

## Policy Coversheet

<b>Name of Policy:</b>	<b>Fitness to Practise Procedure</b>
<b>Purpose of Policy:</b>	<b>To inform students studying on awards leading to professional registration of the procedures for investigation into fitness to practise concerns, of the rights of students when undergoing the procedure and the penalties which can be imposed.</b>
<b>Intended audience(s):</b>	<b>All students registered on Staffordshire University awards and staff</b>
<b>Approval for this policy given by:</b>	<b>Academic Board</b>
<b>Last Review Date:</b>	<b>01/07/2017</b>
<b>Review Due Date:</b>	<b>01/07/2019</b>
<b>Individual responsible for review:</b>	<b>Registrar</b>
<b>Authorising department:</b>	<b>Student &amp; Academic Services</b>



# **Staffordshire University**

## **Fitness to Practise Procedure including Disclosure Screening for Applicants**

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**Appendix 1 Procedure for Dealing with Disclosure Screening for Applicants to Awards Leading to Professional Registration**

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## **Regulation 1 General Principles**

- 1.1 The Interpretation clauses included under Section 1 of the General Regulations for Students also apply to the Fitness to Practise Procedure.
- 1.2 The Vice Chancellor, or in their absence another member of the Executive, shall be ultimately responsible for ensuring the suitability of Staffordshire University students registered on awards leading to professional registration. The Vice-Chancellor may delegate powers under these procedures to another member of the Executive generally or, in respect of a particular case, a member of the School Management Team.
- 1.3 Members of the fitness to practise and appeal panels will have had no prior involvement with the student.
- 1.4 The time limits set out in this procedure may be varied where in the reasonable opinion of the University, such variation is reasonably required and the student will be notified accordingly.

## **Regulation 2 Definition of Fitness to Practise Concerns**

- 2.1 The Course Handbook will provide clear guidance to students regarding the standards of conduct expected of them on awards leading to professional registration. There will also be an emphasis at induction on the standards required by the relevant professional body and by the University.
- 2.2 The following list is indicative of circumstances, which may give rise to concerns regarding a student's fitness to practise. Circumstances may include, but are not limited to:
  - (a) Allegations of or convictions for criminal activity.
  - (b) A serious breach of University regulations.
  - (c) Apparent failure to make a complete and honest disclosure on a University Self Declaration Form.
  - (d) Conduct which puts vulnerable people at risk of harm.
  - (e) Serious concerns regarding honesty and probity.
  - (f) Conduct contrary to professional guidelines.
  - (g) Breaches of professional responsibility such as confidentiality.
  - (h) Serious physical or psychological illness either where a new condition arises or an existing condition worsens.\*
  - (i) Disability either where a new condition arises or an existing condition worsens.\*
  - (j) Failure by a student to cooperate with an investigation into concerns about his/her fitness to practise.
  - (k) Failure to comply with conditions imposed because of a previous finding of impairment of a student's fitness to practise.

\*Concerns would only arise if no reasonable adjustments could be made in consultation with the appropriate partner organisation that would allow the student to safely and competently practise.

- 2.3 University staff will initiate this process wherever appropriate and fitness to practise concerns will initially be considered by a member of the School Management Team with designated responsibility. The following list is indicative but not exhaustive, of the means by which concerns regarding a student's fitness to practise may be raised:
  - (a) Via a member of the Course Team.
  - (b) As a result of a disclosure made on a Self-Declaration Form or Disclosure and Barring Service Certificate.

- (c) A report from a placement supervisor or service manager concerning the student's conduct.
- (d) A complaint by another student or other concerned party.
- (e) A referral from the Examination Board regarding a proven case of major or gross academic misconduct.
- (f) A report from an Occupational Health Assessment.

### **3. Regulation 3 Legal Context**

- 3.1 Where the alleged cause for concern would also constitute a criminal offence if proved in a court of law, the University shall have discretion to continue action under these procedures or such action may be deferred pending any police investigation or prosecution. An acquittal or a decision by the police to terminate an investigation without charge is not binding on the University and consequently these procedures may continue or be resumed (as relevant) in such circumstances.
- 3.2 The standard of proof required for the University to make a decision regarding a student's fitness to practise is the civil standard of proof: balance of probability.
- 3.3 A student may only be accompanied and represented at a fitness to practise investigative meeting or hearing by a fellow student or representative of their Union. In exceptional circumstances, where the University would be required to report its findings to the appropriate professional body, and this would be wholly determinative or significantly influence the student's right to practise their chosen profession, legal representation may be permitted. In these circumstances the University also retains the right to engage legal representation. In this procedure the person accompanying and representing the student is referred to as "the student's representative".

