Appeal Hearing. The Appeal Panel shall be entitled to:

3.21.58 (a) overturn the findings of the Disciplinary Panel and dismiss the allegations, in which case the Appeal Panel shall remove the penalty imposed and direct that no further action be taken in the matter; or

3.21.58 (b) confirm, in whole or in part, the findings of the Disciplinary Panel, in which case the Appeal Panel shall be entitled to:

(i) confirm the penalty imposed; or

(ii) remove the penalty imposed and substitute any lesser penalty as permitted under clause 3.21.48 above; or

(iii) remove the penalty imposed and impose no penalty.

3.21.59 The decision of the Appeal Panel shall be final.

3.21.60 The Appeal Panel shall prepare and send to the appellant a reasoned written decision (normally within 14 calendar days of making its decision). A report of the Appeal Panel's decision will also be sent to Council. Following notification to the Council, a report will also be sent to the Senate. Any dismissed member(s) of Staff shall remain anonymous in any report to Council or Senate and in the minutes of meetings at which such reports are considered.

3.22 Incapacity on Health Grounds

The procedure for dealing with members of Academic Staff because of incapacity on health grounds, referred to in Statute 14, Clauses 14 and 15 shall be as follows:

Part I - Application and Scope

3.22.1 This Ordinance applies to members of Staff as defined by Statute 14, Clause 2(1) with the exception of the Vice Chancellor.

3.22.2 This Ordinance shall not apply to:

3.22.2 (a) the proposed non-confirmation in post of a member of Staff at the end of a period of probationary service;

3.22.2 (b) removal from office as Pro-Vice Chancellor, Deputy Pro-Vice-Chancellor, Head of School, or such other Academic Officer as has been designated by the Council to which a member of Staff has been elected or appointed and which is distinct from that individual's substantive post; and

3.22.2 (c) the proposed dismissal of a member of Staff where that dismissal would arise from the expiry without renewal of a fixed term contract.

3.22.3 The procedures in this Ordinance apply to a member of the clinical Academic Staff (as defined in Statute 14, Clause 19(1)) on the same basis as to any member of Staff, apart from a circumstance in which the honorary

clinical contract has been withdrawn when Ordinance 3.26 relating to clinical Academic Staff would apply.

3.22.4 This procedure is not intended to apply to misconduct in relation to sickness absence or the misreporting of sickness absence (including the misrepresentation of absence for reasons other than sickness as sickness absence), or persistent absenteeism which is not supported by medical certification, which will normally be dealt with under the Ordinance on Disciplinary Procedure and Dismissals. If, after commencing a procedure under this Ordinance, the Appropriate Person (as defined in paragraph 8 below) or Panel, having sought advice from the Director of Human Resources or a nominee with a personnel qualification or an experienced personnel practitioner (which may include seeking a medical opinion), considers that the issue under review may be one of misconduct other than misconduct resulting from any illness or medical condition, he or she may discontinue proceedings under this Ordinance and transfer the matter to the appropriate stage of the Ordinance on Disciplinary Procedure and Dismissals.

3.22.5 Nothing in this Ordinance shall prevent an application being made or accepted at any stage for the member of Staff to retire on ill health grounds.

Part II - General Principles

3.22.6 This Ordinance shall be applied and construed in every case to give effect to the guiding principles set out in Statute 14, Clause 1 (1).

3.22.7 The member of Staff will have the rights to be present and to be represented at any meetings held under Parts III, IV and V of this Ordinance by a member of Staff or trade union representative of his/her choice and may be accompanied by a friend who shall be a member of Staff and who shall take no part in the proceedings Under Parts IV and V only, the member of Staff may be represented by any person who may be legally qualified.

3.22.7 (a) if the member of Staff or his or her representative is not available at the time proposed, the Hearing shall be postponed to another reasonable time at which both are available being normally not later than 14 calendar days after the date first proposed for the Hearing;

3.22.7 (b) the representative attending the Hearing with the member of Staff may speak on the member of Staff's behalf, but may not, except with the permission of the Chair of the Panel, answer questions (relating to the issues in dispute) on the member of Staff's behalf;

3.22.7 (c) if the member of Staff fails to attend the Hearing without a valid reason, or is prevented from attending for such a long period of time that the delay involved would be unreasonable in all the circumstances, the Panel shall have power to proceed with or continue the Hearing in the absence of the member of Staff. If the member of Staff is not present at the Hearing, he or she shall have the right to be represented at the Hearing.

