

Ordinance 10

Employment

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1 Operating Principles (previously Ordinance 25)

1.1 This employment **Ordinance 10** relating to employees shall be applied and construed to give effect to these operating principles.

1.2 Appeals

Any decision made under any procedure prescribed by this **Ordinance 10** will remain in force pending the outcome of an appeal.

1.3 Appeal by clinical academic member of staff

Where an appeal is made under any of the procedures prescribed by **Ordinance 10** by a member of the clinical academic staff, who is required to engage in clinical work or activities and for that purpose to be registered with the General Medical or Dental Council or similar body and/or to have an honorary or substantive contract or status with a National Health Service Trust or similar body, then the panel may include, in addition to its other members, an appropriate representative of the National Health Service.

1.4 Confidentiality

All parties involved in the operation of **Ordinance 10** must ensure that they maintain, as appropriate, confidentiality within and outside the University. However, none of this shall preclude information being given to any person where this is appropriate, and the University may disclose information:

1.4.1 to those who need to know in order to discharge their responsibilities;

- 1.4.2 where disclosure is necessary in the interests of health and safety at work or the welfare of other staff, students or the public;
- 1.4.3 where disclosure is required by law;
- 1.4.4 to witnesses and/or attendees at the meetings within the procedures.

1.5 **Equality**

It is expected that **Ordinance 10** will be operated impartially and that all parties involved in the procedures prescribed by them will be treated with respect and dignity and that no individual will be unjustifiably discriminated against. This includes discrimination because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

1.6 **The Role of Human Resources (“HR”)**

HR will:

- 1.6.1 provide guidance and support to all parties involved in the operation of the procedures prescribed by **Ordinance 10**;
- 1.6.2 advise on the fair and consistent application of the relevant procedure;
- 1.6.3 give guidance to the Appropriate Manager on their responsibilities under the relevant procedure; and
- 1.6.4 be mindful of any conflict that may arise in these roles.

1.7 **Nominees**

References to University post holders shall be construed to refer either to the post holder or to a person nominated by him or her to act with full authority on his or her behalf.

1.8 **Notices and formal communication**

The University will deem any notification to be received by an employee within two days of it being posted to his/her home address as notified by the employee from time to time. If the notification is sent by email it will be deemed to have been received the day after it is sent.

1.9 **Postponement**

Employees (and any representative) must make every effort to attend all meetings arranged under **Ordinance 10**. If the Employee (or their representative) is unable to attend the meeting, they should inform HR as soon as possible. In the event that the employee fails to attend a meeting without good reason, the University reserves the right to make a decision in their absence.

1.10 **Recordings**

Audio and visual recordings in any form are prohibited during any meetings or hearings taking place under **Ordinance 10** unless agreed in advance and for reasons of accessibility.

1.11 **Review**

Ordinance 10 will be reviewed from time to time to ensure that it reflects the University’s legal obligations and its organisational and operational needs.

1.12 **Right to be accompanied**

At any meetings or hearings prescribed by **Ordinance 10** where formal action is being taken, employees have the right to be accompanied by a colleague, friend, trade union or other representative. Although the representative will be able to address the meeting and to confer with the employee during the meeting they will not be permitted to answer any questions on behalf of the employee. In some circumstances the employee's choice of companion may not be accepted. In such circumstances the employee will be asked to select an alternative representative.

1.13 **Statutory references**

References in **Ordinance 10** to any statute are a reference to it as amended, extended or re-enacted from time to time. A reference to legislation shall include all subordinate legislation made from time to time under that statute.

1.14 **Suspension**

The decision to suspend an employee under **Ordinance 10** will be taken by the HR Director or their nominee. The University will advise the employee of the expected length of that suspension and will keep them informed of any changes in that timeframe. The employee will be required to cooperate with any investigation and to be available for interview(s) during working hours. The University may impose conditions during the period of suspension and the employee will be notified accordingly. Any suspension may include the suspension of use of the University's intranet and email account. Suspension is a neutral act and is not considered by the University to be a disciplinary sanction.

1.15 **Timescales**

Whilst every effort should be made by the University to comply with any timescales prescribed by **Ordinance 10**, timescales may be extended in complex cases. In such circumstances the University should keep the employee informed and advise them of the reasons for any delay.

1.16 **Trade Union Representatives**

Where formal proceedings are contemplated against a Trade Union Representative under **Ordinance 10**, the HR Director or nominee shall inform the chair or secretary and the full time official of the Union of those circumstances before any formal meeting.

1.17 **Definitions**

1.17.1 "**Appropriate Manager**" means the Line Manager, Principal Investigator, Head of Department, Head of Section, Head of Discipline, Technical Manager, the Head of School, School or Faculty Manager, or other manager within the line management structure. Where appropriate HR will consider and advise on who the Appropriate Manager is in respect of the operation of all or part of a particular procedure or policy.

