

# Fitness to Practise Procedure

Any student subject to Fitness to Practise procedures should be advised to make contact with the Student Advice Centre <http://www.susu.org/advice-centre> as soon as possible, so that they can receive independent, confidential advice and arrange for representation.

## 1. Academic Issues (including progression)

- 1.1 Student progress from one year to the next will depend upon the successful completion of all pre-determined module and practice learning outcomes.
- 1.2 The requirements for academic progression are outlined in the regulations for all pre-registration and undergraduate awards which can be found on the University calendar at:  
<http://www.calendar.soton.ac.uk/sectionIV/progression-regs.html>
- 1.3 The regulations for higher degrees can be found at:  
<http://www.calendar.soton.ac.uk/sectionV/sectV-index.html>
- 1.4 Any student breaching regulations related to disciplinary procedures may be reviewed under the 'Fitness to Practise' policy to determine if there are implications for their continuation on their programme. This includes any student who breaks the law. Students found guilty of violent behaviour, drug dealing or who engage in repeated episodes of intoxication will automatically be referred to a Fitness to Practise panel.

## 2. Health Related Issues

- 2.1 The majority of students who become ill during their programme of study regain their health with support from their GP or health care provider. This may entail a period of suspension from study, and such situations will be dealt with under the Fitness to Study policy and then the Return to Study procedure (<http://www.calendar.soton.ac.uk/sectionIV/fitness-study.html>). Several Faculties have health procedures designed to protect service users and the public including other students whilst, at the same time, helping the student access the most appropriate care and supervision. In some instances the Fitness to Practise Policy is used to reduce the potential of risk to others.
- 2.2 Students are required to take responsibility for their own health. Students applying for programmes leading to a regulated profession must declare health problems which could pose a risk to themselves or others on application. Health problems that could pose a risk to themselves or others and which arise after the commencement of the programme must be declared and managed.. Students may not rely on their own risk assessment but must be guided by the advice of a relevant healthcare professional who will, assess and make recommendations to Faculty regarding the student's Fitness to Practise, and required reasonable adjustments, whilst maintaining medical confidentiality.
- 2.3 The University initiates Fitness for Practise procedures if a student has been identified as having a health problem that has affected or has the potential to affect their performance or when a student wishes to return from a period of suspension from a programme following a period of ill health. Where the suspension to studies was dealt with under the University's Fitness to Study policy <http://www.calendar.soton.ac.uk/sectionIV/fitness-study.html> for students causing significant concern and/or presenting risk, the Fitness to Study policy should be followed in conjunction with this policy where Fitness to Practise concerns arise.

## 3. Investigating Concerns Relating to Students' Fitness to Practise

- 3.1 If the identified concern is regarded as potentially constituting serious professional misconduct, the student may be suspended from the programme by the Dean of Faculty without prejudice and pending further investigation and initiation of the 'Fitness to Practise' procedure. The student will be informed about the suspension and reasons behind it in writing normally within 5 working days and will receive a copy of the Fitness to Practise policy and procedure.
- 3.2 If the identified problem could be regarded as potentially constituting a risk to others, the student may be suspended from practice without prejudice and pending further investigation. The student

will be informed about the suspension and reasons for it; in writing; normally within 5 working days. They will also receive a copy of the Fitness to Practise policy and procedure.

- 3.3 Whenever there is significant concern about a student's wellbeing or there is a perceived risk to self or others regarding Fitness to Practise the student should be referred to First Support, Student Services for immediate emotional support and intervention.

#### **Gathering Evidence**

- 3.4 Where a student is required to make a statement, this should be undertaken with support from an appropriate professional. Students will be encouraged to approach the Students' Union Advice Centre for advice and guidance on the Fitness to Practise procedure.
- 3.5 When a concern about a student's behaviour, health and/or professional conduct is raised, this will normally be discussed by a named Senior Academic and the students academic/pastoral Tutor (or nominated alternative) to assess what information has been received and, if appropriate, the concern will be passed to 'an investigator', who will be appointed by the Dean of Faculty.