### **4. Regulation 4 Precautionary Suspension**

- 4.1 In any instance where the member of the School Management Team (SMT) with responsibility for fitness to practise judges that a student's continued presence poses a serious risk to other members of the student body, staff, members of the public, or themselves or it would inhibit the University's ability to conduct a proper investigation, he/she may suspend the student immediately and/or may require that they do not to enter all or part of the University's premises. In relevant circumstances, the student may be requested to move to alternative University managed accommodation until the conclusion of any fitness to practise hearing and/or appeal under these procedures, subject to the required statutory notice. Alternatively, depending on the specific circumstances, the precautionary suspension may be partial and the student's participation on the relevant programme may be limited e.g. the student may be suspended from placement but not from academic elements of the programme. The SMT member may choose to consult with practice partners and other relevant staff when reaching this decision.
- 4.2 The SMT member must report the suspension immediately to the Vice-Chancellor.
- 4.3 The student will be informed in writing of the grounds for the suspension, and will have the right to submit written representations to the Vice-Chancellor within 10 working days of the date of the suspension.
- 4.4 The Vice-Chancellor will review the suspension and notify the student of their decision within 15 working days of the date of the suspension.
- 4.5 Subject to the above right of review, the precautionary suspension will remain in force until these procedures are deemed to be concluded.

- 4.6 In circumstances where a student is suspended by their employer, meaning that they are unable to proceed on their registered programme, the University may be required to issue a precautionary suspension. In this instance, it will be made clear to the student as to whether the suspension applies to practice only or additionally to academic elements of the programme. It will be the responsibility of the employer to carry out whatever investigation they deem appropriate. The University will await the outcome of the employer investigation, prior to determining the appropriate course of action. All courses of action remain open to the University at that point, for example (this list is not exhaustive) initiating a Fitness to Practise investigation, referral into University disciplinary proceedings, and taking no further action.

## **5 Regulation 5 Procedure for Dealing with Fitness to Practise Concerns**

- 5.1 The member of SMT with responsibility for fitness to practise shall make such enquiries as he/she shall deem necessary to confirm the facts reported and to determine the seriousness of the matter. He/she may take written statements from the student, or any other person(s) involved and any witness(es). Where deemed appropriate the SMT member will consult with a practitioner and other relevant staff in reaching a decision. (For Midwifery students this will include the Lead Midwife for Education.)

Upon completion of his/her enquiries the SMT member may take one of the following actions and inform the student and the individual raising the concern, in writing of this, within 7 working days:

- (a) Take no further action.
  - (b) Appoint an Investigating Officer to investigate the fitness to practise concerns and notify the relevant Head of Department.
  - (c) Refer the matter for consideration in accordance with an alternative University procedure. In such cases where either the University Disciplinary Regulations or the Fitness to Practise Procedure may be followed, the Fitness to Practise Procedure will take precedence. In all cases only one procedure will be followed.
- 5.2 In the event of 8.1(b) the Investigating Officer will normally be an experienced academic colleague not closely associated with the student or previously involved in the matters under investigation.

The Investigating Officer will conduct an enquiry into the concerns raised by obtaining such written reports and evidence and interviewing witnesses as are judged to be appropriate to the case. The Investigating Officer will complete a standard report in accordance with the published guidance for Investigating Officers. Should the student be interviewed, they may be represented by a fellow student or Union representative.

The investigation will normally be concluded within 4 weeks of the appointment of the Investigating Officer. Where this is not possible, the Investigating Officer will inform the student.

Upon completion of the investigation, the Investigating Officer may recommend one of the following courses of action:

- (a) That there is insufficient evidence to proceed. This will be subject to the agreement of the SMT member with responsibility for fitness to practise. Where agreement cannot be reached, a referral will be made to an alternative member of the School Management Team.
- (b) Refer the matter to the student's Personal Tutor for informal discussion and guidance as to future conduct. Failure to comply with this will result in referral to a Fitness to Practise Panel.

- (c) Refer the matter for the consideration of a Fitness to Practise Panel. The Panel will be informed and the Panel will normally be convened within 25 working days of the referral.

