

## UNIVERSITY OF LEICESTER

### Appeal process for University of Leicester courses operating a Fitness to Practise procedure

#### Appeals against decisions of a Fitness to Practise Panel

**This procedure is allied to Senate Regulation 11 – regulations governing student discipline. All general and procedural rules set out within Senate Regulation 11 apply to this procedure.**

- 1 In determining the outcome of all allegations of student misconduct and/or of fitness to practise under these regulations, the burden of proof for finding the offence proven shall be the balance of probabilities.

#### Appeals against Stage One decisions of Fitness to Practise Panels

- 2 Students have a right of appeal against the “Stage One” decisions of a Fitness to Practice Panel. Appeals must be submitted to the Secretary of the Student Conduct Group within ten working days of notification of the “Stage One” decision.
- 3 Submissions by students must include the grounds for the appeal. For an appeal to be considered there must be at least one of the following grounds:
  - (a) that evidence put to the Fitness to Practise Panel was not fully and properly considered;
  - (b) that there was procedural irregularity in the conduct of the consideration of the case at Stage One by the Fitness to Practise Panel;
  - (c) that there was prejudice and/or bias and/or the appearance of prejudice and/or bias in the conduct of the Stage One process by the Fitness to Practise Panel;
  - (d) that the penalty imposed was excessive;
  - (e) that there is new information to be put forward that was not known to the Fitness to Practise Panel and that there was good reason why this was not presented during the Stage One process.
- 4 If a student decides to make an appeal, s/he must also state whether the appeal is made against the finding, the penalty imposed, or both the finding and the penalty.

#### “Stage Two” Appeals against “Stage One” decisions: initial consideration

- 5 The Secretary to Student Conduct Group will review each appeal received, and will check whether it has been submitted within the specified time limit or whether there is good cause to account for submission outside the specified time limit. If the appeal is accepted by the Secretary to Student Conduct Group, the student will be informed of this within 5 working days of receipt. If the appeal is determined to be out of time without good cause, the student shall be informed that s/he has no further right to appeal within the University.
- 6 The Secretary to Student Conduct Group shall refer the appeal to the Chair of the Student Conduct Group who will appoint a member of the Student Conduct Group to be the ‘designated member’. The designated member will not have had previous involvement in the case.
- 7 The designated member of Student Conduct Group shall review the appeal submission and documentation relevant to the “Stage One” decision. The designated member may determine one of the following:
  - (a) that the appeal does not demonstrate sufficient new evidence, complexity or uncertainty regarding the facts of the case to merit a full hearing of the appeal and that the original “Stage

One” decision should stand. In this case the designated member will dismiss the appeal without a hearing and without further right of appeal within the University and the original “Stage One” decision shall stand;

- (b) that there is clear evidence that there was procedural irregularity in the consideration of the case at “Stage One”, or that the Stage One penalty was excessive. In this case, the designated member will take action to remedy the procedural irregularity or to reduce the penalty. Provided that there are no further procedural irregularities in this part of the process, there shall be no further right of appeal within the University;
- (c) that there is sufficient new evidence and/or complexity and/or uncertainty regarding the facts of the case to merit a full hearing of the Stage Two appeal.

8 The student shall normally be informed by the Student Conduct Group of the outcome of initial consideration of his or her appeal within 15 working days of receipt. The notification of outcome shall set out reasons for the initial decision at Stage Two.

#### **“Stage Two” Appeals against “Stage One” decisions: panel hearings**

- 9 If it is determined (under paragraph 11.139c above) that an appeal should be taken to a full hearing of the appeal, the Chair of the Student Conduct Group shall approve the Chair and members to be appointed to a Fitness to Practise Appeals Panel constituted in accordance with these regulations. Any member appointed to a Student Discipline Panel who considers that there is or that there is the appearance of a conflict of interest or compromise in their serving on a particular Appeals Panel shall notify the Secretary to the Student Conduct Group who will refer the matter to the Chair of the Student Conduct Group who will determine whether a replacement Panel member should be appointed.
- 10 Members of any previous Panel and any Authorised Officer who has previously determined an outcome under these regulations shall not be eligible to sit on the subsequent Appeals Panel considering the same case.
- 11 Where the decision under paragraph 7(c) above was to proceed to a hearing, the designated member who made this decision shall normally chair the subsequent Fitness to Practise Appeals Panel.
- 12 The Secretary to the Student Conduct Group shall appoint a Secretary to each Fitness to Practise Appeals Panel. The Secretary shall act as note-taker and shall advise the Appeals Panel regarding procedural matters.

