UNIVERSITY OF BIRMINGHAM

CODE OF PRACTICE ON PROCEDURES FOR MISCONDUCT AND FITNESS TO PRACTISE COMMITTEE

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Code of Practice on Procedures for Misconduct and Fitness to Practise Committee

1. Introduction

1.1 This Code of Practice applies to all Registered Students, students on Leave of Absence, External Resit Students, students with Thesis Awaited Status and Graduands ("students") and sets out the procedures for the following:

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

.2 concerns about the fitness to practise on health grounds of students following Fitness to Practise programmes

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

.4 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.

1.2 All students are deemed to have accepted the provisions of this Code of Practice.

2. Constitution of the Committees:

2.1 College Misconduct Committee

2.1 .1 The College Misconduct Committee pool shall comprise at least twelve members of academic staff of the College.

2.1 .2 The College Misconduct Committee pool shall be appointed at the beginning of each session by the Head of College or their nominee.

2.1 .3 The Chair shall be appointed from the College Misconduct Committee pool by the Head of College or their nominee.

2.1 .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). In relation to discipline cases involving two or more students registered within two or more Colleges which the Director of Academic Services and College Administration has decided should be heard by a single College Misconduct Committee, the Chair of that Committee will in consultation with the Director of Academic Services and College Administration then appoint

two members of Academic Staff from the College Misconduct Committee pools of those Colleges within which the students involved are registered, to reflect as closely as possible the College membership of those students.

2.1 .5 The Guild of Students shall nominate one full time Registered Student to serve on the Committee, provided that they are from a different School to the student subject to the allegations. The nominated student should have received training from the University on misconduct procedures.

2.1 .6 If the Guild of Students is unable to nominate a Registered Student to serve on the Committee, or if no students trained in misconduct procedures are available, then the Committee can proceed in the absence of a 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 student member. If a nominated student fails to attend the Committee hearing, it may proceed at the discretion of the Chair.

2.1 .7 A secretary should also be appointed by the Head of College or their nominee to make the necessary arrangements, take notes of hearings and to advise the Committee on procedures.

2.1 .8 A Case Presenter should also be appointed by the Head of College or their nominee to present the case. The case presenter shall be a member of the University and may be the Investigating Officer.

2.1 .9 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 .10 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) material 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 their nominee.

2.2 .2 Pool A shall comprise at least twelve members of the academic staff of the College, taken from those Schools 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 profession-specific representatives 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 their 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 School to the student subject to the allegations and who are themselves subject to Fitness to Practise procedures. The nominated 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 student to serve on the Committee, or if no students trained in fitness to practise procedures are available, then the Committee can proceed in the absence of a 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 hearing, the Committee will proceed in the absence of the student member. If a nominated student fails to attend the Committee hearing, it may proceed at the discretion of the Chair.

2.2 .8 A secretary should also be appointed by the Head of College or their 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 their 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) material 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 (normally PVC Education) or their 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 no fewer than twelve members of academic staff of the University, at least one of whom shall hold current General Medical Council (GMC) registration.

2.3 .4 Pool 2 shall comprise no fewer than twelve members of honorary members of staff or external profession-specific representatives who are associated with programmes of study that incorporate Fitness to Practise procedures. At least one of these members shall hold current GMC registration.

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. In the case of appeals from students registered for the degree of MBChB the Committee shall include at least one member holding current GMC registration.

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

2.3 .9 The Director of Academic Services and College Administration or their nominee will act as secretary to the Committee.

2.3 .10 A case presenter should also be appointed by the Director of Academic Services and College Administration or their 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) material 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. In relation to alleged offences involving two or more students registered within two or more Colleges, if the Investigating Officer believes that it would be more appropriate for all the alleged offences to be heard by a single Misconduct Committee, the Investigating Officer may report the alleged offences in writing to the Director of Academic Services and College Administration who will decide to which College Misconduct Committee the alleged offences should be referred, normally the Misconduct Committee of the College within which the majority of students involved are registered; this shall not apply to a student following a fitness to practise programme who must in every instance be referred to the Fitness to Practise Committee of the College within which the student is registered.

3.2 If a case has been referred to a College Misconduct Committee or College Fitness to Practise Committee following the rejection of an outcome by the student following the Plagiarism Meeting, or the penalty applied results in the student failing the programme, the case will be heard afresh and in full.

