

University of Birmingham

**Report to Academic Policy and Regulations Committee on the Review of the
Code of Practice on Misconduct and Fitness to Practise Committees**

The Code of Practice on Misconduct and Fitness to Practise Committees (Code of Practice) came into operation on 1 August 2009 and together with Regulation Section 8 – Student Conduct, replaced Ordinance 5.4 and 5.5 Discipline and Fitness to Practise and Regulation 4.7.7 concerning Examination Irregularities and Plagiarism. The aim of the Code of Practice was to bring all of the Misconduct Procedures together into one Code of Practice. This included discipline, examination irregularities, plagiarism and fitness to practise.

The major change to the procedures was to move from central committees to College committees. Prior to August 2009, only Fitness to Practise was dealt with at local level. Serious Plagiarism and Examination irregularities were dealt with by the University Investigating Committee and discipline cases were dealt with by the Pro-Vice-Chancellor for Teaching, Learning and Quality acting as an adjudicator and serious cases were heard by the University Discipline Committee.

The reasons for the change included:

- Need to ensure consistency of approach for students from similar disciplines;
- Devolved authority of the College model;
- Consideration of 'the whole student';
- Sharing of expertise;
- Speedier management of cases;
- Local identification of quality issues arising from cases.

At the meeting of APRC on 26 February 2008, Regulation Section 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).

The review was carried out by the Student Conduct and Appeals Section (SCA) consulting a wide range of colleagues in Colleges, Corporate Services and the Guild of Students. The following is a report of the findings.

Consultation Process

The Directors of Learning and Teaching 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 SCA or asked to comment via a questionnaire. The Guild of Students was also invited to meet with members of SCA.

In four out of five Colleges, SCA met with a group of staff representing the College. Although colleagues in the College of Life and Environmental Sciences were invited to comment, no comments were received. Comments were also received from many individual colleagues by email and in follow-up discussions.

A meeting was also held with the Vice-President (Education), Guild of Students together with staff from the Advice and Representation Centre of the Guild.

Issues of Concern

A number of concerns were raised by colleagues and members of SCA and these have been categorised into 3 categories as below. A number of recommendations are provided under the conclusions section of this report:

1 High Impact – Action Required

- 1.1 Issues with the membership of the Fitness to Practise (FTP) panel where the panel is made up of honorary staff or external examiners. Practice partners representing professional bodies do not fit the University's definition of honorary staff. Legal Services will need to be consulted to ensure that the appropriate representatives from the Professional Bodies are allowed to sit on FTP panels taking into account legal requirements such as the Data Protection Act 1998 which prevents the sharing of sensitive data with 3rd parties without the individual's explicit consent.
- 1.2 Members of staff within the College of Medical and Dental Sciences are concerned that decisions about whether to refer a student to a FTP hearing should not be made by an individual member of staff and ideally should be considered by a panel. Consequently a College consideration group has been looking at cases and making the final decision about whether cases should be referred to a College FTP Committee. The Code of Practice does not allow for this additional stage in the procedure, which therefore leaves the University open to challenge as a result of not following due process. To formalise this process would be problematic and therefore needs further consideration by Legal Services before any recommendations are made to APRC.
- 1.3 All of the Colleges with the exception of Medical and Dental Services have raised concerns about the secretarial support for College Committee hearings. Prior to the introduction of the Code of Practice, all misconduct (including academic misconduct) hearings were serviced centrally by Academic and Student Administration. FTP hearings were serviced locally by staff within Schools.
- 1.4 Concerns have been raised about equity and how we ensure equity of decision making across Colleges and even within Colleges with different Committee members.

2 Medium Impact – Amendments to legislation required

2.1.1 Penalties

- a) MDS raised the issue that penalties were quite limited. This related to FTP students where a fine or reprimand was not felt to be appropriate. MDS have been setting additional work for students to undertake, for example producing a 5000 word essay to show that they understand the professional issues for example probity.
- b) Regulation Section 8 and the Code of Practice need to be clearer about whether one or more penalties can be applied to an offence, eg "one of the following" or "one or more of the following".
- c) Clarification is required for penalties in academic misconduct cases where the mark is set to zero. Where the offence occurs in a supplementary examination, clarification on which mark should stand is required, ie does the 0 mark go forward for inclusion at the exam board or does the original exam mark stand.

