



**ILLEGALITY AND SOME OTHER SUBSTANTIAL REASON  
(SOSR)  
PROCEDURES FOR DISMISSAL  
ORDINANCE 25**

Rev	Date	Purpose of Issue/Description of Change		Review Date
1.				
2.				
3.				
<b>Policy officer</b>		<b>Senior Responsible Officer</b>	<b>Approved By and Date</b>	<b>Equality Impact Assessed and date</b>
Deputy Chief People Officer		Chief People Officer	University Council 30.09.24	06.09.24

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## 1 Principles

- 1.1 This Procedure represents the relevant Ordinance in relation to the University's approach to matters relating to dismissal due to **illegality**, and dismissal for **some other substantial reason (SOSR)**. This Procedure has been negotiated and agreed with the Unions, approved by the University Council and forms a term of all relevant employment contracts of staff members of the University.
- 1.2 If, after commencing the procedure in this Ordinance, the University considers that the relevant case should have been dealt with under the Management of Change Procedure, Disciplinary Procedure, Supporting Performance/Capability Procedure or the Sickness Absence Procedure rather than under this Procedure, the University may transfer the case to the appropriate stage of the relevant procedure. It shall be for the University to determine the appropriate procedure to be followed and its decision shall be final.
- 1.3 Nothing in this Ordinance shall prevent the University from informing and consulting with the relevant member of staff (or with appropriate employee representatives) or from considering alternatives to dismissal prior to commencing this Procedure.

## 2 Scope

- 2.1 The University will occasionally need to end the employment relationship with staff where the reason for ending that employment does not fall easily into the usual procedures for dismissal. They are termed as dismissals for 'some other substantial reason' (SOSR). This is defined as a reason of a kind so as to justify dismissal which is not related to any of the other potentially fair reasons for dismissal (such as redundancy, conduct, performance, or breach of a statutory restriction).
- 2.2 This Procedure will only normally apply when it would not be appropriate to deal with the dismissal issue(s) under any other Ordinance, Policy or Procedure.
- 2.3 This Procedure outlines the University's approach to dismissals for **SOSR** and provides a framework for dismissals that fall outside the context of other University Ordinances such as the Management of Change, Sickness Absence, Disciplinary or Capability and Supporting Performance Policies and Procedures or other specific dismissal Ordinances. By way of example, where issue(s) relate to the employee's actions or conduct, it would be appropriate for one of the University's other policies to apply, such as the Disciplinary or Capability and Supporting Performance Policies and Procedures. Although not exhaustive, below is a list of examples where dismissal for some other substantial reason (SOSR) would be appropriate:
  - a fundamental breakdown in trust and confidence between the employer and the employee;
  - the continued employment of an employee in their post would constitute a statutory impediment.

- 2.4 There may also be situations where continuing to employ a member of staff would be a breach of a legal provision. These are termed as dismissals for 'illegality' and this reason, like SOSR, constitutes one of the five fair potential reasons for dismissal within the Employment Rights Act 1996.
- 2.5 In both instances the University has a duty to apply its associated processes fairly and consistently. Whether a case will be considered under either illegality or some other substantial reason (SOSR) will depend upon the circumstances of the particular case.
- 2.6 This procedure does not apply to dismissals taken under the Probation Policy.
- 2.7 No member of staff will be dismissed under this Ordinance on the grounds that they have exercised their right of academic freedom as defined in the Supplemental Charter and the general law of the land from time to time.

### **3 Authority to take formal action under this procedure**

- 3.1 The Vice-Chancellor, University Secretary, Deputy Vice-Chancellors, Pro-Vice-Chancellors / Head of College, Directors and Heads of Schools are authorised, subject to any appropriate training, to take action at all stages detailed in paragraph 5, including the authority to dismiss, in accordance with this procedure and following consultation with the Chief People Officer or other person they nominate. The power to nominate can be made by one of those listed plus the Chief People Officer of HR.
- 3.2 Formal action under this procedure in respect of staff in the academic job families will be taken by academic managers.
- 3.3 The Chief People Officer or other person they nominate may authorise other named managers (subject to any appropriate training) to take defined levels of action in accordance with this procedure and following consultation with a HR Officer.

