UNIVERSITY OF BIRMINGHAM

CODE OF PRACTICE ON MISCONDUCT AND FITNESS TO PRACTISE COMMITTEE

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1. Introduction

1.1 This Code of Practice sets out the procedures for the following:

.1 discipline cases referred to the College Misconduct and College Fitness to Practise Committees;

.2 appeals to the University Misconduct and Fitness to Practise Committee against decisions of the College Misconduct or College Fitness to Practise Committees;

.3 the review of cases where the decision of the College Misconduct or College Fitness to Practise Committees is to require the student to withdraw from the programme of study or withdraw from the University.

2. Constitution of the Committees:

2.1 College Misconduct Committee

.1 The College Misconduct Committee pool shall comprise at least twelve members of academic staff of the College.

.2 The College Misconduct Committee pool shall be appointed at the beginning of each session by the Head of College or his nominee.

.3 The Chair shall be appointed from the College Misconduct Committee pool by the Head of College or his nominee.

.4 The Chair will then appoint two members of staff from the College Misconduct Committee pool. None of the members of the Committee shall have previously been involved with the case(s).

.6 The Guild of Students shall nominate one full time registered student to serve on the Committee, provided that they are from a different principal academic unit to the student subject to the allegations. The nominated registered student should have received training from the University on misconduct procedures.

.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 misconduct 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 A secretary should also be appointed by the Head of College or his nominee to make the necessary arrangements, take notes of hearings and to advise the Committee on procedures.

.9 A case presenter should also be appointed by the Head of College or his nominee to present the case. The case presenter shall be a member of the relevant College and may be the Investigating Officer.

2.1 .10 The secretary to College Misconduct Committee, acting on behalf of the Head of College, shall notify the student in writing of the names of the members of the College Misconduct Committee as soon as reasonably practicable, and at least ten working days before the date of the hearing.

2.1 .11 If the student wishes to object to any of the College Misconduct Committee members they must do so as soon as possible and in any event at least five working days before the date of the hearing. The only ground for objection is that of possible bias arising from either:

(a) involvement in the process at an earlier stage, or

(b) involvement in a related appeal hearing, disciplinary hearing or grievance procedure, or

(c) prior knowledge of the matter or the student.

2.2 College Fitness to Practise Committee

2.2 .1 The College Fitness to Practise Committee shall be drawn from two pools, A and B. These shall be appointed at the beginning of each session by the Head of College or his nominee.

2.2 .2 Pool A shall comprise at least twelve members of the academic staff of the College, taken from those principal academic units whose students are subject to Fitness to Practise procedures.

2.2 .3 Pool B shall comprise at least six members who are either honorary members of staff or external examiners of the College who are associated with programmes of study that incorporate Fitness to Practise procedures.

2.2 .4 The Chair shall be appointed from the College Fitness to Practise Committee Pool A by the Head of College or his nominee.

2.2 .5 The Chair will then appoint one member from Pool A and one member from Pool B. None of the members of the Committee shall have previously been involved with the case(s).

2.2 .6 The Guild of Students shall nominate one full time registered student to serve on the Committee, provided that they are from a different principal academic unit to the student subject to the allegations and who are themselves subject to Fitness to Practise procedures. The nominated registered student should have received training from the University on fitness to practise procedures.

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.

2.2 .8 A secretary should also be appointed by the Head of College or his nominee to make the necessary arrangements, take notes of hearings and to advise

the Committee on procedures.

2.2 .9 A case presenter should also be appointed by the Head of College or his nominee to present the case. The case presenter shall be a member of the relevant College and may be the Investigating Officer.

2.2 .10 The secretary to College Fitness to Practise Committee, acting on behalf of the Head of College, shall notify the student in writing of the names of the members of the College Fitness to Practise Committee as soon as reasonably practicable, and at least ten working days before the date of the hearing.

2.2 .11 If the student wishes to object to any of the College Fitness to Practise Committee members they must do so as soon as possible and, in any event, at least five working days before the date of the hearing. The only ground for objection is that of possible bias arising from either:

(a) involvement in the process at an earlier stage, or

(b) involvement in a related appeal hearing, disciplinary hearing or grievance procedure, or

(c) prior knowledge of the matter or the student.