1.17.2 "**Trade Union Representative**" means an accredited representative of a trade union recognised by the University.

2 Performance and Conduct during the Initial Service Review Period (previously Ordinance 26)

2.1 Application & Scope

2.1.1 This procedure is applicable where either an employee's performance or conduct has not improved following an initial meeting under paragraph 5 of the Initial Service Review Policy or their performance or conduct is so poor as to warrant dismissal.

2.1.2 Action under this procedure may be taken at any time during or at the end of an Initial Service Review Period.

2.2 Procedure

2.2.1 The employee should be invited in writing to attend a meeting giving them appropriate notice and advising them of their right to be accompanied. The letter should state the reasons why they have fallen short of the required standards of performance or conduct and enclose any documents that will be referred to at the meeting.

2.2.2 At the meeting the Appropriate Manager will:

- (a) identify the poor performance or conduct and if appropriate give the reasons for considering non confirmation in post;
- (b) allow the employee and/or their representative to respond to the concerns and to ask any questions.

2.2.3 Following the meeting the Appropriate Manager will consider all the representations made and decide whether or not the employee should:

- (a) be given an opportunity to improve, and if so explain: the specific action(s) that the employee is required to take; the outcomes that they are expected to achieve; the timescale within which these must be achieved (the "Improvement Period"); and that if these are not achieved within the Improvement Period their employment may be terminated; or
- (b) receive notice of termination of their employment; or
- (c) be dismissed without notice of termination of their employment.

2.2.4 Any decision reached should be confirmed in a letter to the employee with a copy to HR.

2.3 Appeal

2.3.1 Where an employee's employment has been terminated during their Initial Service Review period they have a right to appeal against the decision using the appeal procedure set out in the Staff Grievance Procedure.

3 Potential Redundancies (previously Ordinance 27)

3.1 Application and Scope

Where the University has identified a potential redundancy situation it will try to minimise the effect of any potential redundancies through the steps set out in this procedure.

3.2 Avoiding Compulsory Redundancies

3.2.1 The University is committed to retaining employees wherever possible and will seek to minimise redundancies by forward planning within the relevant area. Where redundancies are proposed consideration will be given to ways of avoiding redundancy or reducing the numbers involved. Examples of such steps include:

- (a) reviewing the use of agency staff, self-employed contractors and consultants;
- (b) restricting recruitment in affected categories of employees;
- (c) identifying suitable alternative work for potentially redundant employees;
- (d) staff turnover;
- (e) seeking volunteers for redundancy (selection of volunteers for redundancy shall be at the discretion of the University and shall be determined by the University's requirements to retain key skills and experience to meet the present and anticipated needs of the University);
- (f) considering the introduction of agreed short time working, job sharing or other flexible working arrangements, where these are practicable;
- (g) filling vacancies from among existing employees.

3.2.2 Any measures adopted must not adversely affect the University's organisational or operational needs.

3.3 Identification of Potential Redundancies

3.3.1 Where a potential redundancy situation has been identified an Appropriate Manager will where appropriate:

- (a) identify the pool from which employees will be selected for dismissal by reason of redundancy; and
- (b) propose the criteria by which individuals will be selected from the pool for dismissal by reason of redundancy;

3.4 Identification of the Pool

The pool will be defined by the nature of the work that is (or will be) ceasing or reducing. A pool may be limited to one individual or to a group of individuals carrying out the work.

3.5 Selection Criteria

3.5.1 The criteria used to select employees who will potentially be made redundant will be transparent and fair and based on the skills required to meet the University's existing and anticipated organisational and operational needs.

3.5.2 Selection may be based on the:

- (a) skills, experience and aptitude of the employee;
- (b) standard of work performance;
- (c) attendance and/or disciplinary record of the employee;

and the selection process may include interviews with relevant employees.

3.6 **Consultation with Trade Union(s)**

3.6.1 The Appropriate Manager and the relevant Trade Union(s) will engage in collective consultation (as required by law) and in such circumstances will discuss any proposed redundancies and ways of avoiding them.

3.6.2 The purpose of the consultation is to seek ways of:

- (a) avoiding the redundancy situation;
- (b) reducing the number of dismissals; and
- (c) mitigating the effects of the proposed redundancies.

3.6.3 Where appropriate, consultation may include discussions concerning the definition and size of the proposed pool for selection and the proposed selection criteria.

3.6.4 The University will respond to any written submissions from the relevant Trade Union(s) in respect of the above

3.7 **Consultation with individual employees.**

3.7.1 Where a potential redundancy situation has been identified which may affect a group of more than 20 employees an Appropriate Manager may inform those individuals of the proposal prior to the commencement of individual consultation.

