

FITNESS TO PRACTISE POLICY (From August 2017)

1. Purpose

The Fitness to Practise Procedure relates to professional misconduct and professional unsuitability of students whose professions are regulated by professional bodies. It delivers information on what types of activity constitute fitness to practise and on the processes which must be followed in dealing with allegations of professional misconduct and/or professional unsuitability and the penalties which may be applied where such allegations are proven.

It sets out a clear and impartial process for dealing with allegations relating to student professional misconduct and/or professional unsuitability within a reasonable timescale having due regard to the spirit of natural justice. The Procedure is a safeguard for public protection and public safety and is informed by the obligation on practitioners to comply with those regulatory bodies' Professional Codes of Practise.

The Procedure should be applied in instances where, in the light of concerns or allegations of professional misconduct and/or professional unsuitability, consideration need be given not only to the student's status as a student of the University but also to their membership of, or entry to, their profession.

The University is committed to upholding the highest ethical standards and to carrying on its activities fairly, honestly, openly and in compliance with all applicable laws. As members of the University of Sunderland community all students are expected to conduct themselves with due regard for its good name and reputation and to comply with the University's current Regulations, Policies, Procedures and Codes of Practise.

2. Scope and Definitions

The Fitness to Practise Procedure relates to all staff and students whose professions are regulated by the Nursing and Midwifery Council (NMC), Health and Care Professions Council (HCPC), General Pharmaceutical Council (GPhC), the British Association of Counselling & Psychotherapy (BACP), the National Youth Agency (NYA) or other programmes governed by a professional regulatory or statutory code and those students on teacher education programmes. These regulatory bodies maintain a register of every eligible practitioner to ensure that the public is protected by only engaging with individuals who meet specific professional standards.

The University reserves the right to amend the Fitness to Practise policy in the light of government legislation, changes to professional body requirements or operational

experience.

All decisions related to a student's fitness to practise are made with due regard to relevant regulation and guidance, examples of which are included in Appendix Three.

3. Overview

a) Higher Education Institutions are required to monitor good health, character, discipline, standards of conduct and performance on application and throughout all pre-registration / qualification programmes and other programmes leading to professional qualifications.

b) the University has a responsibility for the fitness to practise of students following programmes which lead to professional qualifications and entitle the individual to register (either provisionally or fully) with a statutory professional body and / or to practise under license.

c) the University has a duty to both the student and to the public to ensure that any risk of harm is minimised on programmes that require students to undertake external placements and/or work based practise.

d) an offer of a place to study on some programmes offered by the University will be conditional upon the applicant being deemed fit to practise.

e) Deans of Faculty must ensure that students are informed of the seriousness of maintaining professional standards and the regulations associated with the programme of study.

f) the fitness to practise of students on professional programmes will be assessed throughout the length of the programme. If at any time there are any concerns over the student's fitness to practise the University is required to investigate and address the issue. If a fitness to practise issue arises but then a student withdraws from the University, that fitness to practise case should be resolved before the withdrawal is signed off by the University.

g) the University is responsible for ensuring that students meet the relevant professional standards in addition to academic standards. The University will be required to sign a declaration confirming that an individual is a safe and suitable entrant to the given profession and is 'Fit to Practise'.

h) the student may be required to declare any issues of fitness to practise, (ongoing issues or issues that have been dealt with and investigated) to the professional body on registration.

i) the University may be required to report issues of fitness to practise to the relevant professional body and if applicable to the student's employer and the Disclosure and

Barring Service (DBS).

4. Operating Principles

a) the University will manage issues that may arise in this context and which may impact upon a student's suitability to continue with their programme of study or to be recommended for a license to practise in a particular profession.

b) the University works in partnership with professional practitioners and Fitness to Practise Panels include relevant professional representation.

c) the Faculty Fitness to Practise Panel take place to investigate and respond to such issues and to make sure that the relevant Professional / Statutory body requirements are met in an appropriate and timely manner.

d) the University will need to consider circumstances where members of University of Sunderland staff or work based placement staff, or other appropriate individuals, have concerns regarding a student's fitness to practise with regard to issues which include (but are not limited to):

