

The Ordinances Part 3: Dismissal, Discipline, Grievance Procedures and related matters pursuant to Statute 7

3.6 Capability Procedure

Part I : Introduction and Definitions

1. This Ordinance is promulgated in accordance with the provisions of Part III Clause 11(2) of Statute 7 and sets out procedures in relation to capability.
2. In this Ordinance, unless the context indicates otherwise:-
 - i. 'The Statute' shall mean Statute 7;
 - ii. 'member of staff' shall mean any member of staff as defined by Clause 1(1) of The Statute;
 - iii. in relation to any decision or action that the University is required to make or to perform under this Ordinance, 'the University' shall mean: any member of staff who usually makes such decisions or performs such actions on behalf of the University, or who in the normal course of events may reasonably be expected to do so;
 - iv. a reference to 'clinical staff' shall be taken to mean a reference to any member of staff defined in Clause 20(1) of The Statute;
 - v. references to Deans shall be construed so as to include references to Heads of Professional Services or other equivalent units (and vice versa), and where there is no Dean, Head of Professional Service or equivalent unit, the President and Vice-Chancellor or his or her nominated representative may appoint a member of staff from such Faculty, Professional Service or equivalent unit to undertake the duties required of a Dean or Head of Professional Service by this Ordinance;
 - vi. references to University postholders (including those referred to in sub-paragraph (v) above) shall be construed to refer either to the postholder or to an appropriate member of staff nominated by the postholder to act with full authority on the postholder's behalf;
 - vii. where a post is held jointly by two or more postholders, a reference to the postholder shall be construed as a reference to any or all postholders holding that post, and any action authorised or required under this Ordinance may be taken by any such postholder.
3. For the avoidance of doubt, 'capability', in relation to a member of staff, means his or her capability assessed by reference to skill, aptitude, health or any other physical or mental quality for performing work of the kind which he or she is employed by the University to do.
4. Lack of qualifications may be considered under this Ordinance, and 'qualifications', in relation to a member of staff, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he or she holds.

Part II : Application and Scope

5. This Ordinance applies to members of staff as defined by Clause 1(1) of The Statute with the exception of the President and Vice-Chancellor, namely:-
 - i. members of the academic staff,
 - ii. members of staff with a grade of Level 4 or above in the University's grading structure, or an equivalent grade.

6. This Ordinance shall not apply to:-
- i. removal from appointment as Pro Vice-Chancellor, Dean or such other posts as have 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, where dismissal from the substantive post is not contemplated;
 - ii. the proposed dismissal of a member of staff where that dismissal would arise from the expiry without renewal of a fixed-term contract;
 - iii. any member of staff during his or her probationary period;
 - iv. the proposed dismissal of a member of staff on the grounds of medical incapacity.
7. This procedure applies to clinical staff on the same basis as to any member of staff, apart from the two situations set out below:
- i. in the situation referred to in Clause 20(2) of The Statute, this Ordinance shall not apply and the President and Vice-Chancellor or his or her nominated representative may dismiss or suspend a member of clinical staff, having first afforded an opportunity to the member of staff concerned to make representations; and
 - ii. action under this Ordinance may be taken against a member of clinical staff in respect of lack of capability arising in connection with that member of staff's clinical work or activities as if the work or activities were performed in and for the University.

Relationship with Ordinance 3.5 (Disciplinary Procedure)

8. There may be cases where it is difficult to distinguish at the outset between conduct and capability issues in a particular situation. Cases which clearly involve conduct rather than performance will normally be dealt with separately under Ordinance 3.5 (Disciplinary Procedure). Additionally, where it is considered that poor performance results from negligence or lack of application, it will normally be appropriate to use the Disciplinary Procedure. However, it must be noted that the University reserves the right to deal with matters under whichever Ordinance it deems appropriate, considering the circumstances and the information available.