3.3 The report (hereinafter called the "Investigating Officer's Report") shall state with which infringements of the Student Conduct Regulations the student is charged, and/or state the health concerns that have brought the student's fitness to practise into question, and shall include details of the investigation incorporating any statement made by the student.

3.4 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. The accompanying letter shall specify a date by which the student's response must be received which shall be at least ten working days from the date of the letter.

3.5 The student shall send to the secretary of the Committee in misconduct cases their response to the Investigating Officer's Report by the specified date, which should indicate whether the offence is admitted or denied, or, in cases referred on the grounds of fitness to practise in relation to the student's health, a response stating the student's position. In all cases, the student's response should include any evidence, mitigating circumstances and character references they wish the Committee to consider, before a date specified in the letter accompanying the report. The student shall arrange for any evidence which is not written in English which they wish the Committee to consider to be accompanied by a certified translation by a professional translator, where possible.The student's response to and comments on the Investigating Officer's report shall be disclosed to the Case Presenter but not the Investigating Officer (unless the Investigating Officer is also the Case Presenter). As soon as reasonably practicable thereafter, the secretary of the Committee shall call a meeting of that Committee. A statement relating to any history of previous offence(s) (which may be disclosed to the Committee if the case is found proven), shall be sent to the student(s) at least ten working days before the date of the hearing, normally with the Committee papers), if applicable.

3.6 If no response has been received from the student by the date specified in the letter, and which accompanied the Investigating Officer's report, then the hearing may proceed.

3.7 The student shall be permitted to appear before the Committee with or without a Friend, defined in Regulations Section 1 as meaning a member of academic staff of the University or a Registered Student of the University or a Sabbatical Officer of the Guild of Students. A Friend cannot also act as a witness for the student.

3.8 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.

3.9 The student shall be permitted to call one or more witnesses to give evidence to the Committee; it is the student's responsibility to summon their own witnesses to the hearing.

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

3.11 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 secretary to the Committee or their nominee 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 their absence or to adjourn the hearing. Similarly if any witness fails to attend, the Committee will decide whether to proceed in their absence or to adjourn the hearing. Witnesses shall not be put on oath. As soon as a witness called by either the Case Presenter or the student has given their evidence and has been questioned that witness shall withdraw from the hearing. 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. The Chair has the discretion to manage the hearing as appropriate to ensure that fairness and natural justice are upheld.

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 their 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. A Friend cannot answer questions of evidence on behalf of the student.

4.4 If the student has admitted, as alleged in the Investigating Officer's Report, the offence or offences, or that their fitness to practise has been impaired on the grounds of health alone, the Case Presenter shall present the Investigating Officer's Report to the Committee and make such comments about the circumstances of its commission and the order of the hearing will proceed in accordance with 4.17, unless in the opinion of the Chair it is appropriate to hold a hearing in accordance with 4.7 onwards.

4.5 If the student denies the offence or offences in whole or in part, or if the Chair has decided that it is appropriate to hold a full hearing, the case shall be presented to

the Committee by the Case Presenter. When making a statement concerning the case the Case Presenter shall not include details of any previous misconduct committed by the student which does not form part of the charge except that details of previous findings of plagiarism may be included where the charge is in relation to a plagiarism case referred to the Committee under the Code of Practice on Plagiarism by reason of repeated plagiarism, or in cases where the student does not wish to accept the outcome of a Plagiarism Meeting, or the penalty applied results in the student failing the programme.

4.6 The admissibility of evidence shall be at the sole discretion of the Chair whose decision shall be final.

4.7 The Case Presenter may:

4.7 .1 make a statement concerning the case;

4.7 .2 call witnesses in turn relating to the case.

4.8 The University's witnesses may:

4.8 .1 make a statement to the Committee;

4.8 .2 be questioned by the Case Presenter through the Chair;

4.8 .3 be questioned by the student or their Friend through the Chair;

4.8 .4 be questioned by the Committee.

4.9 The Case Presenter may then:

4.9 .1 be questioned by the student or their Friend through the Chair

4.9 .2 be questioned by the Committee.

