in accordance with paragraph 14 above, the member of staff shall be informed in writing of the reasons for this and requested to attend a hearing at which the issue shall be considered. The member of staff will have a full opportunity to state his or her case and shall be asked to present any additional information relevant to the issue(s) under consideration. The member of staff shall receive at least ten working days' notice of the hearing, and shall be given a copy of this Ordinance and reminded of his or her right to be represented or accompanied at the hearing in accordance with the provisions of paragraph 9 above.
16. The hearing will usually be conducted by the Dean or his or her nominee.
17. A member of Human Resources appointed by the Director of Human Resources or his or her nominee shall be present at the hearing in an advisory capacity.
18. The member of staff shall be provided in advance of the hearing with copies of any evidence to be considered at the hearing, including (where applicable) the names of any witnesses from whom it is intended that evidence will be considered at the hearing and any statements obtained from those witnesses.
19. The member of staff shall indicate, at least five working days prior to the hearing, the nature of any evidence that he or she intends to present in his or her defence or mitigation, including the names of any witnesses and their relevance to the circumstances and shall provide copies of any documents to which he or she intends to refer.
20. The member of staff shall have the right to be represented or accompanied at the hearing in accordance with the provisions of paragraph 9 above.
21. If the member of staff is or becomes unable to attend the hearing, he or she should notify the person who is due to conduct the hearing as soon as possible, giving the reasons for the non-attendance. A member of staff who fails to attend a hearing without good cause shall be

informed that if he or she fails to attend any rearranged hearing without good cause, the matter may be considered in his or her absence.

22. The procedure to be followed at the hearing shall be at the discretion of the person conducting the hearing, which may include without limitation:-
- i. the reasons for the proposed suspension or dismissal being put to the member of staff including if relevant the calling of any witnesses;
  - ii. the member of staff having the opportunity to raise questions of any witnesses called. The manner in which such questions are to be raised is at the discretion of the person conducting the hearing;
  - iii. the member of staff having the opportunity to set out his or her case in response to the proposed action and to call any relevant witnesses;
  - iv. the questioning of any witnesses called by the member of staff;
  - v. the power to postpone or adjourn the hearing;
  - vi. the power to continue the hearing in the absence of a party, witness or representative where, in the opinion of the person conducting the hearing, no good cause has been put forward for an adjournment.
23. After the hearing, the Dean or his or her nominee may decide:-
- i. where the registration, contract or status has lapsed, been terminated, withdrawn or revoked, to dismiss the member of staff; or
  - ii. to suspend the member of staff from his or her University duties with or without pay, for the duration of the suspension under the registration, contract or status (or until the member of staff is reinstated on the appropriate register where registration has lapsed), or for some lesser period;
  - iii. neither to dismiss nor to suspend the member of staff.
24. The member of staff shall be notified in writing, normally within five working days, of the outcome of the hearing and the reasons, and of his or her right to appeal under Part V of this Ordinance.

#### *Part V : Appeals*

25. A member of staff (in this Part referred to as the 'Appellant') who wishes to appeal a decision under Stage Two above should do so in writing to the Director of Human Resources within ten working days of receipt of written notification of the decision concerned. The Appellant should set out in full the grounds for the 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.

#### **Appeals against suspension**

26. Appeals against suspension shall be heard:-
- i. in the case of a decision made by a Dean or his or her nominee: by a person drawn from a list of persons approved by the President and Vice-Chancellor to hear appeals.
27. A member of Human Resources appointed by the Director of Human Resources or his or her nominee will be present in an advisory capacity.
28. 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.

29. 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 the provisions of paragraph 9 above.
30. Where the Appellant fails to attend the appeal hearing without good cause, the appeal may proceed in the Appellant's absence.
31. 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.
32. The Appellant will be advised in writing, normally within five working days of the appeal hearing, of the outcome of the appeal which may include, without limitation, the decision to suspend being upheld or overturned.
33. The decision of the person hearing the appeal shall be final.

#### **Appeals against dismissal**

34. The appeal will be heard by a panel (the 'Appeal Panel') convened by the President and Vice-Chancellor or his or her nominated representative on a case-by-case basis in accordance with the following rules:-
  - i. subject to sub-paragraph (v) below, each Appeal Panel shall consist of three persons;
  - ii. at least one member of the Appeal Panel shall be a lay member of the Council and one shall be a member drawn from a list agreed from time to time by the Senate. The third member may be another lay member of the Council or may be chosen from among the senior management of the University, such as a Vice-President, a Pro Vice-Chancellor, Chief Operating Officer, Dean or Head of Professional Service who shall chair the Appeal Panel unless the Appeal Panel resolves otherwise;
  - iii. if the appeal hearing will involve consideration of issues related to an Appellant's clinical conduct or competence, the chair of the Appeal Panel may permit the Appellant 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;
  - iv. no member of the Appeal Panel shall have had any previous involvement in the Appellant's case;
  - v. a representative or representatives of a National Health Service or other relevant body may be appointed to the Appeal Panel: where this occurs the Appeal Panel may consist of more than three members, but shall not exceed five persons.
35. The Director of Human Resources or his or her nominee shall appoint a member of Human Resources to act as Secretary to the Appeal Panel.
36. An appeal under this Part shall not normally take the form of a re-hearing of the evidence and witnesses may be called only with the Appeal Panel's permission. 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. No later than ten working days before the Appeal Panel Hearing the Appellant shall be notified by the Secretary to the Appeal Panel of:-
  - i. the date, time and place of the Appeal Hearing;
  - ii. his or her right to be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 9 above; and

- iii. so far as they are known at the time, the names of the persons to be present at the hearing including the members of the Appeal Panel, and the name of any person attending to present the reason for the decision to dismiss on behalf of the University.
38. The Appellant may be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 9 above.
39. At least three working days before the Appeal Hearing the name and the address of the Appellant's representative must be notified in writing to the Secretary to the Appeal Panel.
40. The Appellant shall take all reasonable steps to attend the Appeal Hearing and/or any adjournment or postponement of the Appeal Hearing. Where the Appellant indicates to the Appeal Panel that he or she does not wish to exercise his or her right to be heard or fails to attend or leaves the Appeal Hearing or any postponement or adjournment of the Appeal Hearing without good cause, the Appeal Panel shall be entitled to proceed in the Appellant's absence.
41. The procedure to be followed in preparation for and at the Appeal Hearing shall be at the discretion of the Appeal Panel, but shall include without limitation:-
  - i. determining which documents (if any) shall be provided for the Appeal Panel's consideration and at what stage;
  - ii. determining the extent (if any) to which witnesses may be called and questioned; and
  - iii. deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing.
42. The Appeal Panel shall notify the Appellant in writing of the reasons for its decision, normally within ten working days of the Appeal Hearing. A report of the decision will also be sent to the Council and to the Appellant's Dean of Faculty. The Appeal Panel may:-
  - i. uphold the decision to dismiss reached at the Stage Two hearing;
  - ii. overturn that decision and reinstate the Appellant.
43. The decision of the Appeal Panel shall be final.
44. 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.