3.7.2 Those employees who have been provisionally selected for redundancy will be consulted with individually.

3.7.3 Where appropriate, consultation will include discussion of matters such as:

- (a) the reason for the proposal;
- (b) ways to avoid or mitigate the effect of the proposed redundancy;
- (c) the rationale for the employee's inclusion in the pool;
- (d) the fact that the employee has been provisionally selected for redundancy;
- (e) where there is a pool of one, the rationale for the pool;
- (f) the method of selection and/or scoring and the opportunity to challenge them;
- (g) the proposed redundancy payment.

3.7.4 Individual consultation will be carried out as follows:

- (a) The employee will be invited in writing to attend a formal consultation meeting with an Appropriate Manager who may be accompanied by a representative from HR. The letter will explain the reason for the meeting

and give any other relevant information to the employee. The employee will be given the right to be accompanied to the consultation meeting. The employee and their representative may make representations, which will be considered.

- (b) Following this meeting the Appropriate Manager may decide that the post is redundant. If so the Appropriate Manager will write to the individual to advise them of the decision. The letter will respond to any representations made during the consultation meeting and, if the post is declared redundant, will explain the employee's right of appeal, together with details of any notice provisions and any payments that they will receive.
- (c) Where appropriate, further consultation meeting(s) may take place with either the Appropriate Manager or with a manager more senior to the one who undertook the initial consultation meeting(s) at which action taken to date may be reviewed. The manager who conducted the initial consultation meetings may also be invited to attend and a representative from HR may also be present.
- (d) Following the meeting(s) the Appropriate Manager (or a more senior manager) may decide that the post is redundant. If so the Appropriate Manager will write to the individual to advise them of the decision. The letter will respond to any representations made during the consultation meeting(s) and, if the post is declared redundant, will explain the employee's right of appeal, together with details of any notice provisions and any payments that they will receive.

3.8 Redundancy Payments

3.8.1 Redundancy payments will be calculated as follows:

0-9 complete years of service - statutory redundancy payment

Ten or more complete years of service - statutory redundancy payment x2

3.8.2 Eligibility for a redundancy payment may be lost if an employee refuses an offer of reasonable alternative employment.

3.9 Alternative Employment

3.9.1 During the notice period the University operates a redeployment policy to try to find alternative employment for employees who have been given notice of redundancy. Where suitable alternative employment is offered it will be subject to a trial period.

3.9.2 Employees under notice of redundancy will be entitled to take a reasonable amount of paid time off work to look for alternative employment or to arrange training for future employment.

3.10 Appeal

3.10.1 The employee has the right of appeal against a decision to terminate their employment under this procedure. Any appeal should be made in writing to the University Secretary within 28 days of the date of the letter confirming the decision appealed against. The appeal must state the grounds for appeal.

3.10.2 The appeal will be heard by a panel of at least three, none of whom should have had any prior involvement in the case. The appeal panel shall include one member who is independent of the area (for example the Faculty or Division) in which the

employee is employed and in the case of academic staff the appeal panel shall include a member of the academic staff from Senate.

- 3.10.3 The University Secretary or nominee from HR shall act as clerk to the appeal panel. The procedure shall be determined by the panel. The employee may present the appeal in person, attend hearings and be accompanied by a representative. The University may be represented by a member of staff or other representative.

The panel's decision is final. The panel shall give a reasoned decision in writing which shall be sent to the employee and the Appropriate Manager.

4 **Conduct Framework for Staff who have completed their Initial Service Review Period (Previously Ordinance 28)**

4.1 **Application and Scope**

- 4.1.1 The purpose of this procedure is to provide a constructive framework for dealing with staff conduct and to ensure that disciplinary action, where necessary, is applied fairly and consistently.
- 4.1.2 This procedure applies to all employees who have (where applicable) satisfactorily completed their Initial Service Review.
- 4.1.3 The general obligations for employees in respect of their conduct are set out in **Appendix A**

4.2 **Early Action**

- 4.2.1 It is part of the supervisory process that managers bring to the attention of employees the standards of behaviour required and any failure to meet those standards. Minor misconduct should be dealt with by the employee's line manager (the "Manager") informally and without delay. The Manager should speak to the employee to ensure that they understand the nature of the concerns, expectations of improvements in conduct and where appropriate timescales and the nature of any support available.
- 4.2.2 It is expected that cases of minor misconduct will be dealt with informally between the employee and their Manager. However, if that informal discussion does not bring about an improvement or where there is a more serious case of misconduct, formal action under this procedure may be necessary.

4.3 **Suspension**

- 4.3.1 Where appropriate the University may suspend an employee on full pay whilst it undertakes an investigation into alleged misconduct.