#### **Procedures for Hearings of Fitness to Practise Appeals Panels**

- 13 The Secretary to the Fitness to Practise Appeals Panel shall send to the student required to appear before the Panel a written summons stating:
- (a) the nature and grounds of the appeal;
  - (b) the date, time and place of the hearing;
  - (c) the mode and membership of the Panel;
  - (d) the name of the person (if any) who will present the case against the student and, as far as is practicable, the names of any witnesses who are already expected to be attending the hearing;
  - (e) the information on the order of proceedings in hearings set out in these regulations below;
  - (f) notice that the Appeals Panel: (i) shall receive and consider all the written evidence which was before the Panel at the original hearing and that the Secretary may invite to appear before it all witnesses who gave evidence at the original hearing; (ii) may also permit the presentation of such further evidence and the attendance of additional witnesses as it deems appropriate;

- (g) the right of the Appeals Panel to proceed in the student's absence or to determine that the appeal is abandoned and to confirm as a consequence the original decision without further hearing if, having been give due notice of the date of the hearing and sufficient notice of the documentary evidence available to the hearing, the student fails to attend the hearing;
  - (h) confirmation of the Appeals Panel's intention to consider/not consider at the hearing any additional evidence brought by the student forming part of his or her initial appeals submission.
- 14 This summons shall provide not less than 5 working days' notice of the meeting of the Appeals Panel.
  - 15 The student may choose to be accompanied by a friend. This may be a personal friend, a member of their family or a current member of the University (staff or student). Alternatively the student may choose to be accompanied by a representative who is a member of the University or from the student's relevant professional association. For the purpose of this procedure, "someone from the relevant professional association" is defined as a representative of the Medical Protection Society, Medical Defence Union, the Medical and Defence Union of Scotland or similar medical defence organisation, the Chartered Society of Physiotherapy, the British Psychological Society, the College of Operating Department Practitioners, the Royal College of Nursing or the Royal College of Midwives. A representative may undertake the presentation of the case on behalf of the student, providing that the student is present. A friend may not do so. It is the responsibility of the student wishing to be accompanied to inform his or her friend or representative of the date, time and place of any meeting or hearing. The student shall, where possible, notify the Secretary to the Appeals Panel of the name of any friend or representative who will be accompanying him or her at least two days before the date of the hearing or meeting. The ruling of the Chair of the Appeals Panel on any point of procedure relating to the conduct of the Panel shall be final.
  - 16 Where s/he determines that the nature of the case requires it, the Chair of the Appeals Panel may require the attendance of a representative of the student's academic department to present the case against the student.
  - 17 The Chair of the Appeal Panel may request or admit as evidence any additional written information which s/he deems relevant to the case. The Chair shall, in particular, determine whether the admission of information on the student's previous academic or disciplinary record is relevant to the case.
  - 18 If the student wishes, s/he may, prior to the hearing, provide to the Secretary to the Appeal Panel with a statement concerning the allegations, and/or any additional supporting evidence relevant to the case and/or information about any mitigating factors which the student considers should be taken into account. Information relating to any mitigating circumstances should wherever possible be supported by documentary evidence.
  - 19 All written evidence made available to the Appeals Panel will also be made available to the student and the person (if any) presenting the case against the student, wherever possible in advance of the hearing.
  - 20 The Appeals Panel may determine that some or all of the written evidence should be made available to each witness. The Chair may determine that a hearing should be postponed or adjourned if any written evidence is supplied without sufficient notice for it to be circulated and properly considered by all relevant parties.
  - 21 The student required to appear before the Appeals Panel, the person (if any) presenting the case against the student, and the Chair of the Appeal Panel may nominate witnesses to attend the hearing. The purpose of calling for witness evidence is to inform the Appeals Panel's deliberations. The Chair of the Appeals Panel's decision as to whether to accept a nomination is final. Where practicable, the Secretary to the Appeal Panel shall inform all parties of the identity of any witnesses in advance of the hearing. It is the responsibility of the party calling the witness to ensure their attendance at the hearing,

except where the witness is a member of the public. If the witness is a member of the public (being neither a student nor member of staff of the University) the party calling the witness must inform the Secretary as soon as possible of this request. The Secretary will issue the witness with an invitation to attend, making clear who has requested their evidence and explaining the procedures. The Appeals Panel reserves the right to proceed in the absence of any particular witness and the ruling of the Chair of the Appeals Panel in this matter shall be final.