2.3 University Misconduct and Fitness to Practise Committee

2.3 .1 The Chair of the University Misconduct and Fitness to Practise Committee will be the Pro-Vice-Chancellor (Academic Quality and Students) or his nominee.

2.3 .2 The University Misconduct and Fitness to Practise Committee shall be drawn from two pools, 1 and 2.

2.3 .3 Pool 1 shall comprise at least twelve members of academic staff of the University.

2.3 .4 Pool 2 shall comprise at least twelve members of honorary members of staff or external examiners.

2.3 .5 For appeals against the decision of the College Misconduct Committee there shall be two members chosen from Pool 1 and none from Pool 2.

2.3 .6 For appeals against the decision of the College Fitness to Practise Committee there shall be one member from Pool 1 and one from Pool 2.

2.3 .7 For appeals against the decision of the College Fitness to Practise Committee the members of staff chosen from Pool 1 and 2 should have substantial experience of fitness to practise issues through their involvement with the designated fitness to practise programmes as defined in Student Conduct Regulations 1.3.

2.3 .8 The President of the Guild of Students or his nominee shall serve on the Committee.

2.3 .9 The Director of Academic Services or his nominee will act as secretary to the Committee.

2.3 .10 A case presenter should also be appointed by the Director of Academic Services or his nominee to present the case. The case presenter shall be a member of the University and may be the Investigating Officer.

2.3 .11 The secretary to University Misconduct and Fitness to Practise Committee shall notify the student in writing of the names of the members of the University Misconduct and Fitness to Practise Committee as soon as reasonably practicable, and at least ten working days before the date of the hearing.

2.3 .12 If the student wishes to object to any of the University Misconduct and Fitness to Practise Committee members they must do so as soon as possible and, in any event, at least five working days before the date of the hearing. The only ground for objection is that of possible bias arising from either:

(a) involvement in the process at an earlier stage, or

(b) involvement in a related appeal hearing, disciplinary hearing or grievance procedure, or

(c) prior knowledge of the matter or the student.

3. Procedure in non-summary hearings

3.1 Where the student has denied the allegation, or does not wish the matter to be dealt with as a summary offence, or the Investigating Officer (as defined by Regulations Section 8, Student Conduct, 3.1) deems the offence more serious than a summary offence, the Investigating Officer shall report the alleged offence in writing to the Head of College for consideration by the College Misconduct Committee or College Fitness to Practise Committee.

3.2 The report (hereinafter called the “Investigating Officer’s Report”) shall state which infringements of the Student Conduct Regulations that the student is charged with and shall include details of the investigation incorporating any statement made by the student.

3.3 The secretary to the College Misconduct Committee or College Fitness to Practise Committee shall send to the student a copy of the Investigating Officer’s Report.

3.4 The student shall send to the secretary of the Committee his comments on the Investigating Officer’s Report, together with an indication of whether the offence is admitted or denied, together with any mitigating circumstances and character references he wishes the Committee to consider, before a date specified in the letter accompanying the report. The date specified for the response to be received must be at least ten working days from the date of the accompanying letter. As soon as reasonably practicable thereafter, the secretary of the Committee shall call a meeting of that Committee.

3.5 If no response has been received from the student by the date specified in the letter to him, and which accompanied the report, then the hearing may proceed. The student will have the right to appeal, as specified in Regulations Section 8, Subsection 5.

3.6 The student shall be permitted to appear before the Committee with or without a

friend, defined as meaning a member of the staff of the University or a registered student of the University or a Sabbatical Officer of the Guild of Students.

3.7 If the University appoints a professionally qualified person as Case Presenter the student shall also be entitled to appoint a professionally qualified person as their representative.

3.8 An expert, normally from the principal academic unit may, at the request of the Chair, be required to attend as a witness to answer questions of detail, which may arise.

3.9 All hearings shall be in private unless, at the request of the student, the Committee has decided otherwise, in which event the Committee shall make its reasons known.

4. Order of the College Misconduct Committee and Fitness to Practise Committee

4.1 When the members of the College Misconduct or Fitness to Practise Committee have assembled, the Case Presenter will inform the Committee whether the student and the witnesses are present. If the student fails to attend, the Committee will decide whether to proceed in his absence or to adjourn the hearing. Similarly if any witness fails to attend, the Committee will decide whether to proceed in his absence or to adjourn the hearing. Witnesses shall not be put on oath. Where the student does not attend the hearing in person, the secretary to the Committee shall ensure that members of the Committee are instructed that no adverse inference may be derived from the student's absence.