Relationship with Ordinance 3.7 (Incapacity on Health Grounds Procedure)

9. If it emerges that the issue relating to a member of staff's capability may be attributable, in whole or in part, to a medical condition, the person or panel considering the issue may:-
- i. postpone or adjourn any action or hearing under this Ordinance to allow investigation of the member of staff's medical condition, including obtaining, if appropriate, any medical reports;
 - ii. taking into account available medical advice, determine that:-
 - (a) no further action should be taken under this Ordinance (or Part III of The Statute), and may also, as appropriate, direct that the issue should be dealt with under an appropriate stage of Ordinance 3.7 (Incapacity on Health Grounds Procedure); or
 - (b) continue with proceedings under this Ordinance, taking the member of staff's medical condition into account, as appropriate.

Relationship with the University's Personal Performance and Development Review Process

10. The University operates a Personal Performance and Development Review Process for all staff that is designed to allow structured discussions about performance and development and to agree future objectives. This may inform proceedings under this Ordinance but action under this Ordinance may be instigated outside of the Personal Performance and Development Review process.

Part III : General Principles

11. The procedures in this Ordinance are designed as a constructive and supportive framework with which to help members of staff undertake the work expected of them to required standards in relation to their role and responsibilities. It is the University's intention wherever possible to be supportive and encouraging, to help maximise the contribution of members of staff and the performance of their duties.
12. Managers, supervisors and members of staff who are accountable for the work of others are responsible for addressing capability issues as early as possible and for initiating appropriate informal or formal action, with advice from Human Resources as appropriate, and guidance for managers shall be issued by the University from time to time. The procedures in this Ordinance are not intended to replace normal, day-to-day management activities in relation to supporting and monitoring staff performance.
13. Members of staff are responsible for bringing to the attention of their manager or supervisor as soon as possible any work-related problems or other circumstances that may hinder their ability to perform their duties.

Academic Freedom and General Principles

14. This Ordinance shall be construed to give effect to the guiding principles set out in Clause 2(1) of The Statute, namely:-
 - i. to ensure that those members of staff identified in the Ordinance prescribed by clause 1(2) of The Statute have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, with due regard for the need to respect others and promote the best interests of the University and academic learning, without placing themselves in jeopardy of losing their jobs or privileges;
 - ii. to enable the University to provide education, promote learning and engage in research efficiently and economically; and
 - iii. to apply the principles of justice and fairness.

Confidentiality

15. Throughout any proceedings under this Ordinance, the University shall seek to ensure that confidentiality is maintained. However, this shall not preclude the University from disclosing information where necessary for the discharge of duties or as required by law, nor shall this preclude the University, where appropriate, from disclosing information about any outcome under this Ordinance.
16. There may be cases where it is appropriate to preserve confidentiality in relation to the identity of witnesses, where there is reasonably perceived to be a need to protect any member of staff from the risk of intimidation or retribution. Likewise, it may be necessary to adapt these procedures where it is considered undesirable for any one person to give evidence in the presence of another.

Right to be accompanied

17. At any hearing convened under this Ordinance the member of staff may be represented or accompanied by a workplace colleague or trade union representative. If a member of clinical staff is called to a hearing under this Ordinance in relation to a proposal to terminate his or her employment and the hearing will involve consideration of issues related to the member of staff's clinical conduct or competence, the person conducting the hearing (or chair of the panel as appropriate) may permit the member of staff to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity.

18. If the member of staff's representative is not available at the time proposed for the hearing, the member of staff may request that the hearing be postponed to another reasonable time and must offer a date which is not later than five working days after the date first proposed for the hearing. The representative may attend the hearing with the member of staff and may speak on the member of staff's behalf, but that representative may not answer questions (relating to the issues in dispute) on the member of staff's behalf.

Suspension

19. The President and Vice-Chancellor or his or her nominated representative may, as a precautionary measure where this is considered appropriate and in the best interests of the University or of its students or staff, suspend a member of staff from duty at the normal rate of pay pending the outcome of a report or hearing. Any suspension and its terms shall be confirmed to the member of staff in writing by the Director of Human Resources or his or her nominee.

Grievances

20. Any grievance which raises issues which are the subject of proceedings under this Ordinance shall not be considered under the Grievance Ordinance, but should be raised through the procedures in this Ordinance. If the member of staff has concerns regarding the preparation of any preliminary report under paragraph 28 below, he or she should raise the matter as soon as possible with the person instituting the procedure (see paragraph 27 below).