4.4 **Investigations**

- 4.4.1 Before a disciplinary hearing is convened the Appropriate Manager will normally appoint an investigator (supported by HR) to carry out an investigation into the circumstances of the alleged misconduct. The purpose of the investigation is to:
 - (a) gather evidence; and
 - (b) consider if the matter should proceed to a formal hearing.
- 4.4.2 If there is no disagreement concerning the facts of the case, for example because the misconduct is admitted, an investigation may not be necessary before a disciplinary hearing is arranged. However, in cases where misconduct is not admitted or if there are conflicting views or evidence, further investigation would usually be appropriate before a decision is taken to proceed to a formal hearing.
- 4.4.3 As part of any investigation, the employee may be invited to provide a written response to the allegations as well as invited to attend an investigation meeting.
- 4.4.4 The investigator will decide whether:
 - (a) there is a case to answer;
 - (b) there is no case to answer; or

- (c) the matter should be considered under an alternative procedure.

4.5 **Taking Formal Action**

- 4.5.1 Where it is decided that formal action is to be taken the employee will normally be given ten days' notice and invited to attend a disciplinary hearing.

Prior to the Hearing

- 4.5.2 The employee will be provided with details of the allegation(s) and an indication as to whether the alleged misconduct is considered as potentially a serious/gross misconduct case and therefore whether a sanction less than or up to dismissal may be considered.
- 4.5.3 Prior to the hearing the employee will be invited to provide:
 - (a) their response to the allegations including bringing forward any relevant witnesses; and
 - (b) any documentation that they will refer to in the hearing.
- 4.5.4 Prior to the hearing any documentation or other evidence that is to be relied upon by either the employee or the University will be made available to each other and to the Appropriate Manager at least seven days before the hearing.

The Conduct Hearing

- 4.5.5 An appropriate person (supported by HR) shall present the allegation(s) against the employee at the hearing.
- 4.5.6 The hearing will be conducted by an Appropriate Manager supported by HR.
- 4.5.7 The Appropriate Manager will arrange for notes of the meeting to be taken.
- 4.5.8 At the hearing the employee will be given an opportunity to present their case, question witnesses and raise any issue that they wish to have considered. The Appropriate Manager will be able to question those involved in the case.

The Outcome of the Hearing

- 4.5.9 At the end of the hearing the Appropriate Manager will consider all representations then decide whether or not, on the balance of probabilities, the allegation(s) are proved and if they are proved what level of disciplinary sanction, up to and including dismissal is appropriate. On the basis of the information presented, the Appropriate Manager may decide to impose any of the disciplinary sanctions or other measures set out in paragraph 5 and 6.
- 4.5.10 The decision may be given on the day of the hearing and will in any event be confirmed in writing within fourteen days of the hearing. The employee has a right of appeal against any decision.

Disciplinary Sanctions

- 4.5.11 There are three levels of sanction that may be given: first written warning, final written warning and dismissal.

Warnings

- 4.5.12 The warnings given under this procedure will normally be "live" for a period of 12

months. At the end of that period, subject to the employee's satisfactory conduct, the warning will normally be disregarded for disciplinary purposes. However, the University reserves the right to issue warnings for a longer period depending on the nature or seriousness of the offence and to take previous action taken under this procedure into account when issuing a sanction or other measure in respect of a subsequent allegation of misconduct even when the stated duration of any previous warning(s) or other action taken has expired. The University reserves the right to extend the period of time in which a warning is live to reflect any period of time for which the employee is absent from work (not including, for example, annual leave) whilst the warning is live.

4.5.13 A written warning will be placed on the employee's personnel file and will set out:

- (a) the areas where the required standards of behaviour and/or conduct have not been met;
- (b) any specific action(s) that the employee is required to take and outcomes that they are expected to achieve to correct/improve their behaviour or conduct including any time period for completion;
- (c) any measures such as additional training or support which will be taken with a view to correcting or improving conduct or behaviour;
- (d) the date(s) of any interim review meeting(s) to review progress;
- (e) the Review Period, i.e. the period of time over which the employee will need to demonstrate that they can sustain the required improvement or correction in behaviour or conduct; and
- (f) the consequences of failing to improve or correct their behaviour or conduct within the review period or of further unsatisfactory behaviour or conduct (whether similar or not) within the Review Period including, if appropriate, termination of employment.

First Written Warning

4.5.14 Where the misconduct is of a minor nature or, after early action has been taken but there has been no improvement in conduct or behaviour, a first written warning may be issued.

Final Written Warning

4.5.15 If after a first written warning has been given, the employee commits a repeated or further act of misconduct, or where the misconduct is considered sufficiently serious to warrant a final written warning but not sufficiently serious to justify dismissal, a final written warning may be issued.