4.10 The student or their Friend may then:

4.10 .1 make a statement concerning the case;

4.10 .2 call witnesses in turn in relation to the case;

4.11 The student’s witnesses may:

4.11 .1 make a statement to the Committee;

4.11 .2 be questioned by the student or their Friend through the Chair;

4.11 .3 be questioned by the Case Presenter through the Chair;

4.11 .4 be questioned by the Committee.

4.12 The student may then:

4.12 .1 be questioned by the Case Presenter through the Chair.

4.12 .2 be questioned by the Committee.

4.13 The student or their Friend may make a final statement which shall be based on the evidence presented.

4.14 All other persons shall withdraw whilst the Committee, advised by its secretary, who shall remain in attendance, considers whether or not the charge is proven In cases of plagiarism if the case is found proven the Committee will endorse or re-assign the category of plagiarism in accordance with the categories listed in the Code of Practice on Plagiarism. 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 Chair shall have a casting vote in the event of a tie.

4.15 If the Committee decides that the offence is not proven, the student will be informed that the allegation is not proven and will receive a summary report of the Committee's decision.

4.16 If the Committee decides that the offence is proven, the Committee shall reconvene to consider what sanction to impose if appropriate.

4.17 The Case Presenter may:

4.17 .1 make a statement in relation to the sanction (or the concerns regarding the student's health and fitness to practice, for cases heard on the grounds of health only) which may include mitigating factors and/or, where relevant, evidence of any history of previous offence(s) including (but not limited to) findings of a College Misconduct Committee and/or Fitness to Practise Committee or of a University Misconduct and Fitness to Practise Committee;

4.17 .2 call witnesses in turn in relation to the sanction/concerns regarding the student's health and fitness to practise, and/or mitigating factors;

4.18 The University's witnesses may:

4.18 .1 make a statement to the Committee in relation to the sanction/concerns;

4.18 .2 be questioned by the Case Presenter through the Chair;

4.18 .3 be questioned by the student or their Friend through the Chair;

4.18 .4 be questioned by the Committee.

4.19 The Case Presenter may then:

4.19 .1 be questioned by the student or their Friend through the Chair;

4.19 .2 be questioned by the Committee.

4.20 The student or their Friend may then:

4.20 .1 make a statement in relation to the sanction / concerns and/or mitigating factors;

4.20 .2 call witnesses in turn in relation to the sanction / concerns and/or mitigating factors;

4.21 The student's witnesses may:

4.21 .1 make a statement to the Committee relating to the sanction/concerns and/or mitigating factors;

4.21 .2 be questioned by the student or their Friend through the Chair;

4.21 .3 be questioned by the Case Presenter through the Chair;

4.21 .4 be questioned by the Committee.

4.22 The student may then:

4.22 .1 be questioned by the Case Presenter through the Chair;

4.22 .2 be questioned by the Committee.

4.23 The student or their Friend may make a final statement which shall be based on the evidence presented.

4.24 All other persons shall withdraw whilst the Committee, advised by its secretary who shall remain in attendance, considers what sanction, if any, should be imposed. The decision shall be taken by a simple majority of the members present and voting. The Chair shall have a casting vote in the event of a tie.

4.25 **Fitness to Practise**: For students following fitness to practise programmes, where the College Fitness to Practise Committee has found them to have breached University Regulation 8: Student Conduct, before deciding upon a sanction, the Committee shall decide whether the nature of the matter raises specific concerns regarding fitness to practise. In cases referred to a Committee on the basis that a student's fitness to practice may be impaired on the grounds of health only, the Committee will decide if this is the case. In these events the Committee may adjourn to consult the relevant professional body before determining the outcome

and/or sanction.

4.26 At the termination of the proceedings, the Committee will write a short report. In the event of a finding of breach, the report will set out the misconduct alleged, a brief summary of evidence received, the grounds for the finding of breach, the sanction imposed, and the factors taken into account in deciding the sanction. In the event of a fitness to practise case referred on the basis of impairment on health grounds, the report will set out the health issues concerned, a brief summary of the evidence received, the reasons for deciding whether the student's fitness to practise was impaired, and the recommended outcome of the Committee. A copy of the report will be sent to the student.

4.27 The student will normally be informed in writing of the Committee's decision within two working days. Normally, this will be accompanied by a report including the reasons for that decision. If the decision is not accompanied by the report, the report should be provided as soon as is reasonably practicable, normally within five working days.