- 2.1.2 Concern has been raised over the use of language in the Code of Practice, in particular the use of 'offences, penalties and punishments'. This is an issue when dealing with health issues in a FTP hearing.

- 2.1.3 Concern over timing in the Code of Practice when requiring the Guild of Students to inform the secretary of the name of the student representative. This is at odds with the requirement to notify the student of the names of the Committee members.
- 2.1.4 One College raised concerns about dealing with discipline issues that were not academic matters. They felt that the College did not have the expertise to deal with general discipline.
- 2.1.5 The Guild was satisfied that they had been able to provide a student panel member in the majority of cases but were working on improving student representation with the hope that in the future Committees would not be able to proceed without a student representative on the Committee. The Guild fully appreciated why the University needed to have a way of dealing with cases when there were delays in finding student representatives and is not asking for amendments to the Code of Practice at this point.
- 2.1.6 The Guild of Students raised the issue of sharing information and outcomes with staff in the ARC. This was a wider issue and didn't just relate to misconduct cases.
- 2.1.7 An area of conflict has been identified where students are also employed and are subject to FTP requirements by their employer. For example the Clinical Psychology Doctoral students. This needs to be considered as part of a FTP working group looking at other issues.

3 Low Impact – Guidance Required

- 3.1 More detailed guidance documents are being prepared to supplement and expand upon existing guidance. This includes specific guidance for Investigating Officers, Case Presenters, Chairs, Committee members and Secretaries. The aim of this guidance is to assist staff in carrying out their roles. Issues raised as part of the consultation will be included in the guidance documents. Issues raised so far:
 - 3.1.1 Guidance needs to be clearer on what to do if a student representative isn't available to sit on the panel.
 - 3.1.2 Guidance needed on when Professional Bodies should be notified of the outcome and who by.
 - 3.1.3 Should the Investigating Officer make a recommendation or not on the most appropriate punishment as per 4.4 of the Code of Practice. If so, how should they decide on what might be an appropriate punishment.
 - 3.1.4 The quality of Investigating Officer's reports vary. More information could be provided by Schools for example in examination irregularity cases.
 - 3.1.5 Who needs to be informed about the outcome of a Committee, for example the Head of School, SCA and Student Records?
 - 3.1.6 What information should be given to witnesses at the interview stage? Is it acceptable to disclose information provided by other witnesses and the student?
 - 3.1.7 Should students be allowed to continue on their programme of study whilst appealing the outcome of the Committee? If their appeal is successful they may have missed out on teaching and assessments if they are not allowed to continue?
 - 3.1.8 Should the Investigating Officer and the Case Presenter be two different people?

- 3.1.9 If the student has committed previous misconduct offences should the Committee be informed about these? This also includes previous incidences of low level plagiarism when combined they result in a charge of serious plagiarism.
- 3.1.10 Should Schools routinely be informed about disciplinary offences, even low level due to the need to refer to these breaches in subsequent references or for disclosure to the Defence Vetting Agency?
- 3.1.11 A flowchart of the whole process has been requested.
- 3.1.12 Important to share good practice across Colleges; need mechanisms to facilitate this.
- 3.1.13 Do Committees have to stick rigidly to the order of proceedings as set out in the Code of Practice? Is there any flexibility?
- 3.1.14 Consistency of correspondence sent to the student for example letters setting out the allegations and also the outcome letters. The Guild raised concerns that the amount of detail provided in letters varied from one case to another and also whether the right to bring a friend was set out in detail.

