

## **Guidance to Accompany the Code of Practice on Misconduct and Fitness to Practise Committee**

This guidance outlines the processes followed when a student is referred to a College Misconduct and Fitness to Practise Committee.

### **Receipt of the Investigating Officer's Report**

When a case is referred to a College Misconduct and Fitness to Practise Committee, the Student will be sent an Investigating Officer's Report. This report will set out the reason for referral to a Committee, including any alleged breaches of Regulations and details of the investigation. This will include any relevant evidence and any statement made by the Student during the investigation. The Student will be informed of the names and role of any witnesses that have been asked to attend the Committee by the Case Presenter, and the reason for calling these witnesses.

The Student will be given an opportunity to respond to the Investigating Officer's Report within 10 University working days from the date of the letter. This should include:

- (a) a response to the Investigating Officer's Report. In cases of alleged misconduct, the Student should state in their response whether they admit or deny the offence;
- (b) any evidence to be relied on;
- (c) the names of any witnesses that the Student wants to invite to the Committee and the reason why they want the witness to attend (for instance, if they were present at the time of the alleged incident, or as a character witness).

The Student should also submit any information about mitigating factors (such as health or personal problems), and/or character references they wish the Committee to consider as part of any outcome or sanction stage.

Any information submitted by the Student will be seen by the Committee panel, the Case Presenter/Investigating Officer, and the Secretary to the Committee, as well as those involved in any subsequent appeal to the University Misconduct and Fitness to Practise Committee. Where the case involves more than one student, the Student's response to the allegations will be shared with the other students prior to the Committee. Information and supporting evidence relating to mitigating factors will not be shared with the other students and will normally be considered at the sanctioning stage if the allegations are found proven.

Where information is provided that does not appear to be strictly relevant to the matters under consideration by the Committee, it is for the Chair to decide whether the information should be considered by the Committee (for instance, where the information relates to a third-party who is not under investigation, and/or is of a sensitive nature).

Any information should be submitted directly by email or post. Evidence submitted through third-party 'cloud' services such as Dropbox or Google Drive will not usually be accepted.

Any evidence or response received after the relevant date will only be considered by the Committee if the Chair allows it.

### **Arrangements for Telephone or Videoconferencing**

Where the University, at its discretion, approves arrangements for the Student to attend the Committee by telephone or videoconferencing, prior to the approval of such arrangements, the Student should inform the University about:

- The location from which they will be calling
- The security of the location and/or internet connection
- The privacy of the location.

During the call, the audio and visual facilities used by the Student and the Committee should be the same. This means that both parties should be able to hear and see each other, where possible. The hearing should not be observed or heard by anyone else (other than a “Friend”).

If the Student is not able to answer the telephone or videoconferencing call for any reason, or if the connection fails, the Chair may decide that the hearing should continue as if the Student was absent.

### **Proceedings for College Misconduct and Fitness to Practise Committee**

The Committee will be conducted in accordance with procedures set out in the Code of Practice on Misconduct and Fitness to Practise Committee. This Guidance Note explains these procedures.

The Committee will normally begin once all the members of the Committee are present. The Student, the Friend (if present) and the Case Presenter will be invited into the hearing. The Chair will outline the purpose of the Committee and the procedure to be followed. The hearing will normally proceed as set out on page 3, but the Chair can manage the hearing as appropriate to ensure:

- (a) fairness;
- (b) that all parties have an opportunity to make statements and to be questioned about the matter concerned;
- (c) that the Student is given the opportunity to make the final statement.

In cases of alleged misconduct, the Chair should establish whether the Student admits or denies the allegation and reach one of the following decisions:

- (a) If the Student admits the offence, as detailed in the Investigating Officer’s Report, the hearing may go directly to the sanctioning stage (page 4) unless the Chair decides it is appropriate to hear some or all of the evidence of the case.
- (b) If the Student denies part of, or all of the offence or offences, the Committee will begin at the evidence stage (page 3).

For cases referred to a Committee on the basis of health concerns of a Student following a Fitness to Practise programme, if the Student agrees that they have a health concern that may impair their Fitness to Practise, as detailed in the Investigating Officer’s Report, the hearing may begin at the outcome stage, unless the Chair decides it is appropriate to hear all of the case. Otherwise, a full hearing will be held, and the process outlined below should be followed.

