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

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

3.20.37 (c) deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing.

The appellant shall have the right to see, question and challenge at the Appeal Hearing any witnesses and any new evidence which may be produced.

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

3.20.38 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 in person, s/he shall take all reasonable steps to attend the Appeal Hearing and/or any reconvened Hearing following an adjournment or postponement. If the member of Staff then fails to attend the Appeal Hearing or any reconvened Hearing following a postponement or adjournment of the Appeal Hearing without reasonable excuse, the Appeal Panel shall be entitled to proceed in his/her absence. 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.

3.20.39 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:

3.20.39 (a) confirm the decision to dismiss the member of Staff;

3.20.39 (b) revoke the decision to dismiss and reinstate the member of Staff with no loss of service; or

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

3.20.40 The decision of the Appeal Panel shall be final unless its decision falls within clause 3.20.39 (c) and the Appeal Panel decides that it shall not be final.

3.20.41 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.

3.21 Disciplinary Procedure and Dismissals

Part I: General

3.21.1 This Ordinance sets out the disciplinary procedures referred to in Statute 14 Clause 10 which apply to members of Academic Staff.

3.21.2 This Ordinance applies to members of Staff as defined by Section 1 of the Statute with the exception of the Vice Chancellor. This Ordinance shall not apply to:

3.21.2 (a) Removal from office as Pro-Vice-Chancellor, Deputy Pro-Vice-Chancellor, Head of School, or such other Academic Officer as 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, where dismissal from the substantive post is not contemplated;

3.21.2 (b) The proposed dismissal of a member of Staff where that dismissal would arise from the expiry of a fixed term contract; and

3.21.2 (c) The proposed non-confirmation in post of a member of Staff at the end of probationary service.

3.21.3 The procedures set out in this ordinance apply to a member of clinical Academic Staff (as defined in clause 19(1) of Statute 14) 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 3.25 relating to clinical Staff will apply. Disciplinary action may be taken under this Ordinance against a member of clinical Academic Staff in respect of misconduct, or unsatisfactory or inadequate performance arising in connection with that member of Staff's clinical work as if the work or activities were performed in or for the University.

3.21.4 Prior to the institution of formal procedures under this Ordinance, where appropriate, means shall be sought to deal with concerns about conduct or performance through informal methods. If such informal methods do not resolve the matter, formal action may be taken. However, nothing in this Ordinance shall require the institution of formal proceedings to be preceded by informal action, if the misconduct or performance issue is considered too serious to be addressed through informal methods.

3.21.5 In respect of concerns about performance, the member of Staff shall be informed by the Head of School (or nominee) of the nature of the concerns about his/her performance and invited to a meeting to discuss them. The purpose of the meeting shall be, as appropriate: to explain the minimum satisfactory standards of performance sought by the Head of School (or nominee); to establish whether there are any impediments to the member of Staff achieving the minimum satisfactory standards of performance and how these might be overcome; to offer such support, coaching, mentoring and training as may be considered by the Head of School (or nominee) appropriate in the circumstances; to set reasonable targets for the member of Staff and a time period over which his/her performance will be monitored. During the course, or at the end, of a period of monitoring the member of Staff's performance, the Head of School shall provide feedback to the member of Staff on his/her performance, and may refine any targets and/or set a further period of monitoring, as appropriate. The Head of

School (or nominee) shall consult the Director of Human Resources (or nominee) before any continuation of monitoring beyond 12 months. If the performance of the member of Staff is considered by the Head of School (or nominee) to have reached the minimum satisfactory standards, the member of Staff shall be so informed and advised to maintain those standards.