3.22.8 For the purposes of this Ordinance, the "Appropriate Person" shall be identified by the Director of Human Resources or a senior nominee (normally a Deputy or HR qualified Assistant Director of Human Resources) as being:

3.22.8 (a) the Vice-Chancellor, where the member of Staff is a Vice-Principal, Pro Vice-Chancellor, Deputy Pro-Vice-Chancellor, a Head of College or the Registrar and Secretary;

3.22.8 (b) the Vice- Principal or a Pro Vice-Chancellor or a Deputy Pro-Vice-Chancellor, where the member of Staff is a Head of School;

3.22.8 (c) the Head of College or Head of the relevant School, in the case of any other member of Staff.

The Appropriate Person shall seek advice from the Director of Human Resources or a senior nominee with a personnel qualification or an experienced personnel practitioner.

3.22.9 Those providing or receiving any medical report will seek to ensure that its contents are kept confidential, as the case may be, to the Appropriate Person and his/her adviser, the Panel or Appeal Panel, the representatives of the University attending/presenting at the Hearing, and the member of Staff and his/her representatives, unless the member of Staff requests that the information be divulged to any other individual(s).

3.22.10 A member of Staff on sick leave shall have a responsibility to keep the University informed, where possible, of his/her likely date of return to work.

Part III – Procedure for Dealing with Sickness Absence or Medical Incapacity

3.22.11 The procedure in this Part shall apply where, due to any medical condition, illness or other incapacity, a member of Staff is, or has become, or is likely to become, either permanently or long term temporarily (at least 6 months), unable to perform his or her duties (or any part thereof), either in full or in part, or to be able to do so only with difficulty.

3.22.12 The procedure in this Part may be initiated by the member of Staff (or his/her representative) or the Appropriate Person as defined in paragraph 8 above except that, unless initiated by the member of Staff (or his/her representative), this procedure shall not normally be initiated in a case where:

3.22.12 (a) there is a clear reason for the incapacity, from which the member of Staff is expected to make a full recovery and return to normal duties, normally within a period of six months; or

3.22.12 (b) the member of Staff is undergoing medical investigation and/or active medical treatment where medical opinion on the outcome is not yet determined.

3.22.13 The purpose of this part of the procedure is to explore through confidential

discussions or other communications with the member of Staff, and with the assistance of medical or other expert advice as appropriate, the following issues, as appropriate:

3.22.13 (a) the impact of the member of Staff's medical condition, illness or incapacity; and/or

3.22.13 (b) the likely prognosis for the member of Staff's health and fitness to carry out his or her duties, in full or in part; and/or

3.22.13 (c) where the member of Staff is absent from work, the likely duration of the absence and the likelihood of his or her returning to work on a sustained basis and being fit to carry out his/her duties in full or in part.

3.22.14 The member of Staff may provide and/or the University may seek medical information from the member of Staff's doctor(s), from a specialist Consultant and/or from the University's Occupational Health Physician. On each occasion that medical evidence is requested or sought, whether from the Occupational Health Physician or the member of Staff's doctor(s), the member of Staff will be asked whether s/he wants the recognised Trade Union to be consulted. Where the member of Staff refuses without good reason to supply the requested medical information, the Appropriate Person, having taken the advice of the Director of Human Resources (or a nominee with a personnel qualification or an experienced personnel practitioner), will proceed using the information available at the time.

