

University of Birmingham

Report on the Review of the Code of Practice on Misconduct and Fitness to Practise Committees

Topic and purpose of the paper

1. At the meeting of APRC on 26 February 2008, Regulation Chapter 8 – Student Conduct was formally approved with the proviso that a review be carried out after the procedures had been in operation for one complete academic year (08/21). APRC is therefore asked ***to consider*** the attached paper and, if thought appropriate, to ***approve*** the recommendations as set out in the conclusion, which includes amendments to Regulation Section 8 – Student Conduct, the Code of Practice on Misconduct and Fitness to Practise Committees and the Code of Practice on Discipline in Residences.

Consultation

2. The Directors of Education and Directors of Quality Assurance and Enhancement in Colleges together with colleagues involved in the process, eg Committee Chairs, Secretaries and Investigating Officers were invited to comment on the process. They were invited to meet with members of the Student Conduct and Appeals Section (SCA) or asked to comment via a questionnaire. The Guild of Students was also invited to meet with members of SCA. James Piggott from Legal Services has also been consulted and worked with SCA over the wording of the proposed amendments as set out below.

Proposal(s) / recommendation(s)

For the points listed below, please note that additions are underlined, and deletions are struck through.

3. One of the members of a College Fitness to Practise Committee and also one of the members of the University Misconduct and Fitness to Practise Committees (in the case of an appeal against a College Fitness to Practise Committee) represent the fitness to practise programme's Professional Body. There have been some difficulties with the current wording as it is not always possible to use external examiners or honorary members of staff. The following proposal to amend the wording should clarify the criteria for membership of one of the above panels.

Code of Practice on Misconduct and Fitness to Practise Committees

2.2.3 Pool B shall comprise at least six members ~~who are either honorary members of staff or external examiners of the College~~ of profession specific representatives who are associated with programmes of study that incorporate Fitness to Practise procedures.

2.3.4 Pool 2 shall comprise at least twelve members ~~honorary members of staff or external examiners of~~ profession specific representatives who are associated with programmes of study that incorporate Fitness to Practise procedures.

4. That the sanctions be widened to include an additional sanction which would allow remedial tuition or appropriate support to be required, this would be more appropriate for fitness to practise cases although could be used in other misconduct cases.

That the following changes be made to Regulation Chapter 8 – Student Conduct:

8.3.2 (d) accepting an undertaking from the student as to his or her behaviour or to engage with appropriate student support and/or remedial tuition.

In addition to including the additional sanction as above, it needs to be made clearer that only one sanction can be applied for each offence that has been found proven but that conditions can be attached.

That the following changes be made to the Code of Practice on Misconduct and Fitness to Practise Committees:

- 5.1 Committee may impose, after examining any information as to the character and circumstances of the student which the student wishes to present, only one of the following ~~punishment~~ sanctions:

~~5.1.4 attachment of such conditions as it thinks fit to the continued pursuit of the student's studies, to the nature of his living accommodation if in University Residential Accommodation and to his general conduct; or~~

~~5.3 In addition to any of the above, the Committee may order a student to make good in whole or in part any damage resulting from a disciplinary offence. This includes damage to the property of the University or of any member, officer or employee of the University, either by payment of the cost of reinstatement or otherwise as may be appropriate (a compensation order).~~

5.3 In addition to any of the above, the Committee may:

5.3.1 disqualify the student from use of or access to any University service or facility or premises for such period as the Committee may decide; or

5.3.2 order a student to make good in whole or in part any damage resulting from a disciplinary offence. This includes damage to the property of the University or of any member, officer or employee of the University, either by payment of the cost of reinstatement or otherwise as may be appropriate (a compensation order); or

5.3.3 accept an undertaking from the student as to his or her behaviour or to engage with appropriate student support and/or remedial tuition.

5. There has been some confusion over whether a zero mark should stand where irregularities occur in a supplementary examination or whether the original mark should stand when the examination mark is set to zero. The

following amendment to the Code of Practice on Misconduct and Fitness to Practise Committees is proposed to clarify this point:

5.4.1 (d) the mark obtained in the examination or the assessment is to be set at zero with no opportunity of re-assessment permitted (where the offence occurs in a supplementary examination the committee must decide whether or not the original examination mark should stand or whether the final mark should be set at zero);

6. That the words *punishment and penalty* be substituted with the word *sanction* throughout Regulation Section 8 – Student Conduct, the Code of Practice on Misconduct and Fitness to Practise Committees and the Code of Practice on Discipline in Residences. The word punishment did not seem appropriate in many of the misconduct cases being considered by College Committees. Suspending students as a result of medical conditions affecting their fitness to practise was not considered to be a punishment.

