



University of Wales
Prifysgol Cymru

University of Wales Fitness to Practise Procedure

Academic Year 2016-17

Fitness to Practise Procedure

Each Collaborative Partner Institution of the University shall inform candidates for University examinations prior to enrolment and at the commencement of each session of the following Fitness to Practise Procedure. A copy of this procedure should be included in any student handbook issued to candidates at the commencement of their scheme of study.

The Fitness to Practise Procedure is applicable to:

- * Candidates registered on any programme offered at a Collaborative Partner Institution of the University of Wales which leads directly to, or which satisfies a necessary condition, of a professional qualification and/or which gives the right to practise in one or more professions.

1. Introduction

On enrolling on a scheme of study offered by the University of Wales, candidates are required to comply with the regulations and procedures of the University. These regulations and procedures apply equally offsite and in various placement settings arising as a requirement of a validated scheme of study.

In addition to meeting the learning outcomes of a scheme of study candidates must satisfy the University that in respect of their health and conduct they do not constitute a risk to patients or professional clients and meet the requirements of professional bodies.

When necessary, action should be taken under fitness to practise procedures to:

- Protect present or future patients, service users or clients;
- Protect the Institution and subsequently the University against a legal suit brought by someone claiming to have suffered loss or harm as a result of a candidate proving after qualification to be unfit to practise;
- Ensure candidates do not waste time and money seeking a qualification for which they are not suited;
- Comply with the requirements of professional bodies.

In all cases a candidate will be presumed to be innocent of any allegation until proven otherwise.

Confidentiality will be maintained in all proceedings unless the Vice Chancellor directs otherwise.

2. Any candidate registered on a programme of study offered at a Collaborative Partner Institution of the University of Wales which leads directly to, or which satisfies a necessary condition of a professional qualification, and/or which gives the right to practise in one or more professions shall not engage in any conduct which renders him/her not fit to be admitted to and practise that professional or calling.

3. Examples of Circumstances that might render a Candidate Unfit to Practise

These examples are not exhaustive and other cases may fall within the general definition of unfitness to practise.

- acting in a violent manner on or away from University premises;
- exploiting the vulnerability of a patient or professional client to establish a sexual relationship;
- chronic drug or alcohol abuse;
- offences against the vulnerable, including children, the elderly and the mentally incapacitated;
- conviction of a criminal offence;
- failure to rectify behaviour that has been subject to any disciplinary actions under the University's regulations;
- any other circumstance which may call into question a candidate's fitness to be admitted to and practise their professional calling.

4. Preliminary Investigations

- 4.1 Each Collaborative Partner Institution has a duty to ensure its candidates' fitness to practise and will have its own internal monitoring arrangements.
- 4.2 Collaborative Partner Institutions should ensure that the attention of applicants is drawn to disciplinary and other regulations that are relevant to fitness to practise before initial registration.
- 4.3 Any concerns that a candidate enrolled on a programme coming under the scope of these regulations may have acted in a way, or may suffer from a health problem, which may render that student unfit to practise should be made to the Head of the Collaborative Partner Institution in writing. The person who makes the information known should identify himself or herself. In exceptional circumstances the Head of the Collaborative Partner Institution may allow the person offering the information to remain anonymous, providing that this will not prejudice proceedings.
- 4.4 On receipt of a report such as that described in 4.3 the Head of the Collaborative Partner Institution should normally review the case and decide as to whether the concerns raised should be dealt with under point 4.5 of this procedure within 5 working days.
- 4.5 Where it is considered that misconduct may have taken place or that relevant health problems exist, this shall be the subject of a preliminary investigation. The investigation will be carried out by a Panel comprising the Head of Department or Dean concerned or his/her nominee and a senior academic, where possible, from another department. The Head of the Collaborative Partner Institution shall nominate a Secretary to the Panel. The preliminary investigation should normally have taken place and a decision been reached within 20 working days of the receipt of the report by the Head of the Collaborative Partner Institution.