- conduct contrary to professional regulatory body guidance
- conduct contrary to the work based placement code of conduct.
- inappropriate behaviour for example abuse of drugs or alcohol
- breaches of professional responsibility e.g. breach of confidentiality
- breaches of the University of Sunderland Code of Conduct
- breaches of University Regulations/Academic Misconduct [particularly where this relates to attempts to deceive or gain unfair advantage]
- failure to declare a Criminal Conviction/ caution
- an enhanced DBS certificate with undeclared information
- a recently acquired conviction / caution or an on-going or pending criminal investigation
- ill health where this may be relevant to the profession

e) the University of Sunderland Fitness to Practise procedure is based on standards set by statutory regulatory bodies and upon the principles of natural justice. If concerns are raised regarding a student's fitness to practise, the student will be informed of the concerns and the actions of the University in writing within ten working days, and will also be given a copy of this Procedure. Students will have access to the evidence (except where disclosing any part of such evidence may be in contravention of the Data Protection Act 1998), and will be able to respond formally to those concerns.

f) University of Sunderland staff with professional registration involved in investigating concerns about fitness to practise or as members of Fitness to Practise Panels are independent for this purpose.

g) information collated will be treated as 'sensitive, confidential data' in line with University Policy and the Data Protection Act 1998 and information arising from a Fitness to Practise case will only be shared with those staff necessary for the process to

function, or for outcomes to be achieved.

h) statistical data and lessons learned from casework will be collated by the Academic Registry, and reported annually to the Academic Board, in order to monitor policy, process and issues of principle and to share good practise.

i) students can obtain individual advice and support from the Sunderland Students' Union Advice Team on the ground floor of Edinburgh Building, or via su.studentadvice@sunderland.ac.uk or 0191 515 3030.

j) students have the right to be accompanied in all hearings and interviews, including by a professional body or union. If the student chooses to bring a legal representative, the student must inform the University of this, and the University may then choose to have its own legal representation.

k) the University will establish governance arrangements for Fitness to Practise via a University Fitness to Practise Group, which will meet no less than twice each year. This Group will be convened, chaired and serviced by the Academic Registry. The Group will include all Fitness to Practise Panel chairs, representation from staff who have acted as Investigating Officers and Supporting Officers, and a member of the University's Legal team. The Group will consider all cases arising since its last meeting, considering any lessons learned. The Group will also consider any wider environmental developments such as OIA cases, Legal outcomes, or changes to the law. The Group will have oversight of training needs for staff involved with the fitness to practise process, and will make an annual report to the University's Academic Board on the number, type and outcomes of cases, lessons learned, training provided and any other relevant observations.

5. Procedure when Fitness to Practise Concerns are raised

a) University of Sunderland staff and/or work based placement staff should formally report in writing any concerns related to a student's fitness to practise to the Programme/Team Leader who in turn will inform the Dean of Faculty (or nominee). Allegations should be made clearly, with dates and specific detail of the issue, so that all concerned, including at the relevant point the student, can understand precisely what is alleged.

b) the Dean (or nominee), with advice where necessary from the Deputy Academic Registrar or the Student Casework Manager, will determine if any immediate action needs to be taken. This may include:

- Assessing whether there are any immediate risks to staff, students, clients or visitors.
- Suspension of attendance at placement.
- Occupational Health Referral
- Referring the student to appropriate support services

- Appointment of an Investigating Officer (University of Sunderland staff or work based member of staff. Joint investigators may also be appointed) to formally investigate the allegations and to report to the Dean (or nominee). The Investigating Officer should have no previous involvement in the case. The Investigating Officer will normally interview the student (accompanied as above if the student wishes) and other relevant parties, collate relevant evidence and produce a written report of their findings.
- Referring the matter for consideration under the University Disciplinary Regulations, including where criminal convictions have arisen in the course of study.
- Referring the matter to the Fitness to Practise Panel.
- Recommend to the Deputy Vice-Chancellor (or nominee) that the student is suspended from the University until the issues are investigated and addressed.