Part IV : Overview of Procedures

Grounds for Action

21. Action under this Ordinance may be taken in respect of: inability to perform some or all of the duties or to comply with some or all of the conditions attaching to the post; or inability to perform those duties or to comply with those conditions in a satisfactory or adequate manner.
22. Each case will be judged on its own merits and in accordance with the evidence and circumstances presented. The University therefore has absolute discretion to determine which stage of the procedure will be applied in any particular case, taking into account the matters under consideration.

Informal Action

23. Prior to the institution of formal procedures under this Ordinance, it will normally be appropriate to deal with concerns about capability through informal methods. If such informal methods do not lead to the required improvement, formal action may be taken. However, for the avoidance of doubt, in order to institute formal proceedings it is not necessary to precede this by informal action.
24. The informal approach is aimed at: bringing concerns to the attention of the member of staff; ensuring that the member of staff is aware of the standards expected; considering causes; and exploring possible solutions and actions to be taken. The line manager shall meet with the member of staff to discuss the matters and identify a suitable way forward. Possible ways forward may include:-
- i. increased supervision, counselling and/or mentoring by an appropriate person;
 - ii. reviewing the duties, responsibilities, reporting line, career pathway, capability standards or other aspects of the post;
 - iii. providing appropriate training or development opportunities;
 - iv. seeking advice through a referral to the Occupational Health Service (where the member of staff's health appears to be a contributory cause);

- v. informing the member of staff of other available support services as appropriate, such as the University Counselling Service.
25. The manager should take a brief note of the discussion and outline in writing to the member of staff: the main points discussed; future expectations; the timescale in which improvement is expected; the support or training to be given; and potential consequences of failure to improve (which may include taking formal action under this Ordinance). Further discussions may be held to review progress in accordance with the targets and expectations outlined. This may include reviewing and revising the support or training required.

Formal Action

26. Formal action may be taken under the procedures set out in this Ordinance as follows:-
- i. the Capability Hearing (First-Level and Second-Level Warnings) (Part V below);
 - ii. the Capability Hearing (Dismissal) (Part VII below).

Institution of procedures

27. The procedures referred to in paragraph 26 above shall normally be instituted:-
- i. in the case of a Vice-President, a Pro Vice-Chancellor or the Chief Operating Officer: by the President and Vice-Chancellor;
 - ii. in the case of a Dean: by the President and Vice-Chancellor;
 - iii. in the case of a Head of a Professional Service: by the Chief Operating Officer;
 - iv. in the case of any other member of staff: by the Dean or Head of Professional Service or his or her nominee;

and any reference in this Ordinance to an 'Initiator' shall be construed as a reference to a person who institutes the procedures referred to above.

Preliminary Report

28. If informal action has not resulted in the required improvement, the line manager shall present a report (the 'Preliminary Report') to the Dean or Head of Professional Service or his or her nominee (the Initiator) which will outline the issues, detail the actions taken to date and recommend that formal procedures be instituted. On the basis of the Preliminary Report, the Initiator shall decide, taking into account advice from Human Resources, whether formal procedures should be instituted, and whether the matters should be dealt with under the Capability Hearing (First-Level and Second-Level Warnings) (Part V below) or under the Capability Hearing (Dismissal) (Part VII below).
29. Matters of alleged lack of capability shall normally be dealt with under the Capability Hearing (First-Level and Second-Level Warnings) in Part V of this Ordinance if informal action has not resulted in the required improvement and/or it is considered that, if the allegation(s) of lack of capability were upheld, a sanction consisting of a warning (whether First-Level Warning or Second-Level Warning) would be appropriate.
30. Matters of alleged lack of capability shall be dealt with under the Capability Hearing (Dismissal Hearing) in Part VII of this Ordinance if action under Part V Capability Hearing (First-Level and Second-Level Warnings) has not resulted in the required improvement; and/or if it is considered that the alleged lack of capability is such that, if the allegation(s) are upheld, any of the following may be appropriate:
- i. dismissal with notice or pay in lieu of notice;
 - ii. withholding a forthcoming increment in salary;
 - iii. other action short of dismissal (the panel may offer the member of staff regrading or demotion where this is considered to be appropriate in all the circumstances).