4.6 Preliminary investigations shall consist of an informal interview with the candidate by the Panel. No fewer than 5 working days in advance of the interview, the candidate shall be informed in writing by the Secretary to the Panel of the details of the alleged misconduct or health problems and shall be provided with a copy or details of any report which may have been provided to the Head of Department. The candidate will also be notified of the date, time and location of the interview and of his/her entitlement to be represented or accompanied by a friend, adviser or representative who may speak on their behalf but may not be a solicitor or barrister acting in a professional capacity. Any person accompanying and/or representing the candidate shall be asked by the Board to identify themselves at the beginning of the proceedings and may be invited by the Board during the hearing to speak in reference to the case. A candidate who intends to be accompanied and/or represented shall inform the Secretary of the name of the person accompanying and/or representing him/her in writing in advance of the meeting.

4.7 The purpose of the preliminary investigation will be to determine whether a *prima facie* case exists. The Secretary to the Panel shall provide a report of the Panel's findings detailing the outcome of the preliminary investigation.

4.8 Following such a determination the Panel shall have discretion to:

- dismiss a complaint;
- (where appropriate) issue a formal reprimand. This will be noted on the candidate's academic record. The reprimand will include a warning that from then on the candidate's conduct will be monitored closely and that this warning will be taken into account should any other disciplinary measures be imposed in response to any subsequent case of inappropriate conduct on his/her part;
- refer the case to a Fitness to Practise Committee.

4.9 Within 5 working days of the preliminary investigation taking place the candidate will be notified in writing of the decision reached by the Panel and any subsequent action to be taken.

4.10 At the same time the Secretary to the Preliminary Investigation Panel shall send to the Deputy Vice Chancellor (Ref: Fitness to Practise) of the University of Wales a copy of the report on the preliminary investigation and a copy of the letter sent to the candidate informing him/her of the decision and the penalty imposed, where appropriate.

5. Functions of the Committee on Fitness to Practise

5.1 The committee has the following distinct functions:

to consider cases of candidates who are registered on any programme which leads directly to, or that satisfies a necessary condition of, a professional qualification and/or which gives the right to practise in one or more professions which are referred to the committee on either of the following grounds:

- any conduct which may render that candidate not fit to be admitted to and practise that profession or calling

- any health problem which may render that candidate not fit to be admitted to and practise that profession or calling.

6. Establishment of a Committee on Fitness to Practise

- 6.1 On receipt of a referral by the Preliminary Investigation Panel, the Head of the Collaborative Partner Institution shall arrange for an appropriate Committee on Fitness to Practise to be convened as soon as possible, normally within 6 working weeks of the case being referred, and for a member of the institution's Academic Registry or equivalent to act as Secretary to the Committee.
- 6.2 Each Committee on Fitness to Practise shall normally consist of 3 members selected by the Head of the Collaborative Partner Institution from amongst the Academic Staff. Normally a Panel will comprise a senior academic relevant to the candidates' programme and two other members of the academic staff. Where possible these persons will not have been associated with the teaching of the candidate. Members of the Fitness to Practise Committee shall not have been involved in the preliminary investigation. The Chair of the Committee shall be designated by the Head of the Collaborative Partner Institution from amongst the three members of the Panel. Where it is deemed helpful to do so, an appropriately experienced person from a professional body may be appointed as an adviser to the Committee at the discretion of the institution concerned.
- 6.3 All institutions shall invite the Registrar of the University of Wales or his/her nominee to attend, as an observer, all meetings of the Committee on Fitness to Practise. The Academic Registry of the institution concerned shall supply to the Registrar of the University of Wales details of the allegations of unfitness to practise and any other information relevant to the meeting of the Committee.
- 6.4 Meetings of the Committee on Fitness to Practise shall normally be held on a campus of the institution concerned unless alternative arrangements have been agreed with the University.
- 6.5 As soon as reasonably practicable after the appointment of the Committee (and bearing in mind the University of Wales' expectation that such cases should be heard normally within 6 working weeks of the referral being communicated to the candidate) the Secretary to the Committee shall:
- (i) notify the Chair and members of the Committee on Fitness to Practise of the date, place and time of the meeting and supply them with copies of the referral and of any statements or documents;
 - (ii) inform the candidate of the date, place and time of the Committee's meeting and that he/she has the right to be represented or accompanied, to hear all the evidence, to call and question witnesses and to submit other evidence;
 - (iii) send to the candidate copies of statements of witnesses and of documents to be placed before the Committee, and offer the candidate an opportunity to indicate any statement or documents which may be in dispute.
- 6.6 Documentary evidence shall be sent by the candidate to the Head of the Collaborative Partner Institution prior to the date of the meeting and circulated to members of the Committee. Any further evidence made available on the date of the meeting may be presented to the Committee at the discretion of the Chair.