A couple of minor amendments in addition to substituting *sanction* are also required:

Regulation Section 8 – Student Conduct:

8.3.2 (b) imposing a ~~penalty~~ fine subject to a maximum to be determined by the Senate or under delegated authority from time to time; or

Code of Practice on Misconduct and Fitness to Practise Committees section 5.5, ~~imposing~~ should be replaced with deciding upon.

7. There have been some difficulties with arranging Committees with regard to the student member on the panel. The timing as set out in the Code of Practice on Misconduct and Fitness to Practise Committees does not work as the secretary is obliged to inform the student of the members of the Committee in advance of the hearing. It is proposed to remove the 2 day deadline as follows:

2.2.7 If the Guild of Students is unable to nominate a registered student to serve on the Committee, or if no registered students trained in fitness to practise procedures are available, then the Committee can proceed in the absence of a registered student member on receipt of notification from the Guild of Students to this effect. ~~If notification is not received within two working days of the date of the Committee hearing, the Committee will proceed in the absence of the registered student member.~~

8. The University is required by law to refer a student to the Independent Safeguarding Authority where a student's conduct gives rise for concern about harm or risk to a child or vulnerable adult. This became a requirement in October 2009 and needs to be addressed in University legislation. The following amendments are proposed to address this:

Regulation Section 8 – Student Conduct

8.8.3 The University has a duty to refer to the Independent Safeguarding Authority any information about a student's conduct where such conduct gives rise to concerns about harm or the risk of harm to children or vulnerable adults.

Code of Practice on Misconduct and Fitness to Practise Committees
5.6.6 whether the University may be required to make a referral to the

Independent Safeguarding Authority (in cases where there is concern that the student's conduct gives rise to concerns about harm or the risk of harm to children or vulnerable adults.

9. During appeal hearings it is not clear whether the University Misconduct and Fitness to Practise Committee can impose a different penalty to the original penalty imposed by the College Committee. The following addition is proposed to clarify this point for Committees:

Code of Practice on Misconduct and Fitness to Practise Committees
7.12 For the avoidance of doubt, all of the sanctions as set out in Section 5 are available, if the Committee feels that the sanction imposed by the College Misconduct or College Fitness to Practise Committee was not appropriate.

10. When a committee has assembled it is important to ensure that the witnesses are all present and if there are any absences that the committee is aware of these before the hearing commences. The Case Presenter is assigned this duty in the Code of Practice in section 4.1 but this has been found to be impractical so the following amendment is proposed:

Code of Practice on Misconduct and Fitness to Practise Committees
4.1 When the members of the College Misconduct or Fitness to Practise Committee have assembled, the ~~Case Presenter~~ secretary to the Committee or his nominee will inform the Committee whether the student and the witnesses are present.

11. Confusion has arisen about the meaning of section 4.11 in the Code of Practice on Misconduct and Fitness to Practise Committees. The following amendment is proposed to clarify this point:

Code of Practice on Misconduct and Fitness to Practise Committees
4.11 ~~The ruling of the Chair as to whether any question or evidence is or is not permissible shall be final and the normal Rules of Evidence shall not apply.~~ The issue of whether any evidence is admissible shall be at the sole discretion of the Chair whose decision shall be final.

12. In cases where the student has been suspended from a placement a hearing is expected to take place as soon as practicable. The time limit set in Regulation Section 8 – Student Conduct has proved to be unworkable and it is proposed to amend the deadline from three weeks to six weeks:

8.6.2 The College Misconduct Committee or the College Fitness to Practise Committee must meet to hear the student's case as soon as practicable ~~and certainly no later than three weeks~~ and normally within six weeks from the date of the suspension.

Background

13. As set out in point 1 above, APRC requested that the Code of Practice on Misconduct and Fitness to Practise Committees be reviewed after one full academic year. The creation of Colleges and the need to move student misconduct from University Ordinances as part of the legislation review carried out in 2007/08 were the main drivers for the creation of the Code of Practice on Misconduct and Fitness to Practise Committees. Further details are set out in the attached report.

Argument to support proposal / recommendation (s)

14. Now that Regulation Section 8 and the Code of Practice on Misconduct and Fitness to Practise Committees have been in operation for over a year a number of issues have arisen that either need further clarification or amendment to ensure that the process works smoothly. There is also the addition of a legal requirement which was not in place when the Code of Practise was drawn up, ie the Independent Safeguarding Authority.

Conclusion

15. APMC is asked to consider the proposed amendments and if thought appropriate, approve the amendments to take effect from 2010/11.