#### **Critical Incident Investigator**

- 3.6 The investigator will be a suitably experienced member of staff in the Faculty staff who will not be, nor has ever been, the student's academic/personal tutor. The role of the investigator is to gather further evidence on the concern for consideration by the Critical Incident Panel.
- 3.7 The investigator should keep a record of the investigation for presentation to the Fitness to Practice panel. They should consider the evidence based on the balance of probability that the student's Fitness to Practise is impaired.
- 3.8 If the Investigator decides the concern regarding the behaviour, health and/or professional conduct is sufficiently serious and calls into question the student's ability to continue on the programme, or their Fitness to Practise after graduation, the case should be referred directly to a Fitness to Practise Panel without the need for a Critical Incident Panel..
- 3.9 The investigator should also consider the advice on sanctions in this guidance.
- 3.10 Should the Critical Incident Panel consider the case further, it is likely that the investigator will be required to present the report and be prepared to answer questions put by the Faculty. Having taken on the role of investigator and potentially case presenter, the investigator should not be invited to be a member of a decision making committee (including a Fitness to Practise Panel) concerning the case.

### **4. Critical Incident Panel**

- 4.1 If the Investigator has concerns about the student's Fitness to Practise, the Investigator will provide a report to an independent Director of Programmes who will decide on whether the criteria has been met to constitute a Fitness to Practise Panel.

#### **Outcomes**

- 4.2 The Critical Incident Panel will include discussion and assessment of the available evidence on individual matters of student misconduct and behavioural patterns that are of concern with regard to 'Fitness to Practise'. They will recommend one of several outcomes:
- a) The **matter is not sufficiently serious** to warrant any specific action.
  - b) The matter is **of concern but it is deemed to be reversible with additional training** (eg communication skills or racial equality training). If this course of action is taken, the student will be informed that they will remain under regular review by the academic/personal tutor until there is clear evidence that the problem has been resolved.
  - c) The **matter is of serious concern**. This is referred to the 'Fitness to Practise' panel.
- 4.3 Once the **Critical Incident Panel** has made a decision it will be communicated to the student, their academic/personal tutor normally within 5 working days.
- 4.4 Where a report has been produced, and /or notes taken at meetings during any investigation, the student must receive a copy normally within 5 working days. The student will be required to review the report at this stage.

### **5. Critical Incident Panel**

#### **5.1 Constitution**

- Three academic members of staff to include:
- Programme Lead

- Academic/personal tutor
- 2 other academic staff as nominated by a Director of Programmes

## **6. Fitness to Practise Panel**

### **6.1 Constitution**

- Associate Dean (Education and Student Experience) (or other senior nominee). (Chair)
- Associate Dean (Education and Student Experience) (or other senior nominee) from another Faculty with Fitness to Practise policy.
- Professional practitioner from practice - (or other senior nominee).
- A representative or a report from Occupational Health (if appropriate);
- Academic representative from same field of practise
- Expert advisors as appropriate to the issue eg Student Support Services, MIND, Disability Rights Commission

### **6.2 Additional visitor (not involved with the decision making of the panel)**

- A further senior member of Faculty staff may attend to observe, this is undertaken in the spirit of staff development and training. It must be ensured that there is no conflict of interest when inviting observers. The student will be advised and have the opportunity to refuse if an observer is to be present during the panel proceedings.

### **Panel Responsibilities**

### **6.3 The role of the 'Fitness to Practise' panel is to consider whether a student's behaviour, health and/or professional conduct raises a serious or persistent cause for concern regarding their ability to continue on their programme or practise after graduation. The Panel will balance public safety with the interests of the student, and the need to maintain trust in the particular profession.**

### **6.4 The Panel will review the accumulated evidence related to the case and will consider this in the context of any pattern of behaviour, health and/or professional conduct problems over the duration of the undergraduate or postgraduate programme together with any earlier history of relevant problems. The 'Fitness to Practise' panel will normally interview the student.**

### **6.5 Prior to the 'Fitness to Practise' panel, the student will be informed of the basis for concern, and all relevant documentation, including the notes of the preliminary discussions (referred to) will be sent to the student and the Fitness to Practise panel normally no less than 5 working days before the date of the Fitness to Practise panel meeting.**

### **Student Responsibilities**

### **6.6 Students are strongly encouraged to attend the meeting of the 'Fitness to Practise' panel where their case is being heard. This is to allow the Panel to raise questions with the student and for the student to represent him/herself. A panel can proceed without the students should (s)he choose to be absent.**

### **6.7 Students are advised to contact the Students' Union Advice Centre for appropriate advice and representation on the Fitness to Practice policy and procedure. Appropriate documentation will be circulated to the Panel and will also be copied to the student normally 5 working days before the date of the Fitness to Practice Panel meeting. Both the student and the SU advisor will have access to all panel documentation.**