- 22 All parties shall have an opportunity to ask questions through the Chair of all witnesses called. The party calling the witness will normally ask the first questions of the witness.
- 23 The ruling of the Chair of the Appeals Panel shall be final on the admission of all evidence for consideration by the Appeals Panel, including the admission of written evidence and of oral evidence from witnesses or other parties at the hearing. This shall include the power to refuse to admit evidence or hear witnesses on the basis of lack of relevancy.
- 24 A hearing by an Appeals Panel shall be held in closed session.
- 25 The student appearing before the Appeals Panel shall inform the Secretary of his/her intention to be accompanied by a friend or representative at least two working days before the hearing. Where practicable, the Secretary to the Appeal Panel shall inform all parties in advance of the hearing of the identity of any friend or representative who will be in attendance.
- 26 The Appeals Panel shall receive all the written evidence which was before the original Fitness to Practise Panel at the original hearing and the Secretary may invite to appear before it any witnesses who gave evidence at the original hearing. It may also permit the presentation of such further evidence and the attendance of additional witnesses as it deems appropriate.
- 27 The appeals hearing shall proceed as follows:
  - (a) the student (or person representing him or her) shall present his or her appeal and evidence for the appeal, answer questions from the Appeals Panel and the person (if any) presenting the University's case and call witnesses; where a student's representative presents the case the student will be expected to answer questions from the panel;
  - (b) the person (if any) presenting the case against the student shall briefly set out the allegations and evidence in the case, answer questions from the Appeals Panel and student in relation to the grounds for appeal;
  - (c) the Appeals Panel may call any witnesses not called by the other parties;
  - (d) the presentation of any closing statement by the person (if any) presenting the case against the student;
  - (e) the presentation of any closing statement by the student (or person representing him or her).
- 28 The student will be informed in writing by the Secretary to the Appeals Panel of the Appeals Panel's decision in respect of the appeal, including reasons for that decision, normally no more than 5 working days following the appeals hearing. The Secretary to the Appeals Panel shall copy this communication to the student's Head of Department and the person (if any) presenting the case against the student at the hearing.

#### **Outcomes of Hearings of Student Discipline Appeals Panels**

- 29 Having considered all the evidence presented, the Fitness to Practise Appeals Panel shall determine one of the following outcomes to the Appeal:
  - (i) confirm the decision(s) of the original Fitness to Practise Panel;
  - (ii) substitute a lower penalty except that, in so doing, the new, lower penalty must be consistent with precedent;

- (iii) find that the original outcome was unsafe in part and find the student culpable of a lesser offence and impose a lesser penalty;
  - (iv) determine that the original outcome should be wholly overturned, exonerate the student and remove any penalty previously imposed;
  - (v) determine that the circumstances of the case require a new hearing by a new Fitness to Practise Panel, of which the membership will have had no previous involvement in the case.
- 30 Where the Appeals Panel concludes that mitigating circumstances have been presented which are relevant to the appeal and should be taken into account in determining a new penalty, the new penalty shall be determined according to precedent. In determining whether particular circumstances are relevant, the Panel will take into account whether the circumstances have previously been disclosed in a timely manner, as required under the University's Regulations.

#### **Further right to appeal**

- 31 Following completion of "Stage Two" there is no further right to appeal within the University. Students who are dissatisfied with the outcome of the disciplinary process may submit their concerns to the Office of the Independent Adjudicator for Higher Education (OIA), once all internal University procedures have been completed.

#### **Appendix A: composition of Fitness to Practise Panels**

- A Chair, who shall be a member of Student Conduct Group
- One member of the senior staff of the University, who will be a member of academic staff
- One external representative who will be a senior member of the relevant profession
- *Where appropriate*\* One external lay member who is not a member of the relevant profession nor a member of University staff or any University body

\*For programmes in the School of Medicine and the School of Allied Health Professions

The Chair and members of the Fitness to Practise Appeals Panels shall have had no association with the teaching of the student before the Appeals Panel nor shall they be the same persons who heard the original case. Wherever possible, the Panel shall be constituted with due regard to the need to ensure equality of representation.