4 Training and Support

- 4.1 A number of training sessions have been provided by SCA including, three initial briefings, two secretaries training sessions and one session for Investigating Officers. The one for Investigating Officers was organised by Legal Services. Further training sessions are planned and Legal Services will be providing one for Case Presenters in the near future.
- 4.2 As mentioned in 3.1 above, SCA are putting together additional Guidance documents to assist colleagues in all aspects of the misconduct process. This will include template letters and reports. The guidance documents will supplement the training sessions which will continue to be provided on an annual basis.
- 4.3 Support from SCA has been provided and colleagues have appreciated the support and advice provided by phone, email and in person. For example SCA has briefed committee members prior to hearings and has supported secretaries through the process, including commenting on letters and reports. Feedback from colleagues is that this support has been appreciated.

Conclusions

Although, there were some initial problems with the implementation of the Code of Practice on the whole the procedures have worked well, with the exception of the secretarial support, which has continued to be problematic (see below).

On a positive note the new process has allowed quality issues that have been identified as part of the process to be raised at a local level. This has included raising awareness of the number of examination irregularity cases, particularly from overseas students allowing initiatives to be suggested such as the cheating prevention project.

There is no evidence to suggest that the procedure is not working and as a result needs to be significantly changed. There are issues that have been highlighted and need addressing, particularly the issues raised in point 1 above that are likely to be a risk to the University by way of potential litigation and damage to the University's reputation.

This has been a major change to way we have handled these processes and colleagues in Colleges have worked hard to ensure that they were handled appropriately, often taking on additional responsibilities to deal with them. Colleagues are thanked for the time and effort they have contributed to this new procedure, particularly as there were a number of teething problems at the start of the process.

Most of the issues can be addressed by providing additional guidance and training or by making amendments to the legislation. Only one issue needs further thought and that is the issue of secretarial support. Once that has been addressed, the process should work well in the future. The report's recommendations are set out below.

1 Secretarial Support

- 1.1 The number of academic misconduct cases was relatively small in 2007/08. Across the University there were 4 serious cases of plagiarism and 13 cases of examination irregularity referred to a University Investigating Committee. In 2008/09 there has been a two-fold increase with 14 serious cases of plagiarism and 20 cases of examination irregularity being heard by College Committees, further details are set out in Appendix 1.
- 1.2 The increased numbers have caused difficulties for some of the Colleges for example the College of Social Sciences Misconduct Committee which has dealt with 17 cases. This has caused difficulties with scheduling and resources, particularly secretarial support.
- 1.3 Secretarial support is a difficult issue as the SCA team is very small and could not service all of the College cases, particularly as they investigated 20 of the 38 cases and also provided a case presenter at hearings for the 20 cases. SCA also services the University Misconduct and Fitness to Practise Committee and deals with any subsequent grievances to Council and works with colleagues to respond to complaints to the Office of the Independent Adjudicator. As a result there is a conflict of interest if SCA gets too involved at earlier levels.
- 1.4 SCA is also concerned about the consistency of approach provided by the secretarial support and even with training sessions and template documents there have still been errors; potentially putting the University at risk. One of the issues raised is the seniority of the staff involved and whether they have the necessary experience and judgement to be able to adequately support a Committee with these complex cases even with support and training from SCA.

Recommendation

That SCA works closely with colleagues in Colleges and provides the administrative support for the College Misconduct Committees (not FTP Committees). This will include arranging the hearings, collating and sending out the documentation to the student. Colleagues in Colleges continue to provide the secretarial support for the hearing itself, where possible, ie taking notes, providing advice to the committee and preparing a draft report. The report and outcome letter outlining the right of appeal will be sent out to the student by SCA.

That each College identifies a lead for dealing with Misconduct cases in order that SCA may deal directly with one member of staff ensuring that the arrangements of hearings and training sessions run smoothly.

2 Amendments to University Legislation

- 2.1 High Impact, point 1.1 above needs to be addressed following recommendations by Legal Services as the operation of a College Consideration Group raises concerns that a student's case is pre-judged by a panel in their absence. This could in turn could result in the University being open to legal challenge. Legal Services will make recommendations to APRC in May.
- 2.2 High Impact, point 1.2 above needs to be addressed by making changes to the panel membership in the Code of Practice. Representatives from the FTP programmes have met as part of a wider working group and have discussed this issue. They have put forward suggestions for amendments to the Code of Practice which will ensure that the appropriate representatives from the Professional Bodies are included on College FTP Committees, taking into account the University's legal obligations. Legal Services have been consulted.