3.21.6 Issues of misconduct and of unsatisfactory or inadequate performance shall be dealt with under the graduated Disciplinary Warning Procedure specified in paragraph 22 of this Ordinance, unless either:

3.21.6 (a) where the allegation is of misconduct, the member of Staff has previously received a final written warning for an offence of misconduct which has not expired at the date of the allegation ; or

3.21.6 (b) where the allegation relates to unsatisfactory or inadequate performance, the member of Staff has previously received a final written warning for unsatisfactory or inadequate performance which has not expired at the date of the allegation; or

3.21.6 (c) the issue alleged by the Head of School or other person is considered by the Vice-Chancellor, advised by the Registrar and Secretary (or nominee), to be of such seriousness that the matter should be referred to a disciplinary panel to consider whether the member of Staff should be dismissed

in which case, with the agreement of the Director of Human Resources (or a Deputy or Assistant Director of Human Resources), the Procedure for Dealing with Serious Issues in Part V of this Ordinance may apply.

Institution of procedures

3.21.7 The procedures in this Ordinance shall normally be instituted by an 'Appropriate Person' identified by the Director of Human Resources or a senior nominee (normally a Deputy or HR qualified Assistant Director of Human Resources), who shall be:

3.21.7 (a) in the case of a Vice-Principal, Pro-Vice Chancellor, Deputy Pro-Vice-Chancellor or a Head of College, by the Vice Chancellor;

3.21.7 (b) in the case of a Head of School, by a Pro-Vice Chancellor or Deputy Pro-Vice-Chancellor;

3.21.7 (c) in the case of any other member of Staff, by the Head of School or a Head of College.

In each case, before instituting the procedures in this Ordinance, the Appropriate Person shall be advised by the Director of Human Resources or a nominee with a personnel qualification or an experienced personnel practitioner.

3.21.8 The decision to institute the procedures in this Ordinance and the decision about which procedure should be used shall be in the discretion of the Appropriate Person (advised by the Director of Human Resources or a

senior nominee – normally a Deputy or HR qualified Assistant Director of Human Resources).

3.21.9 In the event that the procedures in this Ordinance are instituted against a member of Staff who, prior to or subsequent to the institution of these procedures, raises a grievance under the relevant Ordinance, the Director of Human Resources or a senior nominee (normally a Deputy or HR qualified Assistant Director of Human Resources) will discuss with the member of Staff (or the member of Staff's representative) with a view to reaching agreement on whether the two proceedings can proceed concurrently or in the alternative which of the two shall proceed first. In the event that it is not possible to reach agreement, the matter will be drawn to the attention of the appropriate Pro Vice-Chancellor who, after consulting with the Director (or Deputy or Assistant Director) of Human Resources, will decide how to proceed in the circumstances.

Relationship with Statute 14 Part IV (Medical Incapacity)

3.21.10 If it emerges that the issue relating to a member of Staff's conduct or performance may be attributable, in whole or in part, to a medical condition, the person or panel considering the issue (advised by the Director of Human Resources or nominee) shall postpone or adjourn any meeting under this Ordinance to allow investigation, taking account of any relevant legislation, of the member of Staff's medical condition, including obtaining, if appropriate, any medical report and:

3.21.10 (a) determine that no further action should be taken under Statute 14; or

3.21.10 (b) direct that the issue be dealt with under Statute 14 Part IV, dealing with incapacity on health grounds; or

3.21.10 (c) continue with proceedings under this Ordinance taking the member of Staff's medical condition into account as appropriate.

Part II: Grounds for Disciplinary Action (the Disciplinary Rules)

3.21.11 Disciplinary action may be taken in respect of the following matters, as set out in Statute 14 clause 9:

3.21.11 (a) conduct (wherever occurring) resulting in the member of Staff accepting a formal police caution, even if the member of Staff is not subsequently charged with or convicted of an offence, where that conduct is of a kind that is judged in all the circumstances to be relevant to the member of Staff's employment by the University;

3.21.11 (b) conviction of a criminal offence by any court of competent jurisdiction, where that offence is judged in all the circumstances to be relevant to the member of Staff's employment by the University;

3.21.11 (c) failure, refusal, or neglect to perform some or all of the duties or to comply with some or all of the conditions attaching to the post, or performing those duties or complying with those conditions in an unsatisfactory or inadequate manner;