Part V : Capability Hearing (First-Level and Second Level Warnings)

Hearing

31. Where it is decided by the Initiator that, on the basis of the recommendations in the line manager's report, matters should proceed to a hearing under this Part, the member of staff shall be informed in writing of the grounds for the alleged lack of capability, and requested to attend a hearing at which the issue shall be considered. The member of staff will have a full opportunity to respond to the allegations against him or her and shall be entitled to present any additional information in support of his or her case, and to provide any grounds of mitigation which he or she feels relevant. The member of staff shall receive at least ten working days' notice of the hearing, and shall be given a copy of this Ordinance and reminded of his or her right to be represented or accompanied in accordance with the provisions of paragraph 17 above.
32. The hearing will usually be conducted:-
 - i. in the case of a Vice-President, a Pro Vice-Chancellor or the Chief Operating Officer: by the President and Vice-Chancellor;
 - ii. in the case of a Dean: by the President and Vice-Chancellor;
 - iii. in the case of a Head of a Professional Service: by the Chief Operating Officer;
 - iv. in the case of any other member of staff: by the Dean or Head of Professional Service or his or her nominee.
33. A member of Human Resources appointed by the Director of Human Resources or his or her nominee shall be present at the hearing in an advisory capacity.
34. The member of staff shall be provided in advance of the hearing with copies of any evidence to be considered at the hearing, including the Preliminary Report and (where applicable and subject to the provisions of paragraph 16 above) the names of any witnesses from whom it is intended that evidence will be considered at the hearing and any statements obtained from those witnesses.
35. The member of staff shall indicate, at least five working days prior to the hearing, the nature of any evidence that he or she intends to present in his or her defence or mitigation, including the names of any witnesses and their relevance to the allegations and shall provide copies of any documents to which he or she intends to refer.
36. The member of staff shall have the right to be represented or accompanied at the hearing in accordance with the provisions of paragraph 17 above.
37. If the member of staff is or becomes unable to attend the hearing, he or she should notify the person who is due to conduct the hearing as soon as possible, giving the reasons for the non-attendance. A member of staff who fails to attend a hearing without good cause shall be informed that if he or she fails to attend any rearranged hearing without good cause, the matter may be considered in his or her absence.

Procedure at hearing

38. The procedure to be followed in the hearing shall be at the discretion of the person conducting the hearing, which may include without limitation:-
 - i. the allegation(s) being put to the member of staff and the information and evidence in respect of the alleged lack of capability, including if relevant the calling of any witnesses;
 - ii. the member of staff having the opportunity to raise questions of any witnesses called. The manner in which such questions are to be raised is at the discretion of the person conducting the hearing;

- iii. 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;
 - iv. the questioning of any witnesses called by the member of staff;
 - v. the power to postpone or adjourn the hearing;
 - vi. the power to continue the hearing in the absence of a party, witness or representative where, in the opinion of the person conducting the hearing, no good cause has been put forward for an adjournment.
39. Where it is concluded that the alleged lack of capability has been established, a formal warning may be issued. The warning may be a First-Level Warning or Second-Level Warning, as is considered appropriate having regard to the circumstances and any previous unspent warnings given to the member of staff in respect of capability. For the avoidance of doubt, a member of staff may be issued with a Second-Level Warning even though he or she has not previously received any First-Level Warning under this Part.

Notification of decision

40. Following the hearing, the member of staff shall be notified in writing, normally within five working days:-
- i. of the outcome of the hearing;
 - ii. of any warning issued and the reasons, and whether the warning is a First-Level Warning or a Second-Level Warning;
 - iii. of the required improvement in work performance and, if appropriate, of specific arrangements which are to be made to assist or facilitate the required improvement;
 - iv. of the timescale within which this improvement must be achieved and how the improvement will be monitored or reviewed;
 - v. of his or her right to appeal under Part VI and how that right should be exercised;
 - vi. in the case of a First-Level Warning:-
 - (a) that the warning will be retained on his or her file and will be regarded as spent after one year subject to satisfactory performance and/or conduct;
 - (b) that further failure to meet and/or sustain the required improvement during the period of the warning may lead either to further action being taken under this Part or, in the event of more serious issues in relation to capability, action under the Capability Hearing (Dismissal) under Part VII being instituted (under which a Panel may determine that the member of staff shall be dismissed);
 - vii. in the case of a Second-Level Warning:-
 - (a) that the warning will be retained on his or her file and will be regarded as spent after two years subject to satisfactory performance and/or conduct;
 - (b) that further failure to meet and/or sustain the required improvement may lead to the procedure under Part VII being instituted (under which a Panel may determine that the member of staff shall be dismissed).