5. Sanctions in non-summary hearings for non-academic misconduct and outcomes in health grounds only fitness to practise cases

5.1 Where an offence is admitted or the Committee finds the offence proven, or the student's fitness to practise is impaired on health grounds only, the Committee may impose, after examining any information as to the character and circumstances of the student which the student wishes to present, only one of the following sanctions / outcomes:

5.1 .1 a reprimand; or

5.1 .2 with the student's consent, Community Service (as defined in Regulations), the details of which must be specified before consent is solicited (save that this cannot be applied in respect of a Registered Student who is under the age of 18 at the date of the hearing);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 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 .5 suspension of the student from membership of and/or attendance at the University for a specified period not exceeding one year; or

5.1 .6 withdrawal of the student from the Programme (option available to College Fitness to Practise Committee only); or

5.1 .7 withdrawal of the student from the University.

5.2 If the Committee considers it appropriate to do so, the Committee may, in addition to or instead of any one of the sanctions listed in paragraph 5.1 above, impose one or more of the following further sanctions:

.1 the return by a specified date of any or all documents, materials or other resources provided by the University for the purpose of holding an office or membership of a committee of the University;

.2 recommend to the Vice-Chancellor the withdrawal of a Sabbatical Officer's status as a Registered Student.

5.3 The Committee may suspend a sanction, subject to conditions. The conditions should be appropriate, proportionate, workable and measurable. The details of any such conditions should be formally recorded and transmitted to the appropriate parties (most usually the School) by the Committee. The Committee should specify any consequences of failure to comply with any such condition.

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

5.4 .1 disqualify the student from use of or access to any University service or facility or premises for such period as the Committee may decide; or

5.4 .2 order a student to make good in whole or in part any damages 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); or

5.4 .3 accept an undertaking from the student to engage with appropriate student support and/or remedial tuition. The Committee should specify any consequences of failure to comply with any such undertaking.

5.4.4 In addition to the above, if a College Fitness to Practise Committee has found that a student's fitness to practise is impaired, the Committee may impose a condition on the student provided that:

(a) the Committee is satisfied that the impairment can be remedied through conditions; and

(b) the conditions are necessary to address the impairment to the student's fitness to practise; and

(c) the conditions are appropriate, proportionate, workable and measurable.

The Committee must specify any consequences of failure to comply with any such condition.

6 Sanctions in non-summary hearings for academic misconduct

6.1 Where an offence is admitted or the Committee finds that an offence of academic misconduct in assessed academic work, examinations, or other work required for academic progress (Regulations Section 8, Student Conduct, 2.1.j) is proven, the Committee may impose, after examining any information as to the character and circumstances of the student which the student wishes to present, only one of the following sanctions:

6.1 .1 For students on taught programmes of study, or students on research-based programmes of study, where the academic misconduct takes place on a taught module taken as part of that programme:

(a) Accept an undertaking from the student to engage with appropriate student support and / or remedial tuition. The Committee should specify any consequences of failure to comply with any such undertaking.

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

(c) the mark obtained in the examination or the assessment may be downwardly adjusted to an appropriate level, including an award of zero. Should this lead to failure of the module, a further attempt at passing the module shall be permitted, with the overall module mark awarded capped at the pass mark or capped at a mark decided by the Committee which would still enable the student to obtain credit or to progress. Any such further attempt shall be taken:

(i) at the next available opportunity; or

(ii) at a time specified by the Committee;

(where the offence occurs in a supplementary examination or assessment the mark from the original assessment shall not stand); or

(d) the mark obtained in the examination or the assessment may be downwardly adjusted to an appropriate level, including an award of zero. Should this lead to failure of the module, no further attempts at passing the module shall be permitted (where the offence occurs in a supplementary examination or assessment the mark from the original assessment shall not stand); or

(e) the mark obtained in the module may be downwardly adjusted to an appropriate level, including an award of zero with no opportunity of re-assessment permitted (where the offence occurs in a supplementary examination or assessment the mark from the original assessment shall not stand); or

(f) suspension of the student from membership of and/or attendance at the University for a specified period not exceeding one year; or

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

(h) withdrawal of the student from the University; or

(i) 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

(j) 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.

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

6.2 .1 Accept an undertaking from the student to engage with appropriate student support and/or remedial tuition. The Committee should specify any consequences of failure to comply with any such undertaking.