Where the case involves more than one student, the evidence stage will normally take place to consider the allegations in relation to all of the students together.

All questions should be directed through the Chair who will have the final decision as to whether any question is allowed.

In cases of academic misconduct, a representative from the relevant School (known as a Principle Academic Unit (PAU)) may be invited to answer questions or give any necessary information that the Committee may require.

Once any witness or PAU representative has given evidence and has been questioned they should leave the hearing.

### **Order of Proceedings for College Misconduct and Fitness to Practise Committee:**

#### **Evidence stage**

This stage will normally proceed as follows:

1. The Case Presenter may make a statement about the case and call witnesses as required.
2. The Case Presenter's witnesses may make a statement and then be questioned by the Case Presenter, the Student (or their Friend) and the Committee, normally in that order.
3. The Case Presenter may then be questioned by the Student (or their Friend), and the Committee, normally in that order.
4. The Student (or their Friend) may make a statement about the case and call witnesses as required.
5. The Student's witnesses may make a statement and then be questioned by the Student (or their Friend), the Case Presenter, and the Committee, normally in that order.
6. The Student may then be questioned by the Case Presenter, and the Committee, normally in that order.
7. The Case Presenter may make a final statement which should be based on the evidence presented.
8. The Student (or their Friend) may make a final statement which should be based on the evidence presented.

The Student, their Friend, and the Case Presenter will leave the hearing whilst the Committee consider the evidence.

If an outcome or sanction stage is required, the Chair may allow a short break so that the Student and Case Presenter can prepare before the hearing continues.

Where the case involves more than one student, any sanction or outcome stage will normally be held separately for each individual student.

#### **Outcome or sanction stage**

At the start of this stage, any supplemental report will be distributed to the Committee. Additional evidence related to any mitigating factors or character references may also be admitted at the discretion of the Chair. This stage will normally proceed as follows:

1. The Case Presenter may make a statement in relation to the outcome or sanction, any mitigating or aggravating factors, any fitness to practise concerns, and any history of previous findings of misconduct;
2. The Case Presenter may then call witnesses who may make a statement in relation to the outcome or sanction and then be questioned by the Case Presenter, Student (or their Friend) and the Committee, normally in that order.
3. The Case Presenter may then be questioned by the Student (or their Friend), and the Committee, normally in that order.
4. The Student (or their Friend) may make a statement in relation to the outcome or sanction, any mitigating or aggravating factors, any fitness to practise concerns, and any history of previous findings of misconduct.
5. The Student may then call witnesses who may make a statement in relation to the outcome or sanction and then be questioned by the Student (or their Friend), the Case Presenter, and the Committee, normally in that order.
6. The Student may then be questioned by the Case Presenter, and the Committee, normally in that order.
7. The Case Presenter may make a final statement in relation to the outcome or sanction which should be based on the evidence presented.
8. The Student (or their Friend) may make a final statement in relation to the outcome or sanction which should be based on the evidence presented.
9. The Student, their Friend, and the Case Presenter will then leave the hearing.

The Student, their Friend, and the Case Presenter will then leave the hearing. The Committee will then consider the evidence presented and determine an appropriate sanction/outcome. For students registered on fitness to practise programmes, before deciding on a sanction, the Committee will consider the Student's fitness to practise, and whether it is impaired.

### **Fitness to Practise**

When considering the Student's fitness to practise, and whether it is impaired. the Committee should consider:

- The seriousness and nature of the concern(s)\*;
- The Student's explanations and response to the matter throughout the whole process, including any admission;
- Whether the Student has taken responsibility for their actions and recognises the impact of their own health or actions on others (including other students or service users);
- Whether there is a history of previous misconduct;
- Whether the behaviour was inappropriate or unprofessional;
- Whether the Student has received feedback, guidance, advice or support relating to previous inappropriate or unprofessional attitude or behaviour but has not followed it;
- Whether their behaviour or actions posed a risk to others and/or any safeguarding concerns;
- Whether their attitude, behaviour or actions would undermine public trust and

- confidence in the profession;
- Whether the Student has a sufficient level of insight into the implications of their own actions or wellbeing;
  - Whether the Student can evidence any remediation to ensure similar issues do not arise again;
  - Whether the Student engages appropriately with appropriate services to get support and advice;
  - Whether there has been a sustained period without any further instances of misconduct or behaviour that was unprofessional;
  - Whether the Student had any mitigating circumstances that affected them.