Dismissal

4.5.16 If after a final written warning has been given, the employee commits a repeated or a further act of misconduct, or where the employee commits an act of gross misconduct (see **Appendix G**) the Appropriate Manager may consider dismissal or summary dismissal (that is dismissal with or without notice).

4.6 Other Measures

In all cases the University will consider whether it is appropriate to withhold any increment of salary from the employee. The University reserves the right to impose such other

disciplinary measures as it considers appropriate in the circumstances.

4.7 Appeals

Appeals against a sanction or measure other than dismissal

- 4.7.1 If an employee wishes to appeal they should write to the HR Director within 14 days of receiving the written notification of the sanction setting out the reasons for the appeal.
- 4.7.2 The HR Director will then arrange for the appeal to be heard by an Appropriate Manager who has had no prior involvement in the case. The appeal hearing will be a review of the decision and will be supported by HR.
- 4.7.3 Where, on appeal, the case is upheld, in whole or in part, the Appropriate Manager conducting the appeal may substitute a different sanction. It is not intended that a substituted sanction would be more severe.
- 4.7.4 The decision may be given at the appeal hearing and will in any event be confirmed in writing within fourteen days of the hearing.
- 4.7.5 The decision following the appeal shall be final.

Appeals against dismissal

- 4.7.6 The employee has the right of appeal against a decision to terminate their employment under this procedure. Any appeal should be made in writing to the University Secretary within 28 days of the date of the letter confirming the decision appealed against. The appeal must state the grounds for appeal.
- 4.7.7 The appeal will be heard by a panel of at least three, none of whom should have had any prior involvement in the case. The appeal panel shall include one member who is independent of the area (for example the Faculty or Division) in which the employee is employed and in the case of academic staff the appeal panel shall include a member of the academic staff from Senate.
- 4.7.8 The University Secretary or nominee from HR shall act as clerk to the appeal panel. The procedure shall be determined by the panel. The employee may present the appeal in person, attend hearings and be accompanied by a representative. The University may be represented by a member of staff or other representative.
- 4.7.9 The panel's decision is final. The panel shall give a reasoned decision in writing which shall be sent to the employee and the Appropriate Manager.

Appendix A

Rules of Conduct for Members of Staff

Introduction

These Rules apply to all members of staff of the University and form part of their terms and conditions of employment. They set out behaviour which may amount to misconduct, resulting in disciplinary action. The Rules are intended to promote a productive, harmonious and safe working environment.

General Requirements

Members of staff are expected to:

- a) Comply with their contract and terms and conditions of employment;
- b) Fulfil the duties of their post as reasonably required by their Appropriate Manager;
- c) Observe relevant University rules, regulations, codes of practice and policy statements;
- d) Comply with health and safety and data protection requirements.

Misconduct

The following list gives examples of behaviour which may constitute misconduct. This list is not intended to be exhaustive:

- a) Conduct which constitutes a criminal offence, of a kind that is judged in all the circumstances to be relevant to the member of staff's employment by the University, whether committed on University premises or elsewhere;
- b) Violent, indecent, disorderly, threatening, intimidating or offensive behaviour or language at work;
- c) Sexual, racial, or any other form of harassment, including bullying of any student or member of staff of the University, or any visitor to the University, or any other failure to respect the University's Equal Opportunities and Dignity at Work Policies;
- d) Incapacity at work through the use of alcohol or drugs;
- e) Fraud, deceit, deliberate falsification of records, deception or dishonesty in relation to the University or its staff, students or visitors;
- f) Theft, misappropriation or misuse of University property, or the property of the University's staff, students or visitors, including intellectual property;
- g) Fraud or plagiarism in connection with academic research or failure to comply with the University's Research Misconduct Policy;
- h) Computer misuse, contrary to the University's regulations;
- i) Misuse or unauthorised use of University premises, equipment or facilities;
- j) Damage to University property, or the property of the University's staff, students or visitors, caused intentionally or recklessly;
- k) Action likely to cause injury or impair safety on University premises, or infringement of University Health and Safety policy;

- l) Negligence which causes or might cause unacceptable loss, damage or injury;
- m) Improper bias in relation to students, whether relating to admission or assessment;
- n) Failure to respect the rights of any student or member of staff of the University, or any visitor to the University, to freedom of belief and freedom of speech;
- o) Breach of the provisions of any University code, policy, rule or regulation;
- p) Misuse of the University's name, or bringing the University into serious disrepute;
- q) Undertaking paid work detrimental to or in conflict with the University's interests without the University's permission;
- r) Unauthorised absence;
- s) Poor timekeeping;
- t) Failure to comply with a reasonable request or instruction from an appropriate person.