5.3 The Fitness to Practise Panel will normally be constituted as follows:

- A chair who will be a suitable senior academic other than the Dean, who has not been involved in the case.
- A current practitioner with delegated authority, who has had no prior involvement with the student.
- A registered student of the University nominated by the President of the Students' Union.
- A secretary who will formally record the discussions and outcome, but will not take part in the decision-making process.
- In any panel where a midwifery student is under consideration, the panel should include a Midwifery Clinician.
- The Investigating Officer will attend the hearing to present the fitness to practise concerns.

5.4 The University has the power to proceed with a hearing in the absence of the student where the panel is satisfied that all reasonable efforts have been made to serve notice of the date and time of the hearing on the student and that good reason for non-attendance has not been provided by the student.

5.5 The order of proceedings at the hearing is set out at paragraph 5.10. The Chair of the Panel has responsibility for the conduct of these proceedings and may vary the order of the proceedings at the Chair's reasonable discretion. Where this is the case, the student will be informed of both the variation and the reason(s) for it. The Panel shall have sole discretion to decide whether evidence is relevant and admissible in the proceedings.

5.6 If, due to a disability, the student believes that reasonable adjustments in addition to those already identified as a result of previous assessments with the University's Student Enabling Centre are required in order to prevent the student from suffering substantial disadvantage in these proceedings, the student should liaise with the Secretary to the Panel within 10 working days of the hearing to ensure that those adjustments are assessed as reasonable, and if so, implemented. Such adjustments could include, depending on the student's particular disability, relocation of the hearing to a more accessible venue and/or making arrangements for a communicator or advocate to be present at the hearing.

5.7 A copy of the full documentation to be considered at the hearing will be supplied to the student at least 7 working days in advance of the hearing. The student may prepare a statement regarding the case. Any such statement should be sent to the Director of Student and Academic Services (or nominee) at least 48 hours in advance of the meeting of the Panel.

5.8 The student has the right to hear all of the evidence presented and to question the Investigating Officer presenting the case.

5.9 A hearing may be adjourned at any time at the discretion of the Panel considering the matter. Where this is the case, the student will be informed of the reason and given a likely timescale for completion.

#### 5.10 Order of Proceedings :

- (a) The Investigating Officer shall make an opening statement of case.
- (b) The student or the student's representative may (via the Chair of the Panel) ask questions of the Investigating Officer.
- (c) The student or his/her representative may make an opening statement.
- (d) The student may be questioned by the Investigating Officer via the Chair.
- (e) The Investigating Officer may make a closing statement.
- (f) The student or his/her representative may make a closing statement which may include details of any mitigating factors which they would wish to be considered should sanctions be imposed.

5.11 The Investigating Officer and student (and their representative) must withdraw from the room whilst the Panel hearing the case reaches its decision in private. The Panel will consider any findings of fact and decide whether the facts found to be proven on the balance of probability amount to impairment of fitness to practise.

5.12 The Fitness to Practise Panel may make one of the following decisions

- (a) That there is no evidence that the student's fitness to practise is impaired and that no further action will be taken.
- (b) That there is evidence that the student's fitness to practise is impaired and that one or more of the following sanctions shall be applied:
  - i) Require the student to give a written undertaking as to his/her future conduct within the University and/or placement setting.
  - ii) Issue a formal reprimand which will remain on the student's file and may be taken into account in any future cases.
  - iii) Impose conditions on the student's return to practice.
- (c) That there is evidence that the student's fitness to practise is impaired to the extent that the student should be withdrawn from the award.
- (d) To suspend a sanction pending compliance with such conditions as the Panel sees fit to impose on the student.

5.13 The Panel's decision shall be communicated to the student and individual raising the concern in writing and shall be supported by reasons.

## **6 Regulation 6 Appeals Against the Decision of the Fitness to Practise Panel**

6.1 In the case of 8.13 (b) or (c) the student shall have the right to appeal against the decision of the Fitness to Practise Panel.

6.2 The appeal must be made in writing to the Registrar, giving the grounds for appeal, within 7 working days of the date the decision was issued. If, in the view of the Registrar, the grounds for appeal are not met, the student will be informed and a Completion of Procedures letter will be issued. The grounds for appeal are as follows:

- i) That there is new evidence that would have materially affected the decision of the Fitness to Practise Panel and which could not reasonably have been made available during the University's investigation of the fitness to practise concern.
- ii) That there was a material procedural irregularity with regard to the Fitness to Practise procedure which demonstrably affected the decision of the outcome of the Fitness to Practise Panel.
- iii) The sanction was disproportionate.