2.3 Medium Impact, point 2 above sets out issues that have been raised that will need to be addressed by making amendments to the above legislation. Following consultation with colleagues and Legal Services draft amendments to the legislation have been made.

Recommendation

That amendments to the Code of Practice and Regulation Section 8 as set out in the attached documentation be submitted to Academic Policy and Regulations Committee for formal approval.

3 Equity of Decision Making

3.1 Ensuring that Committees across the 5 Colleges take into account precedence is crucial to ensure that the University acts fairly. It is important that we have a process whereby decisions and penalties can be shared. If SCA is the central point for recording decisions they then can in turn inform secretaries and Committees of precedence for particular offences.

3.2 The Case Presenter is also able to make recommendations about penalties to College Committees and again this would be a way of providing information about precedence. Having said that, the Committee needs to consider each case on its merits and should not be obliged to accept the penalty recommended by the Case Presenter.

Recommendation

That a briefing session is organised at least once a year for committee members, Chairs, Secretaries, Investigating Officers and Case Presenters, to allow sharing of good practice and discussion about case studies. This should also include a representative from Legal Services.

SCA should also provide information on precedence to College Committee secretaries prior to any hearings.

4 General Discipline

4.1 Concern has been raised at dealing with general discipline issues at College level as the members of the College Committee don't have the necessary skills and experience for dealing with these cases.

4.2 One case was referred to a College Misconduct Committee in 2008/09 as the majority of discipline cases are dealt with summarily by SCA. This case involved dishonesty and fraud. The student had lied on entry to the University about her entry qualifications and also falsified documents submitted as part of a mitigation submission.

4.3 Discipline cases are investigated by SCA and presented to a College Committee by SCA. The Committee would need to exercise judgement and apply a penalty as with any other case, no additional expertise or skills are required. Prior to the creation of College Committees the Discipline Committee members were members of Senate and did not have any additional skills or experience to deal with serious cases.

4.4 The number of serious discipline cases needing to be referred to a College Committee is going to be very small. If a case does arise then appropriate support and training can be provided to a committee in advance.

Recommendation

That discipline continues to be included as part of the remit of College Misconduct Committees with additional support from SCA, including servicing by an experienced secretary. That the number and nature of cases be monitored over the next couple of years and if there are significant changes to the number or complexity of cases then this matter should be reconsidered.

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Misconduct Cases Referred to a College Misconduct Committee 2008/09

College	School	Plagiarism	Examination Irregularity	Discipline	Total Cases
CAL	English, Drama and American and Canadian Studies	0	0	0	0
	Language, Cultures, Art History and Music	1	0	0	1
	Institute of Archaeology and Antiquity	0	0	0	0
	Law	3	2	0	5
	History and Cultures	0	0	0	0
	Philosophy, Theology and Religion	1	0	0	1
	Total	5	2	0	7
MDS	Dentistry	0	0	0	0
	The Medical Hub (Cancer Sciences; Clinical and Experimental Medicine; Health and Population Sciences; Immunity and Infection).	3	0	0	3
	Total	3	0	0	3
SS	Education	3	0	1	4
	Birmingham Business School	0	10	0	10
	Government and Society	0	0	0	0
	Social Policy	3	0	0	3
	Total	6	10	1	17
EPS	Chemical Engineering	1	0	0	1
	Chemistry	1	0	0	1
	Civil Engineering	0	2	0	2
	Computer Science	0	0	0	0
	EECE	0	1	0	1
	Mathematics	0	1	0	1
	Mechanical Engineering	0	3	0	3
	Physics and Astronomy	0	0	0	0
	Total	2	7	0	9
LES	Biosciences	0	0	0	0
	Geography, Earth and Environmental Sciences	1	1	0	2
	Psychology	0	0	0	0
	Sport and Exercise Sciences	0	0	0	0
	Total	1	1	0	2
Total Cases for the University		17	20	1	38

Note: More detailed information and statistics have been provided as part of the annual Report to the March meeting of the Quality Assurance and Enhancement Committee.