Gross Misconduct

A member of staff who is found to have been guilty of misconduct shall normally in the first instance be given a warning. However gross misconduct, of such seriousness as to give good grounds for immediate dismissal, may lead to summary dismissal without warning. When determining whether an issue should be dealt with as misconduct or gross misconduct, the actual or potential consequences of the conduct shall be considered. Examples of behaviour which may constitute gross misconduct include assault or physical violence, theft, fraud, research misconduct and serious breaches of regulations relating to health and safety or data protection.

5 **Performance Framework for staff who have completed their Initial Service Review Period (previously Ordinance 29)**

5.1 **Application and Scope**

5.1.1 The purpose of this procedure is to provide a constructive framework to address, identify and resolve any areas of concern relating to an individuals' performance and to ensure that any action taken is fair and consistent.

5.1.2 This procedure applies to all employees (except those who are in their initial service review period).

5.2 **Early Action**

5.2.1 It is part of the supervisory process that managers bring to the attention of employees the standards of performance required and any failure to meet those standards. Any minor lapses in performance should be dealt with by the employee's line manager (the "Manager") informally and without delay. The Manager should speak to the employee to ensure that they understand the nature of any concerns, expectations of improvements in performance (for example in levels of skill, knowledge, responsibility, autonomy and behaviours) and where appropriate timescales and the nature of any support or training available. Where an employee has identified that their performance may have been affected by ill health or a disability, additional support may be available (see Ill Health Policy).

5.2.2 It is expected that minor cases of underperformance will be dealt with informally between the employee and their Manager. However if that informal discussion does not bring about an improvement or where there are more serious concerns about an employee's performance, formal action under this procedure may be taken.

5.3 **Considering Taking Formal Action**

5.3.1 Before any formal action is taken the Appropriate Manager will review the circumstances and the detail of the performance concerns. In particular the Appropriate Manager will consider:

- (a) the nature of the concerns;
- (b) whether the employee has been informed of what is expected of them and where the performance shortfalls lie;
- (c) whether the employee has identified that their performance may have been affected by ill health or a disability and what steps have been taken under the Ill Health Policy;
- (d) the support or training that may have already been provided to the employee.

5.4 **Taking Formal Action**

5.4.1 Where it is decided that formal action is to be taken the employee will normally be given ten days' notice and invited to attend a capability hearing.

Prior to the Hearing

5.4.2 The employee will be provided with details of the performance concerns and an indication as to their seriousness and whether dismissal may be considered.

- 5.4.3 Prior to the hearing the employee will be invited to provide:
- (a) their response to the performance concerns including bringing forward any relevant witnesses;
 - (b) any documentation that they will refer to in the hearing.
- 5.4.4 Prior to the hearing any documentation that is to be relied upon by either the employee or the University will be made available to each other and to the Appropriate Manager at least seven days before the hearing.

The Capability Hearing

- 5.4.5 An Appropriate Person (supported by HR) may explain the performance concerns about the employee at the hearing.
- 5.4.6 The hearing will be conducted by the Appropriate Manager supported by HR.
- 5.4.7 The Appropriate Manager will arrange for notes of the meeting to be taken.
- 5.4.8 At the hearing the employee will be given an opportunity to present their case, question witnesses and raise any issue that they wish to have considered. The Appropriate Manager will be able to question those involved in the case.

The Outcome of the Hearing

- 5.4.9 At the end of the hearing the Appropriate Manager will consider all representations then decide if on the balance of probabilities whether the performance concerns are justified and if justified what level of capability sanction, up to and including dismissal is appropriate. On the basis of the information presented the Appropriate Manager may decide to impose any of the capability sanctions set out in paragraph 4.11. In all cases the Appropriate Manager will consider whether it is appropriate to withhold any salary increment from the employee.
- 5.4.10 The decision may be given on the day of the hearing and will in any event be confirmed in writing within fourteen days of the hearing. The employee has a right of appeal against any decision.

Capability Sanctions

- 5.4.11 There are three levels of sanction that may be given: first written warning, final written warning and dismissal.

Warnings

- 5.4.12 The warnings given under this procedure will normally be “live” for a period of 12 months. At the end of that period, subject to the employee’s satisfactory performance, the warning will normally be disregarded for disciplinary purposes. However, the University reserves the right to issue warnings for a longer period depending on the nature or seriousness of the poor performance and to take previous action taken under this procedure into account when issuing a sanction or other measure in respect of subsequent poor performance even when the stated duration of any previous warning(s) or other action taken has expired. The University reserves the right to extend the period of time in which a warning is live to reflect any period of time for which the employee is absent from work (not including, for example, annual leave) whilst the warning is live.
- 5.4.13 A written warning will be placed on the employee's personnel file and will set out:

- (a) the areas where the required standards of performance have not been met;
- (b) any specific action(s) that the employee is required to take and outcomes that they are expected to achieve to improve their performance including any time period for completion;
- (c) any measures such as additional training or support which will be taken with a view to improving performance;
- (d) the date(s) of any interim review meeting(s) to review progress;
- (e) the Review Period i.e. the period of time over which the employee will need to demonstrate that they can sustain the required improvement in performance; and
- (f) the consequences of failing to improve performance within the Review Period or of further unsatisfactory performance (whether similar or not) within the Review Period including, if appropriate, termination of employment.