- 6.3 If the Registrar concludes that grounds for appeal have been established, a Fitness to Practise Appeals Committee will normally hear the case within 25 working days of this decision.
- 6.4 The Fitness to Practise Appeals Panel will normally be constituted as follows:
- Dean of School (Chair) in which the student is studying or Associate Dean who is more senior than the Chair of the Fitness to Practise Panel.
  - A senior practitioner with delegated authority, who has had no prior involvement with the student
  - President of the Students' Union (or nominee)
  - A Secretary who will formally record the discussions and outcome.
- The Chair of the Fitness to Practise Panel and the Investigating Officer will attend the Appeal Hearing to give evidence.
- 6.5 The Appeal Panel has the power to determine the format of the hearing, and may vary the process and time limits set out at its discretion. Where this is the case the student will be informed of the reason.
- 6.6 If, due to a disability, the student believes that reasonable adjustments in addition to those already identified as a result of previous assessments with the University's Student Enabling Centre are required in order to prevent the student from suffering substantial disadvantage in these proceedings, the student should liaise with the Secretary to the Panel within 10 working days of the hearing to ensure that those adjustments are assessed as reasonable, and if so, implemented. Such adjustments could include, depending on the student's particular disability, relocation of the hearing to a more accessible venue and/or making arrangements for a communicator or advocate to be present at the hearing.
- 6.7 The student will be required to submit copies of any such documents that they wish to be considered by the Panel 10 working days in advance of the meeting. A copy of the full documentation to be considered at the hearing will be supplied to the student at least 7 working days in advance of the hearing.
- 6.8 The student also has the right to hear all of the evidence presented and to question persons presenting the case and giving evidence.
- 6.9 A hearing may be adjourned at any time at the discretion of the Appeal Panel hearing the matter. Where this is the case the student will be informed of the reason and given a likely timescale for completion.
- 6.10 The Investigating Officer, Chair of the Fitness to Practise Panel and student (and their representative) must withdraw from the room whilst the Appeal Panel reaches its decision. The decision will be communicated in writing to the student.
- 6.11 The Appeal Panel will conduct a review of the Fitness to Practise Panel's decision and may make one of the following decisions:
- (a) Uphold the decision of the Fitness to Practise Panel.
  - (b) Vary the decision of the Fitness to Practise Panel.
  - (c) Refer the case for the consideration of a newly constituted Fitness to Practise Panel should the original decision be flawed to the extent that it cannot be remedied by review.

## **7 Student Complaints Procedure**

- 7.1 It is not possible to submit a complaint arising from or connected with a fitness to practise matter until all relevant elements of the Fitness to Practise Procedure have been completed.

## **8 Office of the Independent Adjudicator**

- 8.1 If the student has exhausted the relevant appeals process under this procedure and remains dissatisfied with the outcome they may have the right to take their case to the Office of the Independent Adjudicator (OIA). Further details can be obtained from the OIA website [enquiries@oiahe.org.uk](mailto:enquiries@oiahe.org.uk)

## Appendix 1

### 9 Procedure for Dealing with Disclosure Screening for Applicants to Awards Leading to Professional Registration

- 9.1 Applicants to programmes which lead to professional registration will be required to declare all convictions (including cautions, reprimands and warnings), that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. Protected offences do not have to be disclosed and cannot be taken into account, when making a disclosure screening decision. However, applicants should be aware that they will show on a Disclosure and Barring Service Certificate.
- 9.2 Applicants will be required to complete a Self-Declaration Form normally at the interview stage. Applicants will be required to declare:
- Any convictions, reprimands, cautions or warnings in accordance with the provisions of sections 9.1
  - Any previously incomplete study on an award leading to professional registration.
  - Any safeguarding investigations which the applicant has been involved in, either directly or indirectly, by virtue of living in the same household or being in a relationship with someone involved in, or subject to, a safeguarding investigation.
  - Whether they have ever been banned, or anyone living in their household has ever been banned, from working with vulnerable persons.
  - Whether there is any non-conviction information held about them by any organisation which would call into question their suitability for working with vulnerable persons.