NB. The above list is not exhaustive and a combination of the list of actions may be deemed appropriate in specific individual circumstances: for example, suitable action may include an Occupational Health Referral followed by consideration of the Fitness to Practise Panel.

c) the decision as to whether Fitness to Practise Panel should be convened will rest with the Dean of faculty (or nominee) with each case being considered in the light of the prevailing circumstances. If the Dean (or nominee) decides to convene a Fitness to Practise Panel and an Investigating Officer has not already been appointed, the Dean (or nominee) shall do so as in (b) above.

d) all action taken must be formally recorded in the student's file (with a rationale for the decision) and written notification of any recommendation sent to the student.

6. Exceptional circumstances – misconduct within the practise/placement area

a) an appropriate member of University of Sunderland and work based placement supervisor or mentor may, in exceptional circumstances, suspend a student immediately from work based placement settings. Such action must be notified to the Dean of Faculty (or nominee) at the earliest opportunity and no later than 24 hours after the event.

b) exceptional circumstances may include (but are not limited to) cases where the student's behaviour gives cause for concern with regard to the safety of others or themselves, acts of violence or aggression by the student, issues of confidentiality, or theft or damage to property whilst on placement.

c) the Dean (or nominee) must notify the Deputy Academic Registrar or the Student Casework Manager with details of the incident and if applicable recommend that the student should also be suspended from academic study and/or campus pending Fitness to Practise consideration. Any such suspension from study and/or campus would be managed through either the Disciplinary Regulations or the Regulations Governing

Suspension of Students on Health Grounds, as appropriate.

d) students should be advised that suspension from the placement and/or the University at this stage is not a disciplinary sanction but is a measure taken where it is considered essential to do so to allow time for an appropriate investigation.

7. Procedure for Operation of the Fitness to Practise Panel

a) the Dean (or nominee) will assemble a Faculty Fitness to Practise Panel to consider evidence related to professional behavioural problems, health matters, criminal offences or other issues that give rise to concerns regarding a student's fitness to practise. The Dean (or nominee) will also appoint a Supporting Officer to the Panel (who will manage the administrative arrangements, including taking the notes of the meeting), and a Presenting Officer (normally the Investigating Officer).

b) in planning a schedule for the meeting of the Faculty Fitness to Practise Panel, the Dean (or nominee) should give consideration to other relevant factors, for example the student's overall progression and profile, as well as the impact of any suspension.

c) the student should be notified of the Panel and given a reasonable period (of no less than fifteen working days and no more than twenty-five working days, unless otherwise agreed with the Chair) in which to seek advice and prepare their response. This notification should include:

- the precise nature of the case and the evidence for it
- the date of the Panel and the Panel membership
- that the student is expected to attend. Students are advised that it is in their best interests to attend, and that the Panel may still proceed in event of non-attendance. This is providing that the Panel is assured that the student was notified, and any reasonable adjustments, for example due to illness, were made.
- the student's right to be accompanied, and that they must inform the Chair no later than five working days before the Hearing who that person is, and no later than ten working days before the Hearing if that person is a legal representative
- the requirement that at least five working days before the Panel the student must provide (via the Chair) all relevant evidence and notify the Chair of the identity and role of all witnesses that the student has invited to attend.
- Advise the student that they can obtain independent advice from Sunderland Students' Union Advice Centre at the Student Union offices on the ground floor of Edinburgh Building, or via su.studentadvice@sunderland.ac.uk or 0191 515 3030

d) The Faculty may seek procedural advice from the Deputy Academic Registrar or the Student Casework Manager in Academic Registry.

e) The Faculty (Dean or nominee, working with Supporting Officer) will provide a copy of

all evidence to the student at least two weeks before the Panel (except as outlined in (h) below).

f) the Fitness to Practise Panel will consider the evidence with regard to:

- Safeguarding vulnerable groups
- Public protection and safety
- Professional codes of conduct
- Access to the relevant profession
- The student's progression on the programme
- Potential risk to the University, staff and students and any other relevant individuals

g) the Panel may consider evidence from a range of sources e.g. occupational health referrals, GP statements, student counselling services.

h) evidence to be considered by the Panel will be made available to the student except where such evidence may be in contravention of the Data Protection Act [1998].