4.2 The College Misconduct or Fitness to Practise Committee will, under normal circumstances, expect the hearing to proceed once all the Committee members are present.

4.3 The student and any friend and the Case Presenter will be invited into the room. The Chair will establish, based on the wishes of the student, whether the student or the friend will present the case for the student.

4.4 If the student has admitted the offence, the Case Presenter shall present the Investigating Officer's Report to the Committee and make such comments about the circumstances of its commission and what might be an appropriate punishment in the light of all the circumstances as he shall think fit.

4.5 If the student denies the charge, the case shall be presented to the Committee by the Case Presenter.

4.6 The Case Presenter may:

4.6 .1 make a statement concerning the case;

4.6 .2 call witnesses in turn relating to the case.

4.6 .3 be questioned by the Committee.

4.7 The University's witnesses may:

4.7 .1 make a statement to the Committee;

4.7 .2 be questioned by the Case Presenter through the chair;

4.7 .3 be questioned by the student or his friend through the chair;

4.7 .4 be questioned by the Committee.

4.8 The student (or the friend) may then:

4.8 .1 make a statement concerning the case;

4.8 .2 call witnesses in turn in relation to the case;

4.8 .3 be questioned by the Committee.

4.9 The student's witnesses may:

4.9 .1 make a statement to the Committee;

4.9 .2 be questioned by the student or his friend through the chair;

4.9 .3 be questioned by the Case Presenter through the chair;

4.9 .4 be questioned by the Committee.

4.10 The student (or the friend) may make a final statement.

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.

4.12 All other persons shall withdraw whilst the Committee, advised by its secretary, who shall remain in attendance, considers whether or not the charge is proved. The burden of proof shall be on the basis of the balance of probabilities and the decision shall be taken by a simple majority of the members present and voting. The person chairing the Committee shall have a casting vote in the event of a tie. Once a decision is reached, the Committee, advised by its secretary, shall consider what punishment to impose if appropriate.

4.13 At the termination of the proceedings, the Committee will write a short report. In the event of a finding of guilt, the report will set out the misconduct alleged, a brief summary of evidence received, the grounds for the finding of guilt, the penalty imposed, and the factors taken into account in deciding the penalty. A copy of the report will be sent to the student.

4.14 The student will be informed in writing of the Committee's decision and the reasons for that decision normally within two working days. Normally, this should include the report prepared by the committee.

5. Punishments in non-summary hearings

5.1 Where an offence is admitted or the Committee finds the offence proved, the Committee may impose, after examining any information as to the character and circumstances of the student which the student wishes to present, one of the following punishments:

5.1 .1 a reprimand; or

5.1 .2 with the student's consent, community service (as defined under the Student Conduct Regulations), the details of which must be specified before consent is solicited; or

5.1 .3 a fine not exceeding a maximum to be determined by the Senate or under delegated authority from time to time; or

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

5.1 .5 disqualification of the student from use of or access to any University service or facility or premises for such period as the Committee may decide; or

5.1 .6 suspension of the student from membership of and/or attendance at the University for a specified period not exceeding one year; or

5.1 .7 withdrawal of the student from the Programme (option available to College Fitness to Practise Committee only); or

5.1 .8 withdrawal of the student from the University.

5.2 The Committee may suspend a punishment, subject to agreed conditions.

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, office or employee of the University, either by payment of the cost of reinstatement or otherwise as may be appropriate (a compensation order).

5.4 Where the College Misconduct Committee or College Fitness to Practise Committee finds that discipline offence of cheating or plagiarism in assessed academic work or in examinations (Regulations Section 8, Student Conduct, 2.1.10) is proven, the following additional penalties are available.