3.21.11 (d) conduct of a kind judged to be inappropriate or unacceptable on the part of a holder of the post held by the member of Staff, such as (but not confined to) the following:

(i) breach of any obligation or duty arising under any of the University's regulations regarding financial matters, harassment, equal opportunities, public interest disclosure, health and safety, or data protection or any other rules, regulations or codes binding on the member of Staff;

(ii) wilful damage to or improper use of facilities, premises, property or equipment including equipment owned by, leased or hired to the University or otherwise provided for the pursuance of University duties;

(iii) disruption of, or improper interference with, the activities of those engaged in the activities of the University or any person because of their real or perceived connection with the University (other than any lawful industrial action);

(iv) violent, indecent, disorderly, threatening, abusive, insulting or harassing behaviour or language (whether written, spoken or in any other form);

(v) fraud, deceit, deception or dishonesty in relation to the University or any related activity, including research and examining;

(vi) action likely to cause injury or impair safety;

(vii) divulging information or material received in confidence (unless the disclosure is permitted under the Public Interest Disclosure Act 1998 or in accordance with the University's Public Interest Disclosure Procedure or required by law);

(viii) failure to disclose a conflict of interest which has a material impact on the conduct of University business.

Gross misconduct

3.21.12 Gross misconduct is defined as misconduct representing a serious breach of contractual terms, so serious, if proven, as to justify the summary dismissal (ie dismissal without notice or pay in lieu of notice) of a member of Staff. The classification of misconduct as "gross" is likely to depend as much on the context, quality and degree of misconduct involved as on the particular type of activity. For the purpose of providing guidance to members of Staff the following specific examples of gross misconduct are given. This is not in any way an exhaustive list, but merely indicative of the type of behaviour which may be classified as gross misconduct:

theft

fraud

physical violence

serious negligence

serious breach of trust and confidence

serious bullying or harassment

Part III: Disciplinary Warning Procedure

3.21.13 Prior to the institution of procedures under this Part, an investigation into the alleged misconduct or unsatisfactory or inadequate performance will be carried out by a nominee of the Director of Human Resources with a professional personnel qualification or an experienced personnel practitioner in collaboration with a manager or senior member of Academic Staff who is not subordinate to the person making the complaint against the member of Staff, who is not the immediate line manager of the member of staff against whom the allegation has been made and who has no conflict of interest in the matter. The member of Staff shall be informed of who is carrying out the investigation. The purpose of an investigation is to collect evidence in order to enable a determination to be made as to whether *prima facie* the allegation should proceed to a Disciplinary Hearing. A report of the investigation will be prepared, on the basis of which the appropriate person, advised by the Director of Human Resources (or a nominee with a personnel qualification or an experienced personnel practitioner) shall decide whether to proceed under this Part, or to counsel the member of Staff about his/her future conduct or performance, or that no further action be taken.

3.21.14 During the investigation referred to in clause 3.21.13 above, at any meeting with the member of Staff against whom the allegation has been made, s/he shall have the right to be accompanied by a member of Staff or a trade union representative of his or her choice. S/he shall be given full information about the allegation to enable him/her to respond. S/he shall have the right to nominate individuals to be interviewed as part of the investigation, and the right to submit any documents which may be relevant for the consideration of the persons carrying out the investigation. The member of Staff shall be kept informed of progress of the investigation and, in writing, of its outcome.

3.21.15 Where disciplinary proceedings are commenced against a member of Staff under this Part, the member of Staff shall be informed in writing of the alleged misconduct or unsatisfactory or inadequate performance, provided with a copy of the report prepared under clause 3.21.13 above and invited to a Disciplinary Hearing at which the issue shall be considered. The member of Staff shall receive at least 14 calendar days' notice of the Disciplinary Hearing and shall be given a copy of this Ordinance and reminded of his/her right to be accompanied or represented by a trade union representative or a member of Staff of his/her choice.