First Written Warning

5.4.14 Where the poor performance is of a minor nature or, after early action has been taken but there has been no improvement in performance, a first written warning may be issued.

Final Written Warning

5.4.15 If after a first written warning has been given the employee's performance has not improved, or where the performance concerns are considered sufficiently serious to warrant a final written warning but not sufficiently serious to justify dismissal, a final written warning may be issued.

Dismissal

5.4.16 Dismissal of an employee may be considered where performance:

- (a) has not improved sufficiently within the review period set out in a final written warning;
- (b) is unsatisfactory while a final written warning is still active; or
- (c) has been grossly negligent such as to warrant dismissal without the need for a final written warning.

5.4.17 When considering dismissal the Appropriate Manager may decide:

- (a) to dismiss the employee;
- (b) that there are insufficient grounds to dismiss the employee;
- (c) on the imposition, or extension of a warning already issued under this procedure; or
- (d) to explore options other than dismissal with the employee.

5.5 Appeals

Appeals against warnings

- 5.5.1 If an employee wishes to appeal, they should write to the HR Director within 14 days of receiving the written notification of the warning. The appeal letter must set out the reasons for the appeal.
- 5.5.2 The HR Director will then arrange for the appeal to be heard by an Appropriate Manager who has had no prior involvement in the case. The appeal hearing will be a review of the decision to issue a warning and will be supported by HR.
- 5.5.3 The Appropriate Manager conducting the appeal may substitute a different sanction from that appealed against; it is not intended that a substituted sanction would be more severe.
- 5.5.4 The decision may be given at the appeal hearing and will in any event be confirmed in writing within 14 days of the hearing.
- 5.5.5 The decision following the appeal shall be final and there will be no further internal right of appeal.

Appeals against dismissal

- 5.5.6 The employee has the right of appeal against a decision to terminate their employment under this procedure. Any appeal should be made in writing to the University Secretary within 28 days of the date of the letter confirming the decision appealed against. The appeal must state the grounds for appeal.
- 5.5.7 The appeal will be heard by a panel of at least three, none of whom should have had any prior involvement in the case. The appeal panel shall include one member who is independent of the area (for example the Faculty or Division) in which the employee is employed and in the case of academic staff the appeal panel shall include a member of the academic staff from Senate.
- 5.5.8 University Secretary or nominee from HR shall act as clerk to the appeal panel. The procedure shall be determined by the panel. The employee may present the appeal in person, attend hearings and be accompanied by a representative. The University may be represented by a member of staff or other representative.
- 5.5.9 The panel's decision is final. The panel shall give a reasoned decision in writing which shall be sent to the employee and the Appropriate Manager.

6 Potential Dismissal for other reasons (previously Ordinance 30)

6.1 Application and Scope

- 6.1.1 Where it is believed that there are circumstances which, although not covered by any of the other University procedures, lead the University to contemplate the dismissal of an employee, the steps set out in this procedure will be followed.
- 6.1.2 The procedure is intended to apply where dismissal of an employee is contemplated in any circumstance not covered elsewhere within **Ordinance 10** for example:
- (a) where it is considered that the employee cannot continue to work in the position which they hold because to do so would mean that they and/or the University would be in breach of legislation. In such a case the University may be required to terminate the employment with immediate effect in which case the provisions set out in paragraph 4 may not apply. The employee will still have a right to appeal against their dismissal;
 - (b) dismissal of a member of clinical academic staff whose honorary NHS contract is compromised, withdrawn and/or whose registration is revoked or suspended;
 - (c) dismissal arising from the expiry of a fixed term contract where the reason for the expiry is not redundancy (e.g. where the individual is covering for sabbatical or maternity leave, etc);
 - (d) where the employee is unable to attend work due to imprisonment;
 - (e) dismissal from a remunerated post in the University which is undertaken in addition to an employee's substantive post; or
 - (f) where there has been breakdown in mutual trust and confidence in the working relationship.

6.2 Investigation

Where necessary an investigation will be undertaken to:

- (i) gather evidence; and
- (ii) consider if the matter should proceed to a formal hearing.

In such cases the Appropriate Manager will appoint an investigating officer. Where the University considers it appropriate, the findings and outcome of an investigation undertaken under another procedure may be used as part of this process.