3.22.15 Where, on the basis of the discussions described in paragraph 13 above, and on the basis of any medical information obtained under paragraph 14 above, there is an indication of some longer term effect on the ability of the member of Staff to work normally, there shall be:

3.22.15 (a) an investigation to determine any changes or adjustments which could be made to the member of Staff's role or duties or to the facilities and equipment provided, or to his/her work environment, or to the way in which his/her duties are organised or performed, to facilitate the member of Staff's return to, or continuing to, work normally, on a sustained basis; and

3.22.15 (b) where possible, an agreement between the Appropriate Person and the member of Staff on what changes should be implemented. In doing this, account will be taken of legal requirements and University policy in relation to managing disability or ill-health; and/or

3.22.15 (c) action on any other agreed measures to be taken to address or mitigate the issues raised by the member of Staff's ill-health incapacity.

The changes or actions referred to in this paragraph may include the permanent or temporary transfer of the member of Staff to alternative employment or a permanent or temporary variation to the member of Staff's duties or other terms and conditions of employment. Nothing in this Ordinance shall oblige the University to maintain, in making such changes

or taking such action, a member of Staff's existing terms and conditions of employment, in particular (but without limitation) in respect of pay or other remuneration.

Part IV –Removal For Incapacity On Grounds Of Ill-Health

3.22.16 At any face to face meeting or discussion under this Part, the member of Staff shall be entitled to be accompanied by a member of Staff or trade union representative of his/her choice in accordance with paragraph 7 above.

3.22.17 Before proceeding under this Part, the Appropriate Person, having consulted with the Director of Human Resources (or a senior nominee with a personnel qualification or an experienced personnel practitioner), shall seek to reach agreement with the member of Staff on an agreed resolution to the situation, for example by (but not limited to) ill-health retirement.

3.22.18 If it is not possible to resolve the situation under paragraph 17 above or, where appropriate, under Part III of this Ordinance, (for example, but not limited to, a case in which the member of Staff is considered unlikely to make a complete recovery to the point of being able to carry out his/her duties normally, or where the Appropriate Person is satisfied that it is not possible to accommodate the member of Staff's incapacity through reasonable adjustment) the Appropriate Person may request the Registrar and Secretary or his/her nominee to refer the issue(s) to a Panel Hearing under this Part to consider (as appropriate) whether the member of Staff should be removed from the University's employment on grounds of incapacity and/or what other action (including the matters referred to in paragraph 15(i) –(iii) above) should be taken. The Registrar and Secretary (or nominee), in considering whether to refer the issue(s) to a Panel, shall have regard to the member of Staff's entitlement to occupational sick leave or pay and will normally only refer the issue(s) to a Panel after the arrangements for sick leave and sick pay have been exhausted**.**

3.22.19 The Appropriate Person shall inform the member of Staff of the decision to request the Registrar and Secretary or his/her nominee to refer the issues to a Panel under this Part and shall prepare a report summarising the relevant issues, any action taken under Part III of this Ordinance, and the issues which it is proposed that the Panel should consider ("the Report").

3.22.20 In a case where the member of Staff is not able to deal with the matter personally, in addition to the provisions of paragraph 7 above, a guardian, attorney or other legally appointed representative may act in the place of the member of Staff for the purposes of the remainder of this Ordinance. References hereafter to the "member of Staff" will include any guardian, attorney or other legally appointed representative.

3.22.21 The provisions of paragraphs 22 to 30 below shall apply to the appointment and conduct of the Panel Hearing; and the decision of the Panel shall be subject to the right of appeal to a further Panel as set out in paragraphs 31 to 39 below.

3.22.22 The provisions in this section shall apply to any case referred to a Panel

under paragraph 18 above.

3.22.23 The Panel shall be convened in accordance with Part VI of this Ordinance.

3.22.24 The Registrar and Secretary or his/her nominee, having satisfied him/herself that the procedures under Part III and/or clause 3.22.17 above, where appropriate, have been fully complied with, shall inform the member of Staff in writing as soon as possible after receiving the request under paragraph 18:

3.22.24 (a) enclosing a copy of the Report and summarising the case to be considered by the Panel;

3.22.24 (b) inviting the member of Staff to a Hearing before the Panel ("the Panel Hearing") and giving the member of Staff at least 21 calendar days notice of the date of the Panel Hearing;

3.22.24 (c) naming the members of the Panel and its adviser; and

3.22.24 (d) informing the member of Staff of his/her right to be represented or assisted in accordance with clause 3.22.7 above.

