

Reforming the University of Warwick's Employment Statute (Statute 24) motion

For the meeting of the University Assembly to be held on Wednesday 10 October 2018.

This Assembly notes:

1. The proposed enhancements to the protection of academic freedom in the University's employment statute (currently Statute 24) have been made after detailed work by the Senate Sub-Group and extensive consultation with the Trade Unions.
2. The Senate Sub-Group's final report in Appendix 1 (S.54/17-18) sets out the principles for protecting academic freedom, including the formation of an Academic Freedom Review Committee (AFRC) as a sub-committee of the Senate and its proposed role in disciplinary and redundancy processes.

This Assembly believes:

1. That the Senate Sub-Group's final report in Appendix 1 (S.54/17-18) ensures the fundamental principle of academic freedom – namely “questioning and testing received wisdom and putting forward new ideas – which may be controversial or unpopular”, will be better protected through the establishment of the Academic Freedom Review Committee as outlined in the proposed ordinance.

This Assembly resolves:

1. That the Senate Sub-Group's final report in Appendix 1 (S.54/17-18), and associated proposals are endorsed.

Proposed by: Professor Christine Ennew

Seconded by: Professor Dan Branch

UNIVERSITY OF WARWICK

For the meeting of the Senate to be held on 13 June 2018

Subject: Final Report from the Senate Sub-Group on Statute 24 (S.54/17-18 {Restricted}, attached)

Prepared by: Professor Dan Branch, Chair of the Senate Sub-Group on Statute 24

Presenter: Professor Dan Branch, Chair of the Senate Sub-Group on Statute 24

Key Points:

The Senate is invited to consider the report of the Sub-Group on Statute 24. Approval of revisions to Statute 24, related Ordinance and all-staff policies reflecting the recommendations made here will be sought separately by the University. In particular, the Sub-Group invites comment on:

1. The formation of an Academic Freedom Review Committee (AFRC) as a permanent sub-committee of Senate;
2. The