Part VI : Appeals against action under Part V

41. A member of staff (in this Part referred to as the 'Appellant') may appeal under this Part against a warning issued under the Capability Hearing (First-Level and Second-Level Warnings) in Part V.
42. Any appeal shall be made in writing to the Director of Human Resources within ten working days of receipt of the written notification of the decision concerned. The Appellant shall set

out in full the grounds of his or her appeal and, if the Appellant is proposing to rely upon new evidence, he or she should provide details and a copy of any relevant documentation.

43. The appeal shall be heard:-
- i. in the case of a decision made by a Dean or Head of Professional Service or his or her nominee: by a person drawn from a list of persons approved by the President and Vice-Chancellor to hear appeals;
 - ii. in the case of a decision made by a Vice-President, a Pro Vice-Chancellor or the Chief Operating Officer: by another Vice-President or by the President and Vice-Chancellor;
 - iii. in the case of a decision made by the President and Vice-Chancellor: by the Chair of the Council or his or her nominee.

A member of Human Resources appointed by the Director of Human Resources or his or her nominee shall be present at the appeal hearing in an advisory capacity.

44. The person hearing the appeal shall have full discretion to decide on the conduct of the appeal hearing. Without limitation, the person hearing the appeal shall have power to continue a hearing in the absence of a party, witness or representative if no good cause (in the opinion of the person hearing the appeal) is put forward in support of a request for an adjournment.
45. The Appellant shall be given written notification of the date and time of the appeal hearing and shall be notified of his or her right to be represented or accompanied in accordance with paragraph 17 above.
46. Where the Appellant fails to attend the appeal hearing without good cause, the appeal may proceed in the Appellant's absence.
47. The appeal shall not normally take the form of a re-hearing of the evidence and witnesses other than the Appellant and the person who made the decision being appealed may only be heard with permission of the person hearing the appeal. However, if there is evidence that could not reasonably have been presented at the hearing, and/or if new evidence has emerged since the hearing, this may be presented at the appeal.
48. Following the appeal hearing, the Appellant will be advised in writing, normally within five working days, of the outcome of the appeal which, without limitation, may include the cancellation of the decision being appealed or the substitution of a lesser sanction. However, it shall not be open to the person hearing the appeal to increase the severity of the warning being appealed.
49. The decision of the person hearing the appeal shall be final.

Part VII : Capability Hearing (Dismissal Hearing)

Decision to proceed

50. Where the member of staff has failed to comply with the terms of any warning under Part V or in the light of the Preliminary Report referred to in paragraph 28 above, the Initiator shall bring the matter to the attention of the President and Vice-Chancellor or his or her nominated representative, who after making such enquiry as is appropriate shall determine whether:-

- i. the matter should be dismissed as being without substance;
- ii. the matter should be heard by a Panel under this Part;

and the member of staff shall be informed in writing of that decision.

Panel Hearing

51. Where the President and Vice-Chancellor or his or her nominated representative determines that the matter should be heard by a Panel under this Part, the Panel shall be convened by the

Director of Human Resources or his or her nominee on a case-by-case basis in accordance with the following rules:-