3.22.25 The Registrar and Secretary or his/her nominee will also name in this letter the person who will be explaining the University's position to the Panel and this person may be legally qualified.

3.22.26 The member of Staff shall be provided with copies of any documentation or details of any other information which shall be referred to at the Panel Hearing in support of the action recommended in the Report. So far as is reasonable given the circumstances of the case, that material shall be provided sufficiently (normally not less than 14 calendar days) in advance of the Panel Hearing to give the member of Staff sufficient time to prepare. Where such information is provided to the member of Staff less than 14 days in advance of the Hearing, the person conducting the Hearing shall, if requested by the member of Staff, allow an adjournment to give the member of Staff a reasonable opportunity to prepare.

3.22.27 Subject to paragraph 7 above, it shall be for the Panel to determine, in consultation with the adviser appointed under paragraph 40(v) below, the procedure to be followed in preparation for and at the Panel Hearing which may include without limitation:

3.22.27 (a) a right to call for additional documents;

3.22.27 (b) determining the extent to which witnesses may be called; and

3.22.27 (c) deciding whether it would be appropriate to adjourn or postpone the Panel Hearing. If the Panel considers at any time prior to or during the Panel Hearing that it would like further medical or other information of any kind prior to making its decision, the Panel Hearing may be adjourned whilst the information is obtained.

3.22.27 (d) Where the member of Staff refuses without good reason to supply the requested medical information, the appropriate person, having taken

the advice of the Director of Human Resources (or a nominee with a personnel qualification or an experienced personnel practitioner), will proceed using the information available at the time.

The member of Staff shall have the right to see, question and challenge at the Panel Hearing any witnesses and evidence which may be produced.

3.22.28 The Panel Hearing shall be held in private and the rules of evidence or procedure applicable in a court of law need not apply.

3.22.29 The Panel will make its decision and inform the member of Staff accordingly, normally not more than 14 calendar days after the conclusion of the Hearing. The Panel shall be entitled to terminate the employment of the member of Staff on grounds of ill health or to determine any alternative action that should be taken in respect of the member of Staff.

3.22.30 The Panel shall prepare and send to the member of Staff a reasoned written decision normally within 14 calendar days of making its decision. A report of the Panel's decision will also be sent to Council. Any dismissed member(s) of Staff shall remain anonymous in any report to Council and in the minutes of meetings at which such reports are considered. Where the decision is to dismiss the member of Staff, the member of Staff will be sent a notice of termination of employment on behalf of the University. The member of Staff shall be notified of his/her right to appeal against the Panel's decision under Part V of this Ordinance.

Part V – Appeals against Decisions Under Part IV

3.22.31 If the member of Staff wishes to appeal against a decision of the Panel to terminate his/her employment on grounds of ill health, he or she shall do so in writing to the Registrar and Secretary normally within 28 calendar days of receipt of the written notice of termination of employment under paragraph 30 above. The member of Staff should set out the grounds of his/her appeal.

3.22.32 The appeal will be heard by a panel (the "Appeal Panel") convened in accordance with Part VI of this Ordinance.

3.22.33 The Registrar and Secretary or his/her nominee shall write to the member of Staff at least 21 calendar days in advance of the Appeal Hearing:

3.22.33 (a) naming the members of the Appeal Panel and the adviser appointed under sub-paragraph 40(v) below;

3.22.33 (b) inviting the member of Staff to an appeal hearing ("the Appeal Hearing") and giving the member of Staff at least 21 calendar days notice of the Appeal Hearing; and

3.22.33 (c) informing the member of Staff of his/her right to be represented or accompanied in accordance with paragraph 7 above.

3.22.34 The Registrar and Secretary or his/her nominee shall also name in this letter the person who will be presenting the reason for the decision to

dismiss, and this person may be legally qualified.