5.4 .1 For students on taught programmes of study, or students on research-based programmes of study, where the cheating or plagiarism takes place on a taught module taken as part of that programme:

(a) the examination or assessment mark obtained to stand; or

(b) the paper to be taken as a first sitting at the next available opportunity in the case of an examination irregularity or in the case of plagiarism the work to be submitted for marking as for the first time following the removal of all plagiarised sections and their replacement with legitimate text; or

(c) the mark obtained in the examination or the assessment is to be set at zero. The paper must then be taken as a re-sit examination or resubmitted for assessment (mark capped at the passmark):

(i) at the next available opportunity; or

(ii) at a time specified by the Committee; or

(d) the mark obtained in the examination or the assessment is to be set at zero with no opportunity of re-assessment permitted; or

(e) the mark obtained in the module to be set at zero with no opportunity of re-assessment permitted; or

(f) the degree classification which would have been awarded revised to a level (which may include a fail categorisation or award of a lower alternative qualification) determined by the Committee; or

(g) the award of a Postgraduate Certificate, Postgraduate Diploma or Taught Postgraduate Degree be limited to Pass or Merit only where a Merit or Distinction may have been awarded.

5.4 .2 For students on research-based programmes of study, the following additional penalties are available:

(a) the student may submit/resubmit his dissertation/thesis for the original qualification with the offending sections/data removed;

(b) the student may be required to remove the offending sections/data from his dissertation/thesis, and to submit/resubmit the resulting dissertation/ thesis for a lower award of the University, to be determined by the Misconduct Committee;

5.5 For students following fitness to practise programmes the College Fitness to Practise Committee, before imposing a punishment, shall decide whether the nature of the matter raises specific concerns regarding fitness to practise. In that event the Committee may adjourn to consult the relevant professional body before determining the sanction.

5.6 Having made a decision the College Misconduct Committee or the College Fitness to Practise Committee shall decide:

5.6 .1 whether any record of the decision shall be placed in the student's personal file and, if so, whether permanently or for a stated limited time; and

5.6 .2 whether any report of the matter should be made to the Head of principal academic unit of the student concerned; and

5.6 .3 whether any particular reference should be made with regard to the individual's fitness to practise; and

5.6 .4 whether, and if so in what form, publicity should be given to the decision within the University, in accordance with the Data Protection Act 1998; and

5.6 .5 whether a report should be sent to the employer or professional body, in accordance with the Data Protection Act 1998.

5.7 Where the decision of the Committee is withdrawal from the programme or withdrawal from the University, and the student does not wish to submit an appeal to the Director of Academic Services, the Director of Academic Services shall forward the Committee’s decision and the papers considered by the Committee to the University Misconduct and Fitness to Practise Committee for review. The review will be by the

Chair and an external member from Pool 2 of the University Misconduct and Fitness to Practise Committee, and will establish whether there was an irregularity in the decision making process. If such an irregularity is apparent, the University Misconduct and Fitness to Practise Committee will consider the matter as an automatic appeal.

6. Appeal to the University Misconduct and Fitness to Practise Committee

6.1 Appeals from students will be heard by the University Misconduct and Fitness to Practise Committee.

6.2 As soon as reasonably practicable after receipt of an appeal, the Director of Academic Services shall call a meeting of the University Misconduct and Fitness to Practise Committee and shall give the student at least ten working days notice of the date of the hearing.

6.3 The secretary to the University Misconduct and Fitness to Practise Committee, acting on behalf of the Director of Academic Services, will circulate all of the papers pertaining to the case to the Committee and the student.

6.4 The student (with or without a friend) shall be permitted to appear before the Committee. A friend is defined as meaning a member of the staff of the University or a registered student of the University or a Sabbatical Officer of the Guild of Students.

6.5 When notifying the student of the date and time of the hearing the Director of Academic Services will:

6.5 .1 inform the student of the right to be accompanied at the full hearing by a friend;

6.5 .2 provide the student with the names of any witnesses that the University proposes to call;

6.5 .3 require the student to submit as soon as possible and in any event not later than five working days before the time fixed for the hearing:

(a) copy of any further written evidence which he may wish to present, in support of the appeal;

(b) the name and status of any person who will accompany the student;

(c) the names of any witnesses the student wishes to call;

6.5 .4 The secretary to University Misconduct and Fitness to Practise Committee, acting on behalf of the Director of Academic Services, shall notify the student in writing of the names of the members of the University Misconduct and Fitness to Practise Committee as soon as reasonably practicable, and at least ten working days before the date of the appeal.