Self-Declaration Forms received from successful applicants will be considered in accordance with this procedure to determine whether the applicant or student is suitable for admission or continuation to the chosen award.

- 9.3 Should the nature or timing of any disclosure give rise to concerns about the applicant's suitability for an award leading to professional registration the applicant will be invited to attend a Disclosure Screening Panel.
- 9.4 Should an application be referred for the consideration of the Disclosure Screening Panel, the applicant or student will be informed, in writing, confirming when the Panel will be held. The applicant or student will be given the opportunity to submit a supporting statement, and any evidence on which they intend to rely, in advance of the Panel meeting. Should the applicant or student wish to make personal representations to the Panel meeting they will have the right to do so.
- 9.5 Composition of the Disclosure Screening Panel
- The Head of Department or academic nominee from an appropriate professional background.
  - A practitioner with delegated authority.
  - Another academic member of staff.
  - An administrator will record the decision of the Panel.

- 9.6 The Disclosure Screening Panel will make one of the following decisions:
- (a) That the nature, timing or frequency of the disclosure made on the Self-Declaration form means that the applicant or student is not suitable for entry or continuation on to the award leading to professional registration.
  - (b) That the applicant or student is suitable for entry/continuation on to the award providing that a Disclosure and Barring Service Certificate can be submitted which matches the Self-Declaration.
- 9.7 All students studying on awards leading to professional registration will be subject to Enhanced Disclosure Screening. Applications to the Disclosure and Barring Service and presentation of resulting certificates must be completed prior to entry to placement and by the deadlines set out by the Award Team. Failure to present a DBS certificate to Staffordshire University will result in the student's withdrawal from the award.
- 9.8 Any disclosure which becomes known to the University as a result of the Enhanced Disclosure screening process, or by other means, which was not self-disclosed by the applicant or student, will normally result in the applicant or student's withdrawal from the award.
- 9.9 Once a student or applicant has been subject to the Enhanced Disclosure screening, they will not normally be screened again during the programme but will be required to complete a Self Declaration Form each year through the enrolment process.

## Appendix 2 Protected Convictions

10.1 (a) A 'protected' **caution** is defined as follows:

- **Not** a 'listed offence (see 10.2 below for details); **and**
- Either you were under 18 at the time the caution was given, and two years or more have passed since that date; or you were over 18 at the time the caution was given, and six years or more have passed since that date

(b) A 'protected' **conviction** is defined as follows:

- **Not** a 'listed offence (see 10.2 below for details); **and**
- Either you were under 18 at the time the conviction was imposed, and five years and six months or more have passed since that date; or you were over 18 at the time the conviction was imposed, and eleven years or more have passed since that date; **and**
- The sentence was **not** a custodial sentence (including a suspended sentence) or a sentence of service detention; **and**
- You have no other convictions

10.2 A listed offence is defined below

- an offence under section 67(1A) of the Medicines Act 1968;
- an offence under sections 126 to 129 of the Mental Health Act 1983;
- an offence specified in the Schedule to the Disqualification from Caring for Children (England) Regulations 2002;
- an offence specified in Schedule 15 to the Criminal Justice Act 2003;
- an offence under section 44 of, or under paragraph 4 of Schedule 1 or paragraph 4 of Schedule 4 to, the Mental Capacity Act 2005;
- an offence under section 7, 9 or 19 of the Safeguarding Vulnerable Groups Act 2006;
- an offence specified in section 17(3)(a), (b) or (c) of the Health and Social Care Act 2008, apart from an offence under section 76 of that Act;
- an offence specified in the Schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009;
- an offence specified in Schedule 2 or 3 of the Childcare (Disqualification) Regulations 2009;
- an offence of either (a) attempting or conspiring to commit; (b) inciting or aiding abetting, counselling or procuring the commission of; or (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) committed in relation to any offence falling within paragraphs (1) to (9);
- an offence under the law of Scotland or Northern Ireland, or any country or territory outside the United Kingdom, which corresponds to any offence under the law of England and Wales falling within paragraphs (1) to (10);
- an offence under section 42 of the Armed Forces Act 2006 in relation to which the corresponding offence under the law of England and Wales is an offence falling within paragraphs (1) to (10);
- an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 of which the corresponding civil offence is an offence falling within paragraphs (1) to (10).

**Equality issues have been taken into account during the development of this policy and all protected characteristics have been considered as part of the Equality Analysis undertaken.**