3.21.16 The Disciplinary Hearing will normally be conducted by the Appropriate Person instituting the procedures in accordance with clause 3.21.8 above, advised by the Director of Human Resources (or nominee), provided the Appropriate Person is not otherwise involved in the case (eg as a witness)

and has no conflict of interest in the matter.

3.21.17 Where the member of Staff (other than a Vice-Principal, Pro Vice-Chancellor, Deputy Pro-Vice-Chancellor, Head of College or Head of School) has previously been given a written warning under the Procedure in this Part, which has not expired at the date of the allegation, the Hearing shall be conducted by a Head of College, or a Pro-Vice Chancellor (or a Deputy Pro-Vice-Chancellor).

3.21.18 The member of Staff shall be provided with copies of any evidence to be considered at the Hearing, including (where applicable) the names of any witnesses from whom it is intended any evidence will be considered at the Hearing and any statements obtained from those witnesses. So far as is reasonable given the circumstances of the case, this material shall be provided in advance of the Disciplinary Hearing. Where such information is provided to the member of Staff on the day of the Disciplinary 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 consider the information.

3.21.19 The member of Staff shall be invited to indicate, if s/he wishes, prior to the Hearing:

3.21.19 (a) whether he or she admits the alleged misconduct or under-performance in whole or in part and, if so, to indicate any grounds of mitigation which he or she intends to advance; and/or

3.21.19 (b) the nature of any evidence he or she intends to call in his/her defence or mitigation, including the names of any witnesses and their relevance to the allegations, and details of any documents to which s/he intends to refer.

Where such information has been provided by the member of Staff on the day of the Disciplinary Hearing, the person conducting the Hearing should consider allowing an adjournment to give those present at the Hearing a reasonable opportunity to consider the information.

3.21.20 The member of Staff will have the rights to be present and to be represented at the Hearing referred to in paragraph 15 by a member of Staff or trade union representative of his/her choice.

3.21.20 (a) If the member of Staff or his or her representative is not available at the time proposed, the meeting 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.

3.21.20 (b) The representative attending the meeting with the member of Staff may speak on the member of Staff's behalf, but may not, except with the permission of the person conducting the Hearing, answer questions (relating to the issues in dispute) on the member of Staff's behalf.

3.21.20 (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 person conducting the Hearing shall consider the circumstances preventing the member of Staff attending and shall consult the Director (or an Assistant Director) of Human Resources before deciding whether to proceed with or continue the Hearing, in the absence of the member of Staff, or whether to postpone it. If the member of Staff is not present at the Hearing, he or she shall have the right to be represented at the Hearing.

3.21.21 The procedure to be followed in the Disciplinary Hearing shall be at the discretion of the person conducting the Hearing, but shall include:

3.21.21 (a) the detailed allegations being put to the member of Staff, including (if relevant) the calling of any witness or witnesses;

3.21.21 (b) the member of Staff having the opportunity to set out his or her case in response to the allegation(s) and to call any relevant witnesses;

3.21.21 (c) the questioning of any witnesses by both sides; and

3.21.21 (d) the power to adjourn or postpone the Hearing.

3.21.22 Where it is concluded by the appropriate person (advised as set out in paragraph 8 above) or under paragraphs 47 and 48 below that the allegations are proven, one of a series of graduated warnings (an Oral Warning, a First Written Warning and a Final Written Warning) may be given. However, depending on the seriousness of the case, and by agreement with the Director (or an Assistant Director) of Human Resources and with a Pro Vice-Chancellor, the formal procedure may omit the Oral Warning and begin with a First Written Warning; or may proceed directly to a Final Written Warning; or may exceptionally dispense with warnings altogether. In certain circumstances it may be appropriate to repeat a warning at the same level. An Oral Warning will expire after a maximum of one year, and a Written Warning or a Final Written Warning will expire after a maximum of two years.