3.22.35 Subject to clause 3.22.7 above, it shall be for the Appeal Panel at its discretion to determine, in consultation with the adviser appointed under sub-clause 3.22.40 (e) below, the procedure to be followed in preparation for and at the Appeal Hearing which may include without limitation:

3.22.35 (a) a right to call for additional documents;

3.22.35 (b) determining the extent (if any) to which witnesses may be called; and

3.22.35 (c) deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing. If the Panel considers at any time prior to or during the Appeal Hearing that it would like further medical or other information of any kind prior to making its decision, the Appeal Hearing may be adjourned whilst the information is obtained. Where the member of Staff refuses without good reason to supply the requested medical information, the appropriate person, having taken the advice of the Director of Human Resources (or a nominee with a personnel qualification or an experienced personnel practitioner), will proceed using the information available at the time.

The Appeal Hearing will be held in private and the normal rules of evidence or procedure applicable in a court of law need not apply. The member of Staff shall have the right to see, question and challenge at the Appeal Hearing any witnesses and any new evidence which may be produced. The member of Staff will be informed before the Hearing of the procedure the Appeal Panel has decided to adopt as outlined above.

3.22.36 The member of Staff shall indicate to the Appeal Panel whether or not s/he wishes to attend the Appeal Hearing in person. If s/he wishes to attend, s/he shall take all reasonable steps to attend the Appeal Hearing and/or any reconvened Hearing after an adjournment or postponement. If the member of Staff is not present at the Appeal Hearing, s/he shall have the right to be represented at the Appeal Hearing.

3.22.37 The Appeal Panel will make its decision and inform the member of Staff accordingly, normally not more than 14 calendar days after the conclusion of the Appeal Hearing. The Appeal Panel shall be entitled to:

3.22.37 (a) confirm the decision reached by the Panel; or

3.22.37 (b) overturn that decision and/or reinstate the member of Staff with no loss of service and/or institute some such alternative measure as it may consider appropriate; or

3.22.37 (c) remit the decision to be considered further by such person or persons and to such extent as the Appeal Panel shall specify.

3.22.38 The decision of the Appeal Panel shall be final unless it falls within clause 3.22.37 (c) and the Appeal Panel decides that it shall not be final.

3.22.39 The Appeal Panel shall prepare and send to the appellant a reasoned written decision (normally within 14 calendar days of making its decision). A

report of the Appeal Panel's decision will also be sent to Council. Following notification to the Council, a report will also be sent to the Senate. Any dismissed member(s) of Staff shall remain anonymous in any report to Council or Senate and in the minutes of meetings at which such reports are considered.

Part VI – Constitution of Panels

3.22.40 Any Panel or Appeal Panel convened under Parts IV or V of this Ordinance, shall be appointed by the Pro Chancellor on a case by case basis in accordance with the following rules:

3.22.40 (a) subject to sub-clause 3.22.40 (d) below, each Panel shall consist of three persons;

3.22.40 (b) at least one member of the Panel shall be a lay member of the Council or an Emeritus Professor and at least one shall be a member of Academic Staff (from a different School (or equivalent) from the appellant) drawn from a list agreed from time to time by the Senate of the University. The third member of the Panel, who will be its chair, shall be medically qualified and jointly agreed by the Council and the member of Staff concerned (or his/her representative). In default of agreement between the Council and the member of Staff on the medically qualified chair, the chair of the Panel shall be as nominated by the President of the Royal College of Physicians;

3.22.40 (c) no Panel member shall have had any previous direct or active involvement in the process, or any conflict of interest in the matter;

3.22.40 (d) where the Panel is dealing with a member of Staff falling within Statute 14, Clause 19(1) then a representative of a National Health Service or other relevant body may be appointed to the Panel. Where this occurs the Panel may consist of more than three members, but shall not exceed five persons; and

3.22.40 (e) the Panel shall be advised by the Director of Human Resources or a senior nominee with a personnel qualification or an experienced personnel practitioner.

3.23 Fixed-Term Contracts

Part I – Application and Scope

3.23.1 This Ordinance applies to members of Staff:

3.23.1 (a) as defined by Statute 14, Clause 2(1) (other than the Vice Chancellor); and

3.23.1 (b) who are employed under a fixed-term contract as defined in paragraph 2 of this Ordinance.

3.23.2 For the purposes of this Ordinance, a fixed-term contract is a contract which is not of indefinite duration and which contains provision for the