6.2 .2 In addition to the above, if a College Fitness to Practise Committee has found that a student's fitness to practise is impaired, the Committee may impose a condition on the student provided that:

(a) the Committee is satisfied that the impairment can be remedied through conditions; and

(b) the conditions are necessary to address the impairment to the student's fitness to practise; and

(c) the conditions are appropriate, proportionate, workable and measurable.

The Committee must specify any consequences of failure to comply with any such condition.

6.3 **Postgraduate Research Students:** For students on research-based programmes of study, the following additional penalties are available:

(a) for research assessments that do not carry a numerical mark the outcome will be considered a fail or non-submission. For example, in a case of plagiarism in a research student's upgrade submission a student may be prevented from upgrading and will remain on the original programme;

(b) for research assessments that do not carry a numerical mark a further opportunity to resubmit the assessment at a date specified by the committee will be given;

(c) the student is permitted to submit/resubmit their dissertation/thesis for the **original qualification** with the offending sections/data removed, the length of time given for resubmission (maximum allowable 12 months) and the extent to which additional work may be carried out on the thesis to be determined by the Misconduct Committee. The Committee may decide that no additional work may be carried out;

(d) the student is required to remove the offending sections/data from their dissertation/thesis, and to submit/resubmit the resulting dissertation/ thesis for a **lower award** of the University. The award, the length of time given for resubmission (maximum allowable 12 months) and whether any additional work may be carried out on thesis is, to be determined by the Misconduct Committee. The Committee may decide that no additional work may be carried out;

(e) the student is required to withdraw from the University.

7. Closing Considerations

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

7.1 .1 whether any record of the decision shall be placed in the student's School file and, if so, whether permanently or for a stated limited time (for poor academic practice or moderate plagiarism this would not normally be the case); and

7.1 .2 whether any report of the matter should be made to the Head of School of the student concerned; and

7.1 .3 whether any particular reference should be made with regard to the individual's fitness to practise; and

7.1 .4 whether the student is entitled to an academic transcript; and

7.1 .5 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

7.1 .6 whether a report should be sent to the employer or professional body, in accordance with the Data Protection Act 1998; and

7.1 .7 whether the University may be required to make a referral to the Independent Safeguarding Authority or any successor organisation (in cases

where there is concern that the student's conduct gives rise to concerns about harm or the risk of harm to children or vulnerable adults).

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

8.1 Appeals from students will be heard by the University Misconduct and Fitness to Practise Committee. 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 and College Administration, the Director of Academic Services and College Administration 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 a member from Pool 1 or an external member from Pool 2 as applicable of the University Misconduct and Fitness to Practise Committee, and will establish whether there was an irregularity in the decision-making process which had or might have had a material effect on the outcome. If such an irregularity is apparent, the University Misconduct and Fitness to Practise Committee will consider the matter as an automatic appeal.

8.2 As soon as reasonably practicable after receipt of an appeal, the Director of Academic Services and College Administration 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.

8.3 The Secretary to the University Misconduct and Fitness to Practise Committee, acting on behalf of the Director of Academic Services and College Administration, will circulate all of the papers pertaining to the case to the Committee and the student, including any response from the Case Presenter or Investigating Officer in response to the student's appeal.

8.4 The student shall be permitted to appear before the Committee (with or without a Friend as defined in Regulations Section 1). A student following a Fitness to Practise programme may be represented (for example, legally or by a trade union representative) and if so, the Case Presenter may also be similarly represented. The Committee may also seek legal advice, including the appointment of a legal advisor, where appropriate.

8.5 When notifying the student of the date and time of the hearing the Director of Academic Services and College Administration will:

8.5 .1 inform the student of the right to be accompanied and/or represented at the full hearing by a Friend;

8.5 .2 provide the student with the names of any witnesses that the University proposes to call;

8.5 .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) the name and status of any person who will accompany and/or represent the student;

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

(c) any response to the Case Presenter's statement to the student's appeal

8.5 .4 The Secretary to University Misconduct and Fitness to Practise Committee, acting on behalf of the Director of Academic Services and College Administration, 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.

8.5 .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 and College Administration or their nominee as to whether the student's objection is upheld. 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) material knowledge of the matter or the student.

8.5 .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 School may attend as a witness to answer questions of detail which may arise.

8.5 .7 The Director of Academic Services and College Administration 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.