### **4 Suspension**

- 4.1 At any stage in the procedure, if appropriate, an employee may be suspended. Each case will be considered individually. Wherever possible the employee will be informed of suspension in a meeting. The decision to suspend will be taken by a manager authorised to take action under this procedure, Head of Department or a member of the University Executive Board, and must be approved by the Chief People Officer, or other person whom they nominate.
- 4.2 Suspension will be considered only where necessary to protect any of the following:
- the investigation;
  - the business;
  - other employees;
  - the employee under investigation.

- 4.3 Suspension is not a penalty, there is therefore a presumption that suspension will be on full pay including regular enhancements. Any decision to withhold pay during a period of suspension must be authorised by the Chief People Officer.
- 4.4 Employees suspended on full pay will accrue annual leave. Suspension will override sick leave unless the staff member is unable to attend meetings etc. due to sick leave. The University must be advised of sickness absence for recording purposes.
- 4.5 In circumstances where it is necessary to immediately protect the University's interests (for example, where there are serious safety concerns) and where an authorised manager is not available to suspend an employee, a manager may instruct the employee to leave the place of work and to stay away until further notice. This must be reported to an authorised manager and the Chief People Officer or other person whom they nominate as soon as possible so that they can determine whether the employee is to be formally suspended in accordance with this procedure.
- 4.6 The following principles apply to any period of suspension:
- suspension from duty is not a pre-judgement of guilt and is not a sanction;
  - suspension will normally take place in a face-to-face meeting, if this is not possible suspension will not be delayed but will be notified in writing;
  - the reasons for the suspension must be stated clearly to the employee in writing and will include details of anything the length of the suspension is linked to e.g. until an investigation is concluded or until the outcome of court proceedings are known etc;
  - the period of suspension should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action;
  - where an employee holds more than one role at the University, it may be appropriate to suspend the individual from all roles. However, each case will be considered on an individual basis.
- 4.7 During any period of suspension, the employee must not discuss the case with, and must not contact, any fellow workers or students of the University, or visit University property or access University facilities including email and databases without first obtaining authority. A letter will notify the employee who to contact in such circumstances. Authority will be granted (subject to any conditions considered appropriate) to enable the employee to prepare their response. Staff may contact their Trade Union representative whilst suspended.
- 4.8 During any period of suspension, the employee should remain mindful of their duty not to act in a way that may be prejudicial to the University's interests or reputation, for example through their use of social media.
- 4.9 Whilst suspended, the employee is expected to remain contactable during normal working hours and to be available in a reasonable timescale for any meeting which may be arranged as part of the investigation (which might include a meeting or meetings with the Investigating Officer) or subsequent hearing, if

applicable. Annual leave can be used during period of suspension, with prior approval as with any annual leave request.

## **5 Procedure**

- 5.1 At each formal stage in the procedure the member of staff will be advised of the nature of the circumstances or complaint against them and will be given the opportunity to state their case before any decision is made.
- 5.2 Where an employee raises a grievance during a SOSR process the SOSR process may be temporarily suspended in order to deal with the grievance. Where the grievance and SOSR cases are related it may be appropriate to deal with both issues concurrently, as determined by the University.

## **6 Investigation**

- 6.1 Where necessary an investigation will be undertaken to establish whether there are grounds to consider dismissal in accordance with this Procedure. An Investigating Officer will be appointed to conduct a thorough investigation into the circumstances, including gathering the relevant evidence and interviewing witnesses. The identity of the Investigating Officer will be made known to the staff member involved.