### **6.8 It is important that the student is made aware that he or she can be accompanied by a third party. This may be someone from the Students' Union, a relative, a friend, a lawyer, or a professional representative e.g. from a medical, dental or pharmaceutical defence organisation or a trade union – including the British Medical Association or the Royal College of Nursing or another student. The 'friend' or advocate will not be a member of the Panel.**

### **Evidence**

### **6.9 The Panel will review the accumulated evidence related to the case in the context of any behavioural patterns or problems during the student's programme as a whole as well as any earlier history of relevant problems. The Panel will consider the evidence on the balance of probabilities that the student's judgment is impaired using the civil standard of proof. Due regard will be given to the sanctions that can be imposed by the Panel.**

### **6.10 The evidence will be provided by:**

- the Faculty critical incident panel meeting that considered the issue, including the report and evidence provided to them by the investigator
- the student - the student is free to supply testimonials on their behalf, and should be encouraged to provide any documentation that could help explain their actions.

- expert advisors if called - where it is necessary to obtain further information, for example from the student's general practitioner or health specialist, the student's written consent must be received

- 6.11 It is the responsibility of the presenter to ensure evidence has been provided to substantiate the report being presented, at least two weeks in advance of the Fitness to Practise meeting.
- 6.12 It is the responsibility of the Chair to ensure evidence has been provided to substantiate the report being presented, in advance of the Fitness to Practise meeting.
- 6.13 Mitigating factors will be considered by the panel when deciding on the outcome and only when a student's Fitness to Practise has been judged to be impaired.
- 6.14 Normally proceedings of the Panel will remain confidential with the exception of its decision. The decision of the Panel will be communicated in writing to all parties normally within 5 working days (the Report from the Fitness to Practise Panel meeting will be distributed to all parties normally within 5 working days)

### **Outcomes**

- 6.15 Having considered the evidence, the Panel will recommend either:
- a) the student receives no warning or sanction; a copy of the panel report and decision are located in the student's file.
  - b) the student receives a warning as there is evidence of misconduct but the student's Fitness to Practise is not impaired; The purpose of a warning is to give a formal indication to a student that their conduct has departed from the standards expected of students on professional programmes and if repeated sanctions will be imposed .
  - c) the student receives a sanction as their Fitness to Practise is judged to be impaired. The sanctions are as follows:
    - c1) **conditions are imposed.** The purpose of a sanction is not to punish the student but to protect them and others. Conditions / undertakings will only be applied if the Panel agrees that the student has shown insight into their problem(s) and should respond positively to the saction imposed..
    - c2) **suspension from the programme** Suspension prevents a student from continuing with their registration on the programme for a set period and from graduating at the expected time. When a student is suspended, then conditions will also be set for their return to the programme.
    - c3) **termination of the student's place on the programme.** Termination of a student's studies will occur when the Panel believes that this is the only way to protect them and others. Termination of studies (ie expulsion) is applied if the student's behaviour, health or professional conduct is considered to be incompatible with their continuation on the programme.
- 6.16 The Panel will ensure that the warnings or sanctions imposed are appropriate, proportionate, workable and measurable.
- 6.17 At the discretion of the Panel, proceedings may be adjourned for a period not exceeding 20 working days in the first instance, and its findings or decision deferred accordingly. This will be clearly communicated to the student.
- 6.18 If a concern is upheld, the student will not be permitted to register on other professional programmes within the University of Southampton and may be unable to register on similar programmes elsewhere. In addition, the relevant PSRB will be informed.
- 6.19 The purpose of the outcomes is to protect the student and others,. The Panel will work through the different outcomes from the least to the most severe (as set out above). The Panel will only consider a harsher outcome if they are satisfied that the less harsh warning or sanction is not sufficiently strong to protect the public.
- 6.20 In making the decision on whether a warning or a sanction should be made, the Panel will ensure that it is proportionate to the concern and that it is likely to effectively address the concern that has been raised.