8.5 .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.

8.5 .9 The University may appoint an independent legal adviser to advise the Committee.

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

9.1 When the members of the University Misconduct and Fitness to Practise Committee have assembled, the Secretary 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 their 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 their absence or to adjourn the hearing. Witnesses shall not be put on oath. As soon as a witness is called by either the Case Presenter or the student has given their evidence and has been questioned, that witness shall withdraw from the hearing. 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. 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.

9.2 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.

9.3 Having read the appeal papers submitted by the student, the University Misconduct and Fitness to Practise Committee may prior to the hearing or at the hearing itself decide in its 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 sanctions of the College Misconduct and College Fitness to Practise Committees and the procedures in clause 4.3 – 4.24, order of the College Misconduct Committee and Fitness to Practise Committee should be followed. For the avoidance of doubt, if a case is heard afresh by the University Misconduct and Fitness to Practise Committee there is no further right of appeal.

9.4 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. A Friend cannot answer questions of evidence on behalf of the student.

9.5 The student or their Friend may then:

9.5 .1 make a statement concerning the case;

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

9.6 The student's witnesses may:

9.6 .1 make a statement to the Committee;

9.6 .2 be questioned by the student or their Friend through the Chair;

9.6 .3 be questioned by the Case Presenter through the Chair;

9.6 .4 be questioned by the Committee.

9.7 The student may then:

9.7 .1 be questioned by the Case Presenter through the Chair;

9.7 .2 be questioned by the Committee.

9.8 The Case Presenter may then:

9.8 .1 make a statement concerning the case;

9.8 .2 call witnesses in turn relating to the appeal.

9.9 The University's witnesses may:

9.9 .1 make a statement to the Committee;

9.9 .2 be questioned by the Case Presenter through the Chair;

9.9 .3 be questioned by the student or their Friend through the Chair;

9.9 .4 be questioned by the Committee.

9.10 The Case Presenter may then:

9.10 .1 be questioned by the student or their Friend through the Chair;

9.10 .2 be questioned by the Committee.

9.10 The student or their Friend may make a final statement which shall be based on the evidence presented.

9.11 All other persons shall withdraw whilst the Committee, advised by its secretary and (if appointed) independent legal adviser, who shall remain in attendance, considers

whether or not the appeal is allowed in whole or part. The decision shall be taken by a simple majority of the members present and voting. The Chair shall have a casting vote in the event of a tie.

9.12 For the avoidance of doubt, all of the sanctions as set out in Sections 5 and 6 are available, if the Committee feels that the sanction imposed by the College Misconduct or College Fitness to Practise Committee was not appropriate.

9.13 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 sanction imposed, and the factors taken into account in deciding the sanction. A copy of the report will be sent to the student.

9.14 The student will be informed in writing of the Committee's decision and the reasons for that decision normally within two full working days. Normally, this should include the report prepared by the Committee. If the decision is not accompanied by the report, the report will be provided as soon as is reasonably practicable, normally within five working days.

Appendix A: Misconduct Committees for programmes outside Colleges.

Note: This appendix does not apply to Registered Students following Birmingham Foundation Academy programmes. Those students shall be referred to the College Misconduct Committee within the College to which their programme belongs.

A.1 Where a student has been alleged to have committed a misconduct offence on a programme delivered outside of any College, the Investigating Officer as defined by Regulation 8.3.1 may be an Academic or Academic Related member of Staff who teaches on that programme.

A.2 If a student who is referred to a Misconduct Committee is a student in a College, the Misconduct Committee shall be that of the College within which the student is registered, unless, in exceptional circumstances, the Director of Academic Services and College Administration has decided that the student be referred to the Misconduct Committee of another College (for example, in the interests of natural justice or where there may be a potential conflict of interest) in accordance with Student Conduct Regulation 8.3.5 and paragraph 3.1 above.

A.3 If a student who is referred to a Misconduct Committee is not a student in a College, but is an Academic member of Staff within a College, the Misconduct Committee shall be that of another College with which the student has no prior connection, as determined by the Director of Academic Services and College Administration or their nominee.

A.4 If a student who is referred to a Misconduct Committee is not a student in a College or an Academic member of Staff within a College, the Misconduct Committee shall be that of the College deemed most appropriate by the Director of Academic Services and College Administration or their nominee.