6.3 Procedure

- 6.3.1 Where dismissal of an employee is contemplated, the Appropriate Manager will write to the employee inviting them to a meeting detailing the purpose of the meeting and the circumstances that led the University to consider terminating employment.
- 6.3.2 Prior to the meeting the employee where appropriate will be:
- (a) provided with relevant documentation which include a copy of any investigation report, at least seven days before the meeting;
 - (b) invited to provide a written response; and

- (c) invited to bring forward witnesses that they believe are relevant to the matter.

6.3.3 At the meeting the employee will be given an opportunity to present their case, question witnesses and raise any issues they wish to have considered and the Appropriate Manager conducting and hearing the case will be able to question all those involved in the case.

6.4 **Outcome**

6.4.1 The Appropriate Manager will consider all representations before reaching a decision. The decision may include (but will not be limited to) the following outcomes:

- (a) there are insufficient grounds to dismiss the employee under this procedure;
- (b) employee's employment should be terminated with or without notice; or
- (c) the case should be considered under an alternative procedure.

6.4.2 The decision may be given at the meeting and will in any event be confirmed in writing within seven days of the meeting. The employee has a right of appeal against the decision.

6.5 **Appeals**

6.5.1 The employee has the right of appeal against a decision to terminate their employment under this procedure. Any appeal should be made in writing to the University Secretary within 28 days of the date of the letter confirming the decision appealed against. The appeal must state the grounds for appeal.

6.5.2 The appeal will be heard by a panel of at least three, none of whom should have had any prior involvement in the case. The appeal panel shall include one member who is independent of the area (for example the Faculty or Division) in which the employee is employed and in the case of academic staff the appeal panel shall include a member of the academic staff from Senate.

6.5.3 The University Secretary or nominee from HR shall act as clerk to the appeal panel. The procedure shall be determined by the panel. The employee may present the appeal in person, attend hearings and be accompanied by a representative. The University may be represented by a member of staff or other representative.

6.5.4 The panel's decision is final. The panel shall give a reasoned decision in writing which shall be sent to the employee and the Appropriate Manager.

7 Potential Dismissal on Grounds of Ill-health (previously Ordinance 31)

7.1 Application and Scope

7.1.1 This procedure is only applicable where the University is considering dismissing an employee on the grounds of ill-health (which may or may not amount to a disability as defined by the Equality Act 2010) for example where an employee has:

- (a) had a period of long term sickness absence;
- (b) had frequent intermittent sickness absence, which is found to be attributable to an underlying medical condition; or
- (c) has sustained difficulty in fulfilling the required standards of a role due to an underlying medical condition, even if the employee is not absent from work.

7.1.2 No action may be taken by the University under this procedure unless it has first considered the Ill Health Policy.

7.2 Termination of Employment

7.2.1 Where the University is considering terminating the employee's employment on the grounds of ill-health it will follow the procedure set out below.

- (a) The employee will be invited to attend a meeting to consider whether the employee's employment should be terminated.
- (b) The meeting will be conducted by an Appropriate Manager who will consider all representations made by the University and the employee. In particular consideration will be given to any medical evidence supplied by either the employee or the University; whether the University has taken appropriate measures under the Ill Health Policy and the impact on the employee's ability to undertake the range of duties associated with their role; the delivery of the service of which the employee's role forms part; other members of the team or group in which the employee is employed.
- (c) On the basis of the information presented, the Appropriate Manager may decide:
 - (i) to dismiss the employee;
 - (ii) that there are further steps that either the University or the employee should take before termination of employment is considered, including where appropriate the reconsideration of further adjustments such as alternative employment; or
 - (iii) that the matter should be considered under an alternative procedure.
- (d) The decision may be given at the meeting and will in any event be confirmed in writing within 14 days of the meeting. The employee has a right of appeal against the decision.

7.3 Appeals

7.3.1 The employee has the right of appeal against a decision to terminate their employment under this procedure. Any appeal should be made in writing to the University Secretary within 28 days of the date of the letter confirming the decision

appealed against. The appeal must state the grounds of appeal.

- 7.3.2 The appeal will be heard by a panel of at least three, none of whom should have had any prior involvement in the case. The appeal panel shall include one member who is independent of the area (for example the Faculty or Division) in which the employee is employed and in the case of academic staff the appeal panel shall include a member of the academic staff from Senate.
- 7.3.3 The University Secretary or nominee from HR shall act as clerk to the appeal panel. The procedure shall be determined by the panel. The employee may present the appeal in person, attend hearings and be accompanied by a representative. The University may be represented by a member of staff or other representative.
- 7.3.4 The panel's decision is final. The panel shall give a reasoned decision in writing which shall be sent to the employee and to the Appropriate Manager.