- i. subject to sub-paragraph (v) below, each panel shall consist of three persons;
 - ii. at least one member of the panel shall be a lay member of the Council and one shall be a member drawn from a list agreed from time to time by the Senate. The third member may be another lay member of the Council or may be chosen from among the senior management of the University, such as a Vice-President, a Pro Vice-Chancellor, Dean, Chief Operating Officer or Head of Professional Service who shall chair the panel unless the panel resolves otherwise;
 - iii. if the hearing will involve consideration of issues related to a member of clinical staff's clinical conduct or competence, the chair of the panel may permit the member of clinical staff to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity;
 - iv. no panel member shall have had any previous involvement in the case;
 - v. where the panel is dealing with a member of clinical staff 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.
52. The Director of Human Resources or his or her nominee shall appoint a member of Human Resources to act as Secretary to the Panel.
53. The member of staff shall be notified in writing of the nature of the allegation(s) and given no less than ten working days' written notice of:
- i. the date, time and place of the Panel Hearing;
 - ii. so far as they are known at the time, the names of the persons to be present at the Panel Hearing including the members of the Panel, and the name of any person attending to present the case to the Panel;
 - iii. the issues to be considered at the Panel Hearing (and the member of staff shall be provided with a copy of the Preliminary Report and any documents to be referred to or relied on at the hearing);
 - iv. his or her right to be represented or accompanied at the Panel Hearing;
 - v. his or her right to call relevant witnesses at the Panel Hearing;
 - vi. the names of any witnesses who will be called to give evidence in relation to the issues being considered at the Panel Hearing;
 - vii. the potential outcome(s) of the Panel Hearing including, if dismissal is a possible outcome, a statement to that effect;
 - viii. a reference to this Ordinance.
54. The member of staff may be represented or accompanied at the Panel Hearing in accordance with the provisions of paragraph 17 above.
55. If the member of staff is or becomes unable to attend the hearing, he or she should notify the Secretary to the Panel as soon as possible, giving the reasons for the non-attendance. A member of staff who fails to attend a hearing without good cause shall be informed that if he or she fails to attend any rearranged hearing without good cause, the matter may be considered in his or her absence.
56. At least five working days in advance of the Panel Hearing, the member of staff shall:-

- i. provide details of proposed witnesses and of his or her representative;
 - ii. provide copies of any documents to which he or she wishes to refer at the hearing. Any documentary evidence not disclosed within this timeframe may only be considered at the Panel Hearing with the permission of the Panel.
57. The procedure to be followed in preparation for and at the Panel Hearing shall be at the discretion of the Panel, which may include without limitation:-
 - i. which documents (if any) shall be provided for the Panel's consideration and at what stage;
 - ii. the allegation(s) being put to the member of staff and an account of the actions taken and support given to date, including if relevant the calling of any witnesses;
 - iii. the member of staff having the opportunity to raise questions of any witnesses called. The manner in which such questions are to be raised is at the discretion of the Panel;
 - iv. 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;
 - v. the questioning of any witnesses called by the member of staff.
58. The Panel may, at its discretion:-
 - i. postpone or adjourn the hearing including (without limitation) where the member of staff, his or her representative, the person presenting the complaint, any witness or any member of the Panel is or becomes unable to attend;
 - ii. continue the hearing in the absence of a party, witness or representative where, in the opinion of the Panel, no good cause has been put forward for an adjournment;
 - iii. recall the parties or any witness to clarify any relevant issue. In the event that any person is recalled, the member of staff and his or her representative shall also (subject to paragraph 16 above) be entitled to be present.

Notification of decision

59. The Panel shall produce a reasoned written decision, normally within ten working days of the Panel Hearing, which will be sent to the member of staff. A report of the decision will also be sent to the Council and to the Dean or Head of Professional Service. The Panel may:-
 - i. dismiss the matter, in whole or in part; or
 - ii. uphold the allegation(s) in whole or in part; and
 - iii. where the allegation(s) are upheld in whole or in part, act as it considers appropriate, which may include one or more of the following:-
 - (a) directing that the member of staff be dismissed either with notice or with a payment in lieu of notice;
 - (b) issuing a warning, which may be a First-Level Warning or a Second-Level Warning. In each case the warning shall set out: the required improvement in work performance and if appropriate the specific arrangements which are to be made to assist or facilitate the required improvement; the timescale within which this improvement must be achieved and how the improvement will be monitored or reviewed; and the consequence of further failure to meet and/or sustain the required improvement during the period of the warning;
 - (c) withholding a forthcoming increment in salary;
 - (d) other action short of dismissal (the Panel may offer the member of staff regrading or demotion where this is considered to be appropriate in all the circumstances).