6.5 .5 If the student wishes to object to any of the University Misconduct and Fitness to Practise Committee members they must do so as soon as possible and in any event at least five working days before the date of the hearing. The decision shall be made by the Director of Academic Services or his nominee. The only ground for objection is that of possible bias arising from either:

(a) involvement in the misconduct process at an earlier stage, or

(b) involvement in a related appeal hearing, disciplinary hearing or grievance procedure, or

(c) prior knowledge of the matter or the student.

6.5 .6 It will be the responsibility of the student and of the University respectively to summon their own witnesses to the hearing. Where the appeal relates to an examination irregularity or plagiarism a representative from the principal academic unit shall attend as a witness to answer questions of detail which may arise.

6.5 .7 The Director of Academic Services will circulate to the University Misconduct and Fitness to Practise Committee any further written evidence from the student, the names of witnesses that are to be called, the name of the person who will accompany the student, and the name of the person who will act as case presenter for the University.

6.5 .8 The University Misconduct and Fitness to Practise Committee may require such other witnesses as it thinks fit to be summoned, or such other evidence as it considers relevant to be produced.

7. Order of the University Misconduct and Fitness to Practise Committee Proceedings

7.1 When the members of the University Misconduct and Fitness to Practise Committee have assembled, the Case Presenter will inform the University Misconduct and Fitness to Practise Committee whether the student and the witnesses are present. If the student fails to attend, the University Misconduct and Fitness to Practise Committee will decide whether to proceed in his absence or to adjourn the hearing. Similarly if any witness fails to attend, the University Misconduct and Fitness to Practise Committee will decide whether to proceed in his absence or to adjourn the hearing. Witnesses shall not be put on oath. Where a student does not to attend the hearing in person, the secretary to the University Misconduct and Fitness to Practise Committee shall ensure that members of the Committee are instructed that no adverse inference may be derived from the student's absence.

7.2 The University Misconduct and Fitness to Practise Committee will, under normal circumstances, expect the hearing to proceed once all the University Misconduct Committee members are present.

7.3 Having read the appeal papers submitted by the student, the University Misconduct and Fitness to Practise Committee may decide in their absolute discretion to hear the matter afresh. In that event the Chair of the Committee may decide to postpone the hearing to allow both parties to prepare their cases anew, or with the consent of both parties, to continue with the hearing. If the Committee decides to hear the matter afresh and not as an appeal, the Committee will have all powers and punishments of the College Misconduct and College Fitness to Practise Committees and the procedures in clause 4, order of the College Misconduct Committee and Fitness to

Practise Committee should be followed.

7.4 The student and any friend and the Case Presenter will be invited into the room. The Chair will establish, based on the wishes of the student, whether the student or the friend will present the case for the student.

7.5 The student (or the friend) may then:

7.5 .1 make a statement concerning the case;

7.5 .2 call witnesses in turn in support of the appeal;

7.5 .3 be questioned by the Committee.

7.6 The student's witnesses may:

7.6 .1 make a statement to the Committee;

7.6 .2 be questioned by the student or his friend through the chair;

7.6 .3 be questioned by the Case Presenter through the chair;

7.6 .4 be questioned by the Committee.

7.7 The Case Presenter may then:

7.7 .1 make a statement concerning the case;

7.7 .2 call witnesses in turn relating to the appeal.

7.7 .3 be questioned by the Committee.

7.8 The University's witnesses may:

7.8 .1 make a statement to the Committee;

7.8 .2 be questioned by the Case Presenter through the chair;

7.8 .3 be questioned by the student or his friend through the chair;

7.8 .4 be questioned by the Committee.

7.9 The student (or the friend) may make a final statement.

7.10 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.

7.11 All other persons shall withdraw whilst the Committee, advised by its secretary, who shall remain in attendance, considers whether or not the appeal is allowed in whole or in part. The decision shall be taken by a simple majority of the members present and voting. The person chairing the Committee shall have a casting vote in the event of an equality of votes.

7.12 At the termination of the proceedings, the Committee will write a short report. In the event that the appeal is rejected, the report will set out the grounds for the appeal, a

brief summary of evidence received, the grounds for the decision, the penalty imposed, and the factors taken into account in deciding the penalty. A copy of the report will be sent to the student.

7.13 The student will be informed in writing of the Committee's decision and the reasons for that decision normally within two working days. Normally, this should include the report prepared by the Committee.