3.21.23 Following the Disciplinary Hearing, the member of Staff shall be notified in writing:

3.21.23 (a) of the outcome of the Hearing;

3.21.23 (b) of any disciplinary warning issued against him or her, and if a disciplinary warning is issued, the member of Staff shall also be given the information referred to in paragraph 24;

3.21.23 (c) where appropriate, any counselling relating to the misconduct, or the nature of the improvement in performance required to reach minimum acceptable standards and any measures to be taken to assist the member of Staff in improving his/her performance; and

3.21.23 (d) of his/her right to appeal under Part IV of this Ordinance and how that right should be exercised.

3.21.24 A formal warning issued under this Ordinance shall specify precisely the misconduct or unsatisfactory or inadequate performance which has led to the warning being issued, the level of the warning imposed, the duration of that warning (within the maxima specified under paragraph 22 above), and shall, as relevant, state either that further instances of alleged misconduct, or that a failure to maintain minimum satisfactory levels of performance during the period of the warning:

3.21.24 (a) in the case of a warning other than a Final Written Warning, may lead either to further disciplinary action being taken under this Part or in the event of serious misconduct or seriously unsatisfactory or inadequate performance to the Procedure for Dealing with Serious Issues under Part V being instituted (under which a Disciplinary Panel may determine that the member of Staff shall be dismissed);

3.21.24 (b) in the case of a Final Written Warning, may lead to the procedure under Part V being instituted, under which the Panel may determine that the member of Staff should be dismissed.

3.21.25 Warnings shall be disregarded for the purpose of further disciplinary proceedings on their expiry.

Part IV: Appeals against Action under Part III

3.21.26 A member of Staff may appeal under this Part against a disciplinary warning issued under the Disciplinary Warning Procedure in Part III.

3.21.27 Any appeal should be made in writing to the Registrar and Secretary normally within 28 calendar days of receipt of the written notification of the decision concerned. The member of Staff shall set out l the grounds of his/her appeal.

3.21.28 The appeal shall be heard:

3.21.28 (a) in the case of a decision made by a Head of School (or nominee), by a Head of College or a Pro Vice Chancellor (or a Deputy Pro-Vice-Chancellor); or

3.21.28 (b) in the case of a decision made by a Head of College or a Deputy Pro-Vice-Chancellor or a Pro Vice Chancellor, by the Vice Principal or by the Vice Chancellor; or

3.21.28 (c) in the case of a decision by the Vice Chancellor, by the Pro Chancellor (or nominee).

3.21.29 The member of Staff shall be given at least 14 calendar days (which may be reduced by agreement with the member of Staff) written notification of the date and time of the Appeal Hearing and shall be notified of his/her rights to be present and to be represented at the Appeal Hearing by a member of Staff or trade union representative of his/her choice.

3.21.29 (a) If the member of Staff or his or her representative is not available at the time proposed, the meeting 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.

3.21.29 (b) The representative attending the meeting with the member of Staff may speak on the member of Staff's behalf, but may not, except with the permission of the person hearing the appeal, answer questions (relating to the issues in dispute) on the member of Staff's behalf.

3.21.29 (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 person conducting the Hearing 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.

3.21.30 Witnesses, other than the member of Staff and the person who made the decision being appealed, may only be heard with permission of the person hearing the appeal.

3.21.31 Following the Appeal Hearing, the member of Staff will be advised of the outcome of the appeal which, without limitation, may include the cancellation of the decision being appealed or the substitution of a lesser penalty or sanction. However, it shall not be open to the person hearing the appeal to increase the severity of the warning being appealed.

Part V: Procedure for Dealing with Serious Issues

3.21.32 Where it is judged by the Appropriate Person (as defined in paragraph 7 above) that circumstances have arisen where this procedure should be instituted in respect of any member of Staff, the allegation shall be reported to the Vice Chancellor (or in his/her absence, the Vice–Principal) in writing, who may consider the matter personally or delegate it for consideration to a specially nominated person.

