

REGULATION 36 PROCEDURE FOR DISMISSAL ON GROUNDS OF SOME OTHER SUBSTANTIAL REASON OR STATUTORY BAR

1. INTRODUCTION

- 1.1 This Procedure sets a procedural framework for considering the dismissal of members of staff on grounds other than those for which other specific procedures have been adopted by the University. Its purpose is to ensure that such cases are considered fairly, that (save as otherwise specified in this Procedure) no decision is taken unless the member of staff has had the opportunity to make representations regarding his/her proposed dismissal, and to provide for a right of appeal.
- 1.2 This Procedure applies when it is proposed to terminate the employment of any member of staff for reasons *other* than :
- (i) misconduct;
 - (ii) performance;
 - (iii) medical incapacity or ill health
 - (iv) redundancy
 - (v) non-confirmation in post at the end of a probationary period.
- 1.3 Examples of proposed dismissals to which this Procedure may apply are:
- (i) the proposed dismissal of a member of staff who has been employed to cover the absence of a member of staff (the substantive post holder) - for example during the substantive post holder's absence on research or sabbatical leave, secondment, or maternity leave - on the basis that the substantive post holder is due to return to his/her employment or if the substantive post holder is not so returning, that the substantive post is to be advertised;
 - (ii) where the member of staff's employment cannot be continued without the University or the member of staff contravening any statutory duty or restriction. In such cases, the University may need to terminate the employment with immediate effect, in which case the stages of the Procedure set out in paragraph 4.1 to 4.4 below will not apply, but the member of staff shall still have the right to appeal against his/her dismissal.

2. APPLICATION OF THE PROCEDURE

- 2.1 This Procedure applies to all staff including Associate Tutors and other staff contracted to work on a variable hours basis, but excluding casual staff and references to "member of staff" or "staff" shall be interpreted accordingly. However, there will be some differences of procedure in cases where a member of staff is employed on a fixed term contract of less than one year.
- 2.2 The University acknowledges that there may be circumstances where the proposed dismissals to which this Procedure applies need to be the subject of collective consultation with the trade union representatives of the affected members of staff

and that nothing in this Procedure shall preclude such collective consultation taking place.

3. RIGHT TO BE ACCOMPANIED

- 3.1 Members of staff may be accompanied at formal meetings or hearings under this Procedure by a colleague employed by the University or a trade union representative. The companion will be able to confer with the member of staff during the meeting or hearing and will be allowed to address the meeting or hearing in order to put forward and sum up the member of staff's case, respond on the member of staff's behalf to any view expressed at the hearing and ask questions of clarification. The companion will not be able to answer questions on the member of staff's behalf.
- 3.2 Should the chosen companion be unavailable to attend the meeting or hearing on the first notified date, the member of staff shall immediately request a postponement by proposing an alternative date and time, which should be within five days of the date originally notified. Where this is not possible, the member of staff shall choose an alternative person to accompany him/her to the meeting or hearing.
- 3.3 The member of staff and companion shall make every effort to attend meetings or hearings under this Procedure. It is the member of staff's responsibility to notify his/her chosen companion of the details of the meeting or hearing including the date, time and location of the meetings as well any relevant documentation relating to his/her case.
- 3.4 If a member of staff or his/her companion becomes unable to attend any meeting or hearing for reasons that were unforeseeable at the time of arranging the meeting, the member of staff will be notified of a new date, time and location for the meeting. If a member of staff or his/her companion fails to attend a meeting or hearing without good reason, the University reserves the right to proceed with the meeting or hearing in the absence of the member of staff or his/her companion.

4. PROCEDURE

- 4.1 The Director of Human Resources or his/her delegate will write to the member of staff setting out the reasons for the proposed termination of the member of staff's employment and invite him/her to a meeting with a nominated person (accompanied by an HR representative) to discuss that proposal. The member of staff will be provided with copies of any relevant documentation to be considered at the meeting.
- 4.2 The member of staff will be advised of his/her right to be accompanied under paragraphs 3.1 to 3.4 to above.
- 4.3 At the meeting, the reason for the proposed dismissal will be explained to the member of staff, who will have the opportunity to respond before any decision is taken.
- 4.4 Following the meeting, the member of staff will be informed of the decision taken. If his/her employment is terminated, he/she will be informed whether the dismissal is on notice or with a payment in lieu of notice, and will be advised of his/her right of appeal.

5. APPEALS

- 5.1 A member of staff who wishes to appeal against a decision taken under paragraph 4.4 above should do so in writing to the Director of Human Resources within 10 working days of receipt of the decision. The member of staff should set out the grounds of his/her appeal in full.
- 5.2 An appeal shall usually be a review rather than a re-hearing of the case.
- 5.3 The person whose decision is being appealed shall be asked to provide written comments on the grounds of appeal. A copy of these written comments will be provided to the member of staff in advance of the appeal hearing.
- 5.4 (a) Where the **dismissal is due to the fact that the appellant has been covering for the absence of a member of staff** (the substantive post-holder) who has returned to work, the appeal will normally be heard by a senior manager appointed by the Vice-Chancellor (or nominee) and they will be accompanied by a Human Resources representative. The person whose decision is being appealed will also be present at the hearing.
- (b) For **all other cases of dismissal on grounds not covered by other specific procedures**, the appeal will be heard by an Appeals Panel appointed by the Vice-Chancellor (or nominee), and consisting of two independent senior managers (one of whom shall be the Chair) and an independent employment solicitor appointed by the University (who shall not be employed by the University nor act for the University other than in their capacity as a member of a panel for appeals against dismissal. In the case of the independent peer (from the staff), independent shall have the meaning of not having had prior involvement in the case. In the case of the independent person external to the University, independent shall have the meaning of having no involvement with the University which might be prejudicial to impartial judgement (and for the avoidance of doubt, any payment by the University to such external person in respect of their time incurred in respect of the appeal shall not be deemed to prejudice their impartial judgement). In the case of an appeal of an academic member of staff, one of the two senior managers shall be a Head of School from another School or other academic peer. The panel will be supported by a Human Resources representative. The person whose decision is being appealed will also be present at the hearing.
- 5.5 At the Appeal Hearing the member of staff shall present his/her grounds of appeal and the person who made the decision appealed against shall respond. Members of the Appeal Panel may question anyone present at any stage. After each side's case has been presented, the Appeal Chair will ask the member of staff and then the person who made the decision appealed against to sum up. The Hearing will then be adjourned while the facts of the case and the representations made are considered and a decision is reached.
- 5.6 The Appeal Chair shall produce a written decision normally within 10 working days of the Appeal Hearing which will be sent to the member of staff and his/her representative.