i) notes of the case presented to the Panel, the Hearing, and the decisions of the Panel will be taken and made available to the individual concerned.

j) the Panel will operate as outlined in Appendix One of this Policy, will reach a decision, and make recommendations based upon all the available evidence.

k) where necessary, the Chair may decide to suspend the deliberations of the Panel and reconvene pending further investigation and review of new information.

l) the Panel will reach a determination based on the civil standard of proof – that is, on the balance of probability - whether the student's fitness to practise is impaired or not and will determine the most appropriate recommendations.

m) outcomes available to the Panel can include:

- no formal warning or sanction.
- referral to other University of Sunderland Procedures such as the Student Disciplinary Procedure if there is evidence of misconduct but the student's fitness to practise is not impaired, or to an academic misconduct panel.
- formal monitoring of the student's progress for a specified period of time, with or without specified support and/or conditions/undertakings.
- warning/caution on file for a specified period
- suspension from the programme of study or the University for a specified period.
- expulsion from the programme of study/University

n) the Panel will consider the options available in the light of any relevant professional body guidance, starting with the least severe and moving to the next outcome only if satisfied that the warning or sanction is not sufficient.

o) the Chair of the Panel will inform the student in writing of the outcome and the recommendations of the Panel, normally within 5 working days of the panel's decision. If there are reasonable grounds for this timescale to be extended for any reason, the student will be advised of this in writing, together with why the extension is necessary. The student will also be advised about the applicable appeals process. Where appropriate the student's employer and/or relevant professional body will be notified of the outcome and if applicable the matter will be referred to the Disclosure and Barring Service.

(N.B The University works in partnership with employers in upholding professional standards and will liaise with them in the first instance regarding the reporting of Fitness to Practise findings to the relevant professional body. However, the University reserves the right to make referrals directly if this is deemed appropriate.)

8. Appeals against the decision of the Fitness to Practise Panel

8.1 Appeal against decisions of the Panel other than expulsion or suspension.

a) the student has the right to appeal against the decision of the Fitness to Practise Panel if they believe and can demonstrate that:

- there has been a material procedural irregularity in the operation of the Fitness to Practise process
- the decision of the Panel is not reasonable in all the circumstances: that is, that the decision is not one that any reasonable person would find understandable. Disagreement with the decision of the Panel is not in itself sufficient reason to demonstrate that its decision is unreasonable.
- new evidence is available which for good reason was not available at the time.

b) an appeal is not a re-opening of the investigation and students must provide reasonable evidence to substantiate their appeal on one of the above grounds.

c) appeals should be made in writing, with full supporting evidence, to the Student Casework Manager, within a maximum of 20 working days of the receipt of the letter (which is deemed to be 24 hours after sending if the decision has been conveyed by email and 48 hours after sending if the decision has been conveyed by hard copy post only) notifying the student of the Fitness to Practise Panel decision.

d) the Fitness to Practise Appeals Panel will consider whether the documentation of the case suggests that the decision of the original Fitness to Practise Panel was reasonable and the procedure was followed correctly. The Fitness to Practise Appeals Panel may:

- amend the decision of the original Fitness to Practise Panel
- uphold the decision of the original Fitness to Practise Panel
- refer the case back to a new Fitness to Practise Panel for reconsideration

- defer the decision pending further information and advice
 - reject the Appeal.
- e) to reach its decision, the Panel will consider the written representations made by the student in their appeal submission. The Panel may request further information from students, staff or where applicable external representatives. The Panel has the right to convene an oral hearing if decided it is necessary to do so for the fair and effective hearing of the case. Any such hearing will operate in the principles outlined in Appendix One.
- f) the decision and any recommendations of the Fitness to Practise Appeals Panel will be notified to the student, normally within five working days, and to the original Fitness to Practise Panel. Decisions of the Appeals Panel are final, and complete the University internal processes.
- g) The Appeals Panel will consist of a Chair, who shall be an academic member of staff from outside of the School where the case arose, a member of academic staff from the School, and a member of academic staff from outside the School. All members will have experience of fitness to practise cases.