3.21.33 The Vice Chancellor (or in his or her absence the Vice-Principal) in consultation with the Director of Human Resources or, in his/her absence, a senior nominee (normally a Deputy or Assistant Director of Human Resources) shall be entitled to suspend the member of Staff on full pay pending a final decision on the matter. Any suspensions shall be confirmed to the member of Staff in writing by the Director of Human Resources or a senior nominee (normally a Deputy or Assistant Director of Human Resources).

3.21.34 Unless the Vice Chancellor (or in his/her absence the Vice-Principal) determines that, on the basis of the allegation itself, the allegation should be dismissed as being trivial or without substance or should be dealt with under the Disciplinary Warning Procedure under Part III, the Vice Chancellor or the Vice-Principal shall nominate a person to conduct such investigations as may be considered appropriate and to prepare a report of that investigation.

3.21.35 Before any investigation referred to in paragraph 34 above the member of

Staff shall be given in writing full information about the allegation to enable him/her to respond. S/he shall have the right to nominate individuals to be interviewed as part of the investigation, and the right to submit any documents which may be relevant for the consideration of the person specified in paragraph 34 above. At any meeting with the member of Staff during the course of the investigation, s/he shall have the right to be accompanied by a member of Staff or a trade union representative of his or her choice. The member of Staff shall be kept informed of progress of the investigation and, in writing, of its outcome.

3.21.36 Following receipt of the investigation report, the Vice Chancellor (or the Vice-Principal) shall determine whether:

3.21.36 (a) the allegation should be dismissed as being trivial or without substance;

3.21.36 (b) the allegation be resolved informally, with the written agreement of the member of Staff;

3.21.36 (c) the member of Staff should be counselled as to his/her future conduct or performance;

3.21.36 (d) the allegation should be dealt with under the Disciplinary Warning Procedure in Part III;

3.21.36 (e) the allegation should be heard under this Part and a Disciplinary Panel established.

The member of Staff shall be informed of that decision in writing without delay.

3.21.37 The Disciplinary Panel shall be appointed by the Pro Chancellor on a case-by-case basis and in accordance with the following rules:

3.21.37 (a) subject to sub-clause 3.21.37 (d) below the Panel shall consist of three persons;

3.21.37 (b) at least one member of the Panel but no more than two 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 member of Staff) drawn from a list agreed from time to time by the Senate of the University;

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

3.21.37 (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

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

3.21.38 The Pro Chancellor or nominee shall determine who shall chair the Disciplinary Panel.

3.21.39 Where it is decided under clause 3.21.36 (e) above that the matter shall be considered by a Panel under this Part, the member of Staff shall be notified in writing without delay of the detail of the allegation, including a copy of any investigation report, be informed that the matter is being referred to a Disciplinary Panel and subsequently be given no less than 28 calendar days' (or such other period as may be mutually agreed) written notice of:

3.21.39 (a) the date, time and place of the Panel Hearing;

3.21.39 (b) the issues to be considered at the Panel Hearing;

3.21.39 (c) the right to be represented and/or accompanied at the Panel Hearing in accordance with paragraph 40; and

3.21.39 (d) the right to call relevant witnesses at the Panel Hearing.

3.21.40 The member of Staff may be represented at the Panel Hearing by another person, who may be legally qualified, and accompanied by a friend who shall be a member of Staff and who shall take no part in the proceedings.

3.21.40 (a) If the member of Staff or his or her representative is not available at the time proposed, the meeting 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.

3.21.40 (b) The representative attending the meeting with the member of Staff may speak on the member of Staff's behalf, but may not, except with the permission of the person chairing the Hearing, answer questions (relating to the issues in dispute) on the member of Staff's behalf.

3.21.40 (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.

3.21.41 The member of Staff shall be under a duty to take reasonable steps to attend the Panel Hearing.

3.21.42 No later than 14 calendar days before the Panel Hearing the member of Staff shall be provided with:

3.21.42 (a) copies of all documentary evidence including statements by witnesses to be referred to or relied upon at the Panel Hearing;

3.21.42 (b) the names and designations of any witnesses who will be called to give evidence in relation to the issues being considered at the Panel Hearing*;*

3.21.42 (c) so far as they are known at the time, the names and designations of any person(s) to be present at the Hearing including the members of the Disciplinary Panel, the adviser to the Panel and the name of any person attending to present the allegation(s) to the Panel (who may be legally qualified).