60. Where the Panel decides that a member of staff should be dismissed, the Director of Human Resources or his or her nominee shall give effect to the Panel's decision and the member of staff shall be advised of his or her right to appeal under Part VIII against the Panel's findings or against any sanction imposed.

VIII : Appeals against Decisions under Part VII

61. A member of staff (hereafter called the 'Appellant') who wishes to appeal the findings of the Panel or any sanction imposed by the Panel should do so in writing to the Director of Human Resources within ten working days of the date of written notification of the Panel's decision. The Appellant should set out in full the grounds of his or her appeal and, if the Appellant is proposing to rely upon new evidence, he or she should provide details and a copy of any relevant documentation.
62. The appeal will be heard by a panel (the 'Appeal Panel') convened by the President and Vice-Chancellor or his or her nominated representative on a case-by-case basis in accordance with the following rules:-
- i. subject to sub-paragraph (v) below, each Appeal Panel shall consist of three persons;
 - ii. at least one member of the Appeal Panel shall be a lay member of the Council and one shall be a member drawn from a list agreed from time to time by the Senate. The third member may be another lay member of the Council or may be chosen from among the senior management of the University, such as a Vice-President, a Pro Vice-Chancellor, Dean, Chief Operating Officer or Head of Professional Service who shall chair the Appeal Panel unless the Appeal Panel resolves otherwise;
 - iii. if the Appellant is a member of clinical staff and the appeal hearing will involve consideration of issues related to his or her clinical conduct or competence, the chair of the Appeal Panel may permit the Appellant to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity;
 - iv. no panel member shall have had any previous involvement in the member of staff's case, and accordingly no person may sit on both the Hearing Panel and the Appeal Panel in a particular case;
 - v. where the panel is dealing with a member of clinical staff 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.
63. The Director of Human Resources or his or her nominee shall appoint a member of Human Resources to act as Secretary to the Appeal Panel.
64. An appeal under this Part shall not normally take the form of a re-hearing of the evidence and witnesses may be called only with the Appeal Panel's permission. However, if there is evidence that could not reasonably have been presented at the hearing, and/or if new evidence has emerged since the hearing, this may be presented at the appeal.
65. No later than ten working days before the Appeal Panel Hearing the Appellant shall be notified by the Secretary to the Appeal Panel of:-
- i. the date, time and place of the Appeal Hearing;
 - ii. his or her right to be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 17 above; and

- iii. so far as they are known at the time, the names of the persons to be present at the hearing including the members of the Appeal Panel, and the name of any person attending to present the reason for the decision to dismiss on behalf of the University.
66. The Appellant may be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 17 above.
67. At least three working days before the Appeal Hearing the name and the address of the Appellant's representative must be notified in writing to the Secretary to the Appeal Panel.
68. The Appellant shall take all reasonable steps to attend the Appeal Hearing and/or any adjournment or postponement of the Appeal Hearing. Where the Appellant indicates to the Appeal Panel that he or she does not wish to exercise his or her right to be heard or fails to attend or leaves the Appeal Hearing or any postponement or adjournment of the Appeal Hearing without good cause, the Appeal Panel shall be entitled to proceed in the Appellant's absence.
69. The procedure to be followed in preparation for and at the Appeal Hearing shall be at the discretion of the Appeal Panel, which may include without limitation:-
 - i. determining which documents (if any) shall be provided for the Appeal Panel's consideration and at what stage;
 - ii. determining the extent (if any) to which witnesses may be called and questioned; and
 - iii. deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing.
70. The Appeal Panel shall notify the Appellant in writing of the reasons for its decision, normally within ten working days of the Appeal Hearing. A report of the decision will also be sent to the Council and to the Dean or Head of Professional Service. The Appeal Panel may:-
 - i. uphold the decision reached by the Panel;
 - ii. overturn that decision and reinstate the member of staff and/or impose some lesser or alternative sanction; or
 - iii. remit the matter to a further new Panel, or to such person or persons as the Appeal Panel shall specify, for reconsideration or rehearing, in whole or in part.
71. The decision of the Appeal Panel shall be final.
72. Any dismissal under this procedure shall remain in force pending the outcome of an appeal. If the decision to dismiss is overturned, continuity of employment shall be restored.