8.2 Appeal against suspension/expulsion decisions

- a) where the recommendation of the Panel is that the student should be suspended for a defined period of time or expelled from the programme and/or the University, the student has a right of appeal if they believe and can demonstrate that:
- there has been a material procedural irregularity in the operation of the Fitness to Practise process
 - the decision of the Panel is not reasonable in all the circumstances: that is, that the decision is not one that any reasonable person would find understandable. Disagreement with the decision of the Panel is not in itself sufficient reason to demonstrate that its decision is unreasonable.
 - new evidence is available which for good reason was not available at the time.
- b) an appeal is not a re-opening of the investigation and students must provide reasonable evidence to substantiate their appeal on one of the above grounds..
- c) the request for such an appeal must be made in writing, providing full supporting evidence and grounds for appeal, to the Deputy Academic Registrar within 10 working days of receipt of the decision (which is deemed to be 24 hours after sending if the decision has been conveyed by email and 48 hours after sending if the decision has been conveyed by hard copy post only).
- d) the Appeals Panel will consist of a Chair, who shall be the Vice-Chancellor, acting as Chair of the Panel (or a Deputy Vice-Chancellor or other member of the University Executive Board acting as nominee); a Dean or Director with no prior involvement in the case; President of the Students' Union (or nominee from the Students' Union Executive).

e) none of the members must have had previous involvement with the case other than a decision to make a precautionary suspension.

f) the appeals process will then operate as per the process outlined in 8.1(c-f) above

9. Completion of Procedures and the Office of the Independent Adjudicator for Higher Education (OIA)

a) when the student has exhausted the University procedures (including appeal) the student will be issued with a Completion of Procedures letter by the Student Casework Manager.

b) students who remain dissatisfied with the final outcome of their Appeal (and believe that the University has failed to follow this procedure correctly, may take their case to the Office of the Independent Adjudicator for Higher Education (OIA). Further information can be found at <http://www.oiahe.org.uk/>

Appendix 1 – Operation Of Panels

a) the Chair will open the hearing, introduce and summarise the roles of all parties present and the purpose of the Hearing. The Chair will check that all participants have had the relevant papers, and will outline the procedure to be taken including the order of any witnesses.

b) the Chair will ask members to confirm that there are no perceived conflicts of interest between the initial investigator(s), panelists and the student, and will emphasise the need for confidentiality.

c) the Chair will confirm that the student was informed of the right to be accompanied. If the person accompanying the student is a legal representative, and the University has also chosen to bring legal representation, the Chair or Panel may consult with the University's legal representative for advice at any time.

d) the Chair will confirm that the outcome of the case will be reported to the appropriate Regulator in accordance with their procedures.

e) the Chair shall confirm to the parties the substance of the issue(s) of Fitness to Practise, and indicate that neither party can present new evidence during the hearing. If there is new and relevant evidence available, the Chair will decide upon a timescale for all parties to consider it, and the Panel will then be adjourned to be reconvened at that time.

f) the Chair will ask the Presenting Officer (normally an academic practitioner) to outline the details and the supporting evidence of the case to all present, introducing any applicable witnesses. The Panel may ask questions of the presenting officer and witnesses at any time.

g) through the Chair, the student may ask questions of the presenting officer and witnesses.

h) the Chair and Panel will ask the student to respond to the issues of fitness to practise, referring to any evidence provided. The Panel may ask questions of the student at any time.

i) through the Chair the Presenting Officer may ask questions of the student and witnesses.

j) following no further questions from the Panel or the student, the Presenting Officer will summarise their case, and the Chair will ask the student to summarise their case.

k) the Chair will then adjourn the hearing to consider the evidence that the Panel have heard. The student and Presenting Officer will leave for the Panel to consider the issues. The Panel may at this stage choose to seek additional evidence or information from other parties. Should this be the case, all parties will be informed as to the nature

of the enquiry and the hearing will be reconvened following a repeat of these procedures.

l) Panel members will advise the Chair of their opinion of the case. Following this discussion, the Chair will act as final arbiter in the matter.

m) the Chair will announce their decision, either by inviting the student to return, or in writing. The outcome of the hearing will be confirmed in writing within five working days of the decision, and the notes of the meeting will be made available no later than five working days after that. The student will be notified of the appropriate appeals procedure in the written outcome. Decisions made against individuals will be reported to the Regulator as appropriate.