- 6.7 The candidate shall be required to inform the Secretary as to whether or not he/she intends to attend the meeting of the Committee. Should the candidate indicate that he/she does not wish to attend the meeting the Committee will proceed in his/her absence. In such a case the candidate may elect to be represented at the meeting. Where no response is received from the candidate there may be one postponement of the Committee pending to establish whether the candidate has received the communication.
- 6.8 A candidate who intends to be accompanied and/or represented shall inform the Secretary of the name of the person accompanying and/or representing him/her in writing in advance of the meeting. The candidate will have been notified of his/her entitlement to be represented or accompanied by a friend, adviser or representative who may speak on their behalf but may not be a solicitor or barrister acting in a professional capacity. Any person accompanying and/or representing the candidate shall be asked by the Board to identify themselves at the beginning of the proceedings and may be invited by the Board during the hearing to speak in reference to the case.
- 6.9 Should a candidate not attend the meeting of the Committee, having previously indicated to the Secretary that he/she would attend, the meeting shall proceed in his/her absence provided that all reasonable means have been taken to contact the candidate.

7. Procedure during the meeting

- 7.1 A member of the Preliminary Investigation Panel shall be appointed by the Head of the Collaborative Partner Institution to present the case against the candidate, calling such witnesses and presenting such evidence as he/she thinks fit. Additional documentary evidence in support of the case against the candidate may only be presented to the Committee on the day of the hearing, at the discretion of the Chair.
- 7.2 Members of the Committee on Fitness to Practise may ask questions of the candidate, the member of the Preliminary Investigation Panel presenting the case and of the witnesses. The candidate may question the witnesses called by the Preliminary Investigation Panel.
- 7.3 The candidate shall have the right to hear all the evidence brought against him/her, to call and to question witnesses, and to submit other evidence. Additional documentary evidence may only be presented to the Committee on the day of the hearing at the Chair's discretion. The Chair may invite contributions from the person accompanying the candidate; this person may not otherwise speak, or question witnesses or present other evidence.
- 7.4 Witnesses shall be concerned only with evidence relating directly to the case and shall normally withdraw after questioning. The Chair may wish to consider allowing witnesses to remain in the hearing throughout the submission of evidence. The agreement of both parties to this shall be obtained in advance of its occurrence.
- 7.5 When the submission of evidence and the questioning of witnesses are completed, all persons other than the members of the Committee, the Secretary and observer(s) from the University of Wales Registry, if present, shall withdraw.
- 7.6 The Chair of the Committee may agree to an adjournment of the hearing following a reasonable request from any party.
- 7.7 The Committee shall then consider whether a case for unfitness to practise may exist and if so what penalties should be imposed. When making a decision the Committee may take into consideration any penalty previously imposed on the candidate for breach of a University Regulation. The Committee may also take into consideration any medical or

character assessments and call for a background report from the Head of Department or any other records pertaining to the candidate.

8. Penalties available to the Committee on Fitness to Practise

8.1 On reaching a decision the Committee shall then consider whether any penalty should be imposed. Penalties may include:

- (i) permitting the candidate to continue with the programme under close supervision and/or specified conditions;
- (ii) suspending the studies of the candidate for a specified time with conditional return;
- (iii) recommending any other action considered appropriate and reasonable by the Committee to enable the candidate's successful completion of the remainder of the programme;
- (iv) requiring that the candidate's studies on a programme leading to a professional qualification be terminated, but recommending instead enrolment for an alternative academic qualification;
- (v) requiring that the candidate studies on a programme be terminated and that his/her enrolment as a student should cease.

9. Action to be taken following a meeting of a Committee on Fitness to Practise

9.1 Where it proves impossible to allow a candidate to continue his/her course of study because the candidate is deemed incapable of completing it and will therefore not be fit to practise, the student's registration may be suspended and every effort should be made to offer an appropriate alternative course of study.