3.21.43 At least seven calendar days in advance of the Panel Hearing, the member of Staff shall:

3.21.43 (a) state whether it is his/her intention to attend the Hearing;

3.21.43 (b) provide names and details of proposed witnesses, as appropriate;

3.21.43 (c) provide copies of all documentary evidence including any statements by witnesses to which he or she wishes to refer at the Hearing. Any documentary evidence not disclosed within this timeframe may be considered at the Panel Hearing only with the consent of the chair of the Panel.

Disciplinary Hearing

3.21.44 The procedure to be followed at the Disciplinary Hearing shall be determined by the Panel in consultation with the adviser appointed under paragraph 37(v) above but must include:

3.21.44 (a) that the member of Staff has the right to be present at or absent from the Hearing;

3.21.44 (b) the presentation of the allegation, along with provision for the calling of witnesses in relation to the allegation;

3.21.44 (c) that, if evidence in support of the allegation(s) is to be given by witnesses, the member of Staff and/or his/her representative shall be allowed to cross-examine the witnesses;

3.21.44 (d) that the member of Staff or his/her representative has the right to make representations, present evidence and call witnesses, who may also be questioned by the person presenting the allegation;

3.21.44 (e) where a number of witnesses is listed, that the Chair of the Panel may seek information from the relevant party as to whether any will be supplying duplicate evidence. If the Chair of the Panel believes there is duplication of evidence, s/he may invite the parties to agree that written statements from some of those witnesses (without their attendance being required at the Hearing) be taken into account together with oral evidence from other witnesses;

3.21.44 (f) either party seeking clarification through the Chair of the Panel from the other party, as appropriate;

3.21.44 (g) that the Panel has the ability to ask questions of all parties and witnesses;

3.21.44 (h) that the Panel has the power to adjourn or postpone the Hearing.

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

3.21.46 The Panel may, at its discretion recall the parties or any witness to clarify any relevant issue. In the event that any person is recalled, the person attending to present the allegation to the Panel and the member of Staff and his/her representative shall have the right to be present.

3.21.47 As soon as reasonably practicable after the Panel Hearing, the Panel shall reach its decision (which may be by majority if necessary). That decision shall be sent in writing to the Vice-Chancellor (or in his/her absence to the Vice-Principal) and to each party to the proceedings (together with the Panel's finding of fact and the reasons for its decision and its recommendations, if any, as to the appropriate penalty). The Panel may:

3.21.47 (a) dismiss the allegation(s), in whole or in part;

3.21.47 (b) uphold the allegation(s), in whole or in part;

3.21.47 (c) where the allegation is upheld in whole or in part, may recommend a course of action as it considers appropriate, having regard to the provisions of paragraph 48 below.

3.21.48 Where the allegation is upheld in whole or in part, on receipt of the Panel's report, the Vice-Chancellor (or Vice-Principal) shall decide on the appropriate action, which may include one or more of the following, providing the penalty is not greater than any recommended by the Panel:

3.21.48 (a) only in cases where the member of Staff's conduct is designated as gross misconduct, direct that the member of Staff should be dismissed without notice or payment in lieu of notice;

3.21.48 (b) direct that the member of Staff shall be dismissed either with notice or a payment in lieu of notice;

3.21.48 (c) issue a warning, which may be a Formal Oral Warning, Written Warning or Final Written Warning, in which case the terms of paragraphs 22 and 24 above shall apply. In each case the warning shall set out the conduct or behaviour constituting the act of misconduct, and any improvement or action required with an appropriate time scale. The warning should set out the consequences of non-compliance and of any further misconduct;

3.21.48 (d) any other penalty which may be appropriate in the circumstances;

3.21.48 (e) direct that the member of Staff be counselled as to his/her future conduct or performance, which may include appropriate training;

3.21.48 (f) discuss the issues raised with the member of Staff.