APPENDIX 2 – Panel Memberships

1. General Principles

- a) any panel may seek advice if appropriate on matters of procedure by Academic Registry.
- b) no Panel member should have prior involvement with the investigation of the case. A student's personal tutor should not be a member of the Panel
- c) Heads of School will be responsible for ensuring appropriate external representation and nominating internal panel members.
- d) the Supporting Officer to the Faculty Panels will submit a statistical annual report of all decisions made and any issues of principle to the Student Casework Manager
- e) Panels should meet no less than twice a year to review policy and consider any issues of principle arising from cases.
- f) All panel members should be appropriately experienced and have access to all relevant documentation. Panel members should:
 - Know and understand the rules and regulations of fitness to practise
 - Know and understand relevant guidance
 - Be fair-minded and willing to hear the full facts of the case before reaching a decision;
 - Be prepared to take into account appropriate expert advice;
 - Make sure the fitness to practise proceedings are fair and proportionate;
 - Know and understand the legal requirements and good practise of equality and diversity.
 - Be willing to undertake training for the role as appropriate.

2. School of Nursing and Health Sciences

- Chair – Dean (or nominee, from an area within the Faculty that is not directly connected to the student's programme of study).
- Two members of academic staff nominated by the Head of School (one of whom should not be from the student's programme of study)
- One Independent Practise/Service representative nominated by the Head of School.

3. School of Pharmacy and Pharmaceutical Sciences

- Chair – Dean (or nominee, from an area within the Faculty that is not directly

connected to the student's programme of study).

- Two members of academic staff nominated by the Head of School (one of whom should not be from the student's programme of study, the second of whom should be from the programme but with no prior involvement in the case)
- One independent experienced practitioner, registered with the appropriate professional body.

4. Faculty of Education and Society

- Chair – Dean (or nominee, from an area within the Faculty that is not directly connected to the student's programme of study).
- Two members of academic staff nominated by the Head of School (one of whom should not be from the student's programme of study)
- One Independent Practise/Service representative nominated by the Head of School.

Appendix 3 – Examples of Relevant Documentation

- Standards for Pharmacy Professionals (May 2017)
https://www.pharmacyregulation.org/sites/default/files/standards_for_pharmacy_professionals_may_2017_0.pdf
- Guidance on Student Fitness to Practise Procedures in Schools of Pharmacy (Nov 2017)
https://www.pharmacyregulation.org/sites/default/files/document/guidance_on_student_fitness_to_practise_procedures_in_schools_of_pharmacy_july_2018_.pdf
- The General Pharmaceutical Council Code of Ethics for Pharmacists and Pharmacy Technicians
- The General Pharmaceutical Council Assessment of Good Character
- The General Pharmaceutical Council
- The Nursing and Midwifery Council (NMC) Guidance “Requirements for evidence of good health and good character”
- NMC Code of Professional Conduct
- Health and Care Professions Council (HCPC)
- British Association of Counselling & Psychotherapy Practitioners (BACP) Codes of Professional Conduct
- University of Sunderland Code of Conduct
- University of Sunderland Equal Opportunity Policy
- University of Sunderland Assessment Regulations
- All other relevant Professional and / or Statutory Body requirements which may be appropriate
- DfEE Circular 4/99, Physical & Mental Fitness to Teach of Teachers & Entrants to Initial Teacher Training (May 1999)
- TDA (2004) Able to Teach Guidance for providers of Initial Teacher Training
- Guidelines for Professional Standards for Teachers (2007)
- Health Care Professions Council Guidance on Conduct and Ethics for Students
- Health Care Professions Council Guidance on Health and Character
- University of Sunderland Disciplinary Regulations
- University of Sunderland Regulations on The Suspension of Students On Health Grounds
- University of Sunderland Academic Misconduct Regulations
- University of Sunderland Policy on Dignity and Respect At Work
- University of Sunderland Assessment Regulations
- All other relevant University, Professional and / or Statutory Body requirements which may be appropriate