9.2 Where registration is permitted to continue under specified conditions, the department will monitor progress and report any failure to meet the conditions set to the Secretary of the Committee on Fitness to Practise.

9.3 Any decision of the Committee on Fitness to Practise should be communicated to the candidate within 5 working days specifying any action to be taken.

9.4 At the same time the Secretary to the Committee shall send to the Vice Chancellor (Ref: Fitness to Practise) of the University of Wales a copy of the report of the meeting of the committee and a copy of the letter sent to the candidate informing him/her of the decision and the penalty imposed, where appropriate.

9.5 The Vice Chancellor or his/her nominee shall submit a report on the outcome of each case of unfitness to practise considered in accordance with the procedure set out above to the next available meeting of the Academic Board of the University of Wales.

10. Candidates Right to Appeal

10.1 Candidates shall have the right to appeal against the decisions of the Committee on Fitness to Practise. (See Appendix 1)

APPENDIX

Appeals by candidates considered under UoW Fitness to Practise Regulations

- 1 The University is only prepared to consider appeals which are based on one or both of the following grounds:
 - 1.1 irregularities which occurred under the Fitness to Practise Procedure process, which are of such a nature as to cause reasonable doubt whether the Committee would have reached the same decision had they not occurred;
 - 1.2 exceptional personal circumstances which were not known to the Committee at the time that the candidate's case was considered, and which can be shown to be relevant to the suggestion of unfitness to practise. (In appeals based on these grounds the appellant must show good reason why such personal circumstances were not made known to the Committee on Fitness to Practise before its meeting. Where a candidate could have reported exceptional personal circumstances to the Committee prior to its meeting, those circumstances cannot subsequently be cited as grounds for appeal.)
- 2 Any appeal against a decision of a Committee on Fitness to Practise (including any penalty imposed) shall be sent in full, in writing to the Vice Chancellor (Ref: Appeals), University of Wales Registry, King Edward VII Avenue, Cathays Park, Cardiff CF10 3NS, and must reach him/her not later than one month after despatch to the candidate of the Committee's decision. Simple notice of appeal given in writing by a candidate within the above deadline shall not be deemed to constitute an appeal proper and shall not be accepted. The Chair shall, at an Appeal Board meeting, have discretion to declare inadmissible any matter introduced by the appellant, or by any member of staff or student accompanying the appellant, if he/she deems it not directly related to the contents of the appeal previously lodged in writing within the stipulated deadline.
- 3 On receipt of an appeal, a University Officer shall acknowledge receipt, normally within three working days and, where appropriate to the circumstances of the case, consult the Chair of the Committee on Fitness to Practise and/or the Head of the Collaborative Partner Institution concerned. The appeal will then be referred to the Adjudication Panel, for consideration. The appellant shall be provided with a written progress report within 25 working days.
- 4 The Adjudication Panel or his/her nominee, is required to disallow an appeal normally within three months of its receipt:
 - 4.1 which is based on factors which were known to the Committee on Fitness to Practise when the penalty was imposed;
 - 4.2 which introduces information which was known to, and could have been reported by, the candidate prior to the meeting of the Committee.
- 5 If it is decided by the Adjudication Panel that there is a *prima facie* case to be considered, he/she may choose:

- 5.1 to refer the case back to the relevant Examining Board for further consideration;
- 5.2 to refer the case to a full Appeal Board for decision.
- 6 The Appeals Board shall be made up of two external members.
- 7 An appellant shall be offered a personal hearing by the Appeal Board and shall accordingly be informed in advance of the time and date of the meeting. The appellant may be accompanied by a member of the academic or welfare or advisory staff of the Institution concerned or by a student or officer of the Students' Union at the Institution concerned, but not by any other individual. Any person accompanying the appellant shall be asked by the Board to identify themselves at the beginning of the proceedings and may be invited by the Board during the hearing to speak in support of the case. The appellant may not send any other person to an Appeal Board in his/her stead.
- 8 The Institution concerned shall be invited to send a member of staff to attend the hearing and, at the invitation of the Chair of the Appeal Board, to contribute to the hearing. The Institution Registry shall accordingly be informed in advance of the time and date of the meeting and shall be provided with a copy of the candidate's application for appeal.
- 9 The Appeal Board shall base its decision on the evidence of the appellant's submission and the testimony of the Chair of the Committee on Fitness to Practise concerned, together with any further evidence which it considers relevant.
- 10 The decision of the Appeal Board, and recommendations or advice where appropriate to the circumstances of the case, shall be conveyed by the Vice Chancellor of the University, or nominee as soon as possible to the appellant, the Chair of the Committee on Fitness to Practise and to the Head of the Collaborative Partner Institution concerned.
- 11 The Appeal Board shall be empowered to take one of the following decisions:
 - 11.1 to reject the appeal;
 - 11.2 to disallow the original penalty and to refer the case back to the original Committee on Fitness to Practise for a review of the penalty imposed;
 - 11.3 to require a new Committee on Fitness to Practise to re-hear the case.
- 12 *Where a new Committee on Fitness to Practise is required to re-hear a case, the membership of that Committee should be entirely different from that of the previous Committee. The new Committee shall not be provided with any evidence of any penalty imposed by the previous Committee, or details of any other matter discussed by the previous Committee or Appeal Board, other than that it is re-hearing a case on appeal.*

An obligation to hear the case on the basis of the facts presented before them at the hearing and not in the light of anything that they may have heard or discovered outside the Committee, shall be framed within any Terms of Reference applying to the Committee members.

- 13 The decision of the Appeal Board shall be final, and the matter shall, thereafter, be regarded as closed. There shall be no discussion of the decision of the Appeal Board with the appellant or any other person.
- 14 If an appeal is upheld, the Vice Chancellor or nominee, shall in consultation with the Chair of the Examining Board, arrange for the publication of such supplementary pass-list as may be necessary.
- 15 If, as a consequence of a successful appeal a candidate is regarded as having qualified for a degree, such a candidate shall be admitted to that degree at the next succeeding Degree Congregation. Alternatively, the Vice-Chancellor shall have authority to deem such a candidate to have been admitted to his/her degree provided all other necessary conditions for his/her admission have been met.
- 16 The Vice-Chancellor shall also have authority to deem a candidate who has already been admitted to a degree to have been admitted to a different class of award if, following a successful appeal, the Examining Board decides that the candidate's degree classification shall be amended. In such cases, the Vice Chancellor or his/her nominee shall issue a replacement certificate upon the return by the candidate of the original certificate.
- 17 Where applicable, appropriate arrangements will be made in respect of candidates who, following successful appeal, are deemed by an Examining Board to have qualified for the award of a certificate or diploma.
- 18 The Appeal Board may make recommendations for consideration by the Regulations and Special Cases Committee or the Academic Board as appropriate on any matters arising from the consideration of appeals.
- 19 Pursuant to the Higher Education Act 2004, the Office of the Independent Adjudicator for Higher Education (the OIA) has been designated by the National Assembly for Wales from 1 January 2005 as the operator of an independent scheme in Wales for the review of candidate complaints.

If the candidate is dissatisfied with the outcome of the appeal, they may be able to apply to the Office of the Independent Adjudicator for Higher Education (OIA) for review, providing that the complaint taken to the OIA is eligible under its rules.

Only once all relevant University of Wales procedures have been exhausted may a candidate apply to the OIA for a review of the complaint.

Should the candidate decide to make a complaint to the OIA, the Complaint Form must be received by the OIA within twelve months of the date of receipt of the Completion of Procedures letter from the University.

The OIA's leaflet, *An Introduction to the OIA for candidates*, can be downloaded from http://www.oiahe.org.uk/media/42715/oia_intro_leaflet_16pp.pdf

Alternatively, a form can be obtained by phoning or writing to the OIA. A copy of this letter should be sent to the OIA with the OIA Complaint Form.

Guidance on submitting a complaint to the OIA and the OIA Complaint Form can also be found on the OIA's website www.oiahe.org.uk. A candidate may also wish to seek advice from the appropriate candidate's' Union about taking a complaint to the OIA. Please note that the OIA will normally only review issues that have been dealt with through the University's internal procedures.

MONITORING AND EVALUATION

The nature, incidence and outcomes of complaints will be regularly monitored and an annual report made to Academic Board in this respect.