3.21.49 Where the Vice-Chancellor (or Vice-Principal) decides that a member of Staff should be dismissed, or that any other penalty be imposed, the Registrar and Secretary or nominee shall give effect to the decision.

3.21.50 The member of Staff shall be advised of his/her right of appeal under Part VI against the Panel's findings or against any penalty imposed.

Part VI: Appeals against Decisions Taken in Part V

3.21.51 A member of Staff who wishes to appeal against the findings of the Disciplinary Panel, or any penalty imposed, should do so in writing to the Registrar and Secretary normally within 28 calendar days of receipt of the decision of the Disciplinary Panel. The member of Staff should set out the grounds of his/her appeal.

3.21.52 The appeal will be heard by a Panel ("the Appeal Panel") appointed by the Pro Chancellor on a case by case basis in accordance with the following rules:

3.21.52 (a) subject to sub-clause 3.21.52 (d) below each Panel shall consist of three persons;

3.21.52 (b) at least one member of the Panel but no more than two 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;

3.21.52 (c) no Panel member shall have had any previous direct or active involvement in the process or decision to dismiss the member of Staff, or any conflict of interest in the matter. No person may sit on both the Disciplinary Panel established under Part V above and the Appeal Panel in a particular case;

3.21.52 (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

3.21.52 (e) The Panel shall be advised by the Director of Human Resources or a senior nominee (normally a Deputy or HR qualified Assistant Director of Human Resources).

3.21.53 The Pro Chancellor shall determine who shall chair the Appeal Panel.

3.21.54 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:

3.21.54 (a) inviting the member of Staff to an Appeal Hearing (the "Appeal Hearing");

3.21.54 (b) naming the members of the Appeal Panel and the adviser appointed under sub-paragraph 52(v) above;

3.21.54 (c) reminding the member of Staff that s/he has an inherent right to challenge the membership of the Panel on the grounds of conflict of interest; and

3.21.54 (d) informing the member of Staff of his/her right to be represented or assisted in accordance with paragraph 55 below.

3.21.55 At the Appeal Hearing the member of Staff may be represented by any other person, who may be legally qualified, and may also be accompanied by a friend who shall be a member of Staff and who shall take no part in the proceedings. If the member of Staff or his or her representative is not available at the time proposed for the Appeal Hearing, the meeting shall be postponed to another reasonable time at which they will both be available, being normally not later than 14 calendar days after the date first proposed for the Appeal Hearing. Any representative may attend 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 Appeal Hearing, answer questions (relating to the issues in dispute) on the member of Staff's behalf.

3.21.56 Subject to clause 3.21.55 above, it shall be for the Appeal Panel at its discretion to determine, in consultation with the adviser appointed under sub-clause 3.21.52 (e) above, the procedure to be followed in preparation for and at the Appeal Hearing which may include without limitation:

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

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

3.21.56 (c) deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing.

The appellant shall have the right to see, question and challenge at the Appeal Hearing any witnesses and any new evidence which may be produced.

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

3.21.57 The member of Staff shall indicate to the Appeal Panel whether or not s/he wishes to attend the Appeal Hearing in person, and provide the name of any representative. If s/he wishes to attend in person, s/he shall take all reasonable steps to attend the Appeal Hearing and/or any reconvened Hearing following an adjournment or postponement. If the member of Staff then fails to attend the Appeal Hearing or any reconvened Hearing following a postponement or adjournment of the Appeal Hearing without reasonable excuse, the Appeal Panel shall be entitled to proceed in his/her absence. If the member of Staff is not present at the Appeal Hearing, he or she shall have the right to be represented at the Appeal Hearing.

3.21.58 The Appeal Panel will make its decision and inform the member of Staff accordingly, normally not more than 14 days after the conclusion of the

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