\*The Committee should consider the seriousness of the offence and the professional body requirements. Some professional bodies may have a presumption in favour of finding an impairment in cases of serious misconduct such as those involving violence, sexual misconduct, harassment (including that based on protected characteristics) and dishonesty.

Where a Committee decides a student's fitness to practise is impaired, a condition may be imposed to remedy the impairment, if this is appropriate, proportionate, workable and measurable. Where conditions are imposed, the Committee Chair may review at a later date the effectiveness of the conditions to determine whether the fitness to practise impairment has been remediated over a sustained period. Where appropriate, the Committee may be reconvened to hear information related to the review of the student's fitness to practise impairment.

In some circumstances, a Committee may decide that the concerns about the student's fitness to practise impairment cannot be remediated, for example, where the misconduct was of a very serious nature, or the Committee decides that the impairment cannot be remediated by further measures (such as further training or supervision). Where the concerns are very serious and/or the concerns cannot be remediated, the Committee will need to consider all sanctions available to it, including those which mean the student would be unable to complete their programme of study.

### **Mitigating Circumstances and Aggravating Factors**

When determining a sanction, the Committee should consider any mitigating factors or aggravating factors. Mitigating factors may lessen a sanction but it does not normally change any finding that the misconduct has been proven. A Committee will normally consider whether mitigating factors should have been raised at an earlier time, for instance, in accordance with the Extenuating Circumstances procedure.

Factors to consider may include:

- Level and experience of the student (for instance, undergraduate or postgraduate)
- The severity of the misconduct
- The Student's explanation and response to the allegation, including whether or not the Student admitted the offence
- Whether there had been previous misconduct

- Whether the misconduct had been premeditated
- Whether the misconduct was intentional
- Whether there had been an attempt to change, hide, or dispose of evidence
- Whether the misconduct was of a nature that poses a risk to the University, including its staff, students, or visitors
- Whether the Student has compelling personal circumstances that affected their judgment

Where mitigation factors are provided, Committees should consider whether any evidence has been provided to support these.

Where students receive a less severe sanction due to mitigating circumstances, they should not expect a less severe sanction when, if any, further incidents of misconduct are found proven.

### **University Misconduct and Fitness to Practise Committee – Appeal Hearing Process**

The Committee will normally begin once all the members of the Committee are present. The Student, their Friend (if present) and the Case Presenter will be invited into the hearing. The Chair will outline the purpose of the Committee and the procedure to be followed. The hearing will normally proceed as outlined below, but the Chair can manage the hearing as appropriate to ensure:

- (a) fairness;
- (b) that all parties have an opportunity to make statements and to be questioned about the matter concerned;
- (c) that the Student is given the opportunity to make the final statement.

### **Order of Proceedings for University Misconduct and Fitness to Practise Committee**

The hearing will normally proceed as follows:

1. The Student (or their Friend) may make a statement in relation to the appeal.
2. The Student may then call witnesses who may make a statement in relation to the appeal and then be questioned by the Student (or their Friend), the Case Presenter, and the Committee, normally in that order.
3. The Student may then be questioned by the Case Presenter, and the Committee, normally in that order.
4. The Case Presenter may make a statement in relation to the appeal.
5. The Case Presenter may then call witnesses who may make a statement in relation to the appeal and then be questioned by the Case Presenter, the Student (or their Friend) and the Committee, normally in that order.
6. The Case Presenter may then be questioned by the Student (or their Friend), and the Committee, normally in that order.
7. The Student (or their Friend) may make a final statement in relation to the appeal which should be based on the evidence presented.
8. The Student, their Friend, and the Case Presenter will then leave the hearing.

The Committee will then consider the evidence presented and decide if some or all of the appeal should be accepted (upheld) or rejected.