- 6.21 If the Panel makes a decision to impose a sanction, they will give the reasons for this sanction being imposed and specify the timeframe for it to be met. The Panel will also set out any conditions that apply.
- 6.22 A student who receives a sanction or a warning (short of expulsion from the programme) will be supervised or monitored in a manner that is appropriate to the sanction / warning given.
- 6.23 The recommendation of the relevant Panel, and any findings of fact, will be conveyed to the student and other parties normally within 5 working days, and will in any event be conveyed to the student in writing.
- 6.24 The outcome from the Panel will be set out in writing and will include:
- the outcomes of the case
  - the reasons for the decisions being made
  - any warning or sanction that has been given and its purpose
  - any mitigating circumstances that have been taken into consideration when determining the warning or sanction
  - the expected duration of the warning or sanction
  - whether or when their Fitness to Practise will be considered again in a formal hearing
  - whether the outcome must be declared to a professional/regulatory body at the point of registration and/or to other organisations such as employers or postgraduate deaneries
  - how long the sanctions or warning will remain on the student's record.
- 6.25 After the 'Fitness to Practise' panel, a decision will be reached, and this will be communicated in writing to the student normally within 5 working days. The decision letter will provide full reasons for the decision and details of the appeal process will be provided.
- 6.26 Where a student has attended, they will have the opportunity to approve the notes, and confirm that they are correct record of what was said. A hard copy signature confirming this should be obtained, and attached to the record of the interview. A signature of the note taker is helpful and provides further confirmation of the process that was followed.

## **7. Appeals procedure**

- 7.1 Students whose programme has been terminated, or who want to appeal against the decision of the Fitness to Practise Panel, should write to the Faculty Education Manager according to the University's Regulations Governing Academic Appeals by Students at <http://www.calendar.soton.ac.uk/sectionIV/student-appeals.html>. Students are encouraged to seek support and guidance from the Students' Union Advice Centre.

## **8. Confidentiality**

### **8.1 Data Protection Issues**

All University staff are governed by the requirements of the Data Protection Acts 1984 and 1998. Under these acts, all data relating to a person's physical or mental health is regarded as sensitive personal data. The University's Data Protection Policy contains guidance on the use of sensitive personal data and should be followed in any Fitness to Practise procedures.

### **8.2 Confidentiality**

- a) In all cases where, in the member of staff's judgment, it would be in the student's best interests to disclose sensitive information (e.g. so that appropriate support may be provided) the student's informed consent should be obtained where possible. It will be necessary to inform the student why there might be a need to disclose sensitive information, who will have access to this information and the likely consequences of giving or withholding consent (e.g. additional support strategies such as reasonable adjustments including additional examination arrangements). Once consent has been obtained, it is the responsibility of the person passing on the information to ensure it is done on terms agreed with the student.
- b) If the student chooses not to provide their consent this decision should be respected. In this scenario, the implications of non-disclosure in terms of additional support should be made clear. However, there are occasions when the student's consent is withheld, or it is impracticable to try to obtain it, when confidentiality may be broken, these include;
- When the student's mental health has deteriorated to the extent of threatening his/her personal safety
  - When the student is at risk of serious abuse or exploitation
  - When the student's behaviour, health and professional conduct is or is likely to adversely affect the rights and safety of others

- Where the member of staff would be liable to civil or criminal procedure if the information were not disclosed

## **9. Patient Safety**

Information will be shared with others in circumstances where there may be a risk to others if information were withheld, unless the case is dismissed. Referral to Fitness to Practise procedures will be made in all exiting student references.

## **10. Enhancement**

Where there is an opportunity for the enhancement of care delivery, anonymised feedback will be given to the organisation concerned and relevant stakeholders.

A report of the outcome will be made to the relevant Head of Academic Unit and Director of programme.

## **11. Staff Development**

11.1 The competence of the panel, and the related training, includes:

- knowledge and application of the Faculty's Fitness to Practise policy and related rules and regulations
- knowledge of and ability to apply the requirements set down in the Fitness to Practise policy, PSRB requirements and other related guidance
- familiarity with PRSB Fitness to Practise procedures
- fair-mindedness and a non- prejudicial approach
- knowledge of when and how to seek appropriate expert advice.
- knowledge and application of legal requirements and good practise related to equality and diversity.
- knowledge of OIA decisions to enhance Fitness to Practise complaints.
- Anonymised case studies will be used in external and University learning (completed/spent cases only, please see terms)

<sup>1</sup> Definition: Practise = all practise related to a professional registration.

### **Revision History**

Devloped by cross-faculty Fitness to Practise Working Group 2011-12.

Approved by Senate 13 June 2012

## FITNESS TO PRACTISE FLOW DIAGRAM

## Overarching Principles: Parity and practice, Transparency and Fairness