### **6.2 Formal process following investigation**

- 6.2.1 The manager authorised to take action under paragraph 3 above will write to the employee, at least five days before the date of the hearing:
  - a) explaining the circumstances which lead the University to consider dismissing the member of staff;
  - b) inviting the member of staff to a hearing;
  - c) informing the member of staff of their right to be accompanied by a trade union representative or colleague;
  - d) providing copies of any documents, and any other information, which will be considered at the hearing; and
  - e) advising of any witnesses who will attend the hearing.
- 6.2.2 As soon as is reasonably practicable after the hearing a Panel of at least two members of staff, one of whom is listed in paragraph 3. above, shall reach a decision as to whether the member of staff should be dismissed or take any other action other than dismissal which is justified by the circumstances.
- 6.2.3 Normally within one week of the meeting, the University will confirm the decision in writing to the employee. The letter will specify the decision and the reasons for it and (where the decision is that the employment should be terminated) that the employee has the right of appeal and how to exercise that right.
- 6.2.4 Where a member of staff is unable to attend for any reason then they must notify the Chair of the panel, as soon as possible, and fully explain the failure to attend.
- 6.2.5 The University has a duty of care to all of its members of staff. Therefore, where a member of staff is experiencing stress or illness during a SOSR dismissal

process and there is a possibility that the process could be delayed as a result of absence, the University will request a medical report (from Occupational Health, the staff member's GP or specialist) to determine if and when a member of staff is fit to attend a hearing.

- 6.2.6 The role of Occupational Health is to meet, confidentially, with a member of staff and based on the medical evidence, to provide recommendations to the University about a staff member's health.
- 6.2.7 Where a member of staff is deemed fit to attend by Occupational Health or a medical practitioner, the hearing will be arranged in the normal way. Where the medical advice suggests that a hearing may go ahead with adjustments, the hearing will be arranged accordingly.
- 6.2.8 Where a member of staff is deemed to be too unwell to attend by Occupational Health or a medical practitioner, the hearing will normally be rescheduled. However, where the member of staff is persistently unable to attend, the chair (or Panel) may take a decision to hold the SOSR dismissal hearing in their absence or make arrangements for written statements to be submitted instead.
- 6.2.9 Where a member of staff is persistently unable or unwilling to attend a meeting without good cause, the Panel may make a decision in their absence based on the evidence available.

## **7 Appeal**

- 7.1 An employee has a right of appeal against a decision to terminate their employment made under this Procedure.
- 7.2 The staff member's formal outcome letter will include details of the arrangements to follow should the staff member decide to appeal e.g. to whom to appeal.
- 7.3 Staff intending to appeal against a decision taken under this policy, must do so promptly, within 10 working days of receipt of the outcome letter. Should the employee require additional time to submit an appeal, they may make a request for a reasonable extension of time. This request must be made within the 10-day timeframe. Any such request for an extension of time will be granted at the discretion of the University.
- 7.4 The appeal must be communicated in writing, stating the grounds upon which the appeal is made.
- 7.5 Staff members have the right to be accompanied by a colleague or a Trade Union representative at an appeal meeting.
- 7.6 The University will, as far as reasonably practical, seek to hear the appeal within 28 working days of receipt of the submitted appeal. The employee will be informed in writing of the time, date and venue for the appeal hearing no later than 7 working days in advance of the appeal hearing. Employees will also be advised of their right to be accompanied at the hearing.

- 7.7 The appeal hearing will be chaired by a Lay Member of the University Council, and a Senior member of staff (with no previous involvement in the case and being of no less seniority than the staff member who issued the sanction being appealed). A member of the Human Resources Department will support the appeal meeting.
- 7.8 As the purpose of the appeal is not a reconsideration of all matters, it is the responsibility of the staff member to state their case and bring to the attention of the appeal chair all relevant documentary evidence that should be considered.
- 7.9 An appeal will not prevent or delay the termination of the staff member's appointment but if the outcome of the appeal overturns the termination, then the employee will be reinstated and paid any back-pay. Where an appeal against dismissal fails, the termination date will be as set out in the original decision outcome letter.
- 7.10 The staff member will be informed in writing of the appeal outcome, usually within 10 working days of the appeal meeting. If the timescales are to be longer, this will be communicated to the employee. The decision is final within the procedures of the University and will conclude the process.

## **8 Policy Review**

- 8.1 This Procedure will be reviewed 12 months from implementation, and then at regular intervals of not less than three years and will at all times be read and applied subject to the general law. All reviews will be undertaken in consultation with the recognised campus Trade Unions and any changes agreed with them, prior to approval from the University Council.

## **9 Equality Impact Assessment**

- 9.1 An Equality Impact Assessment will be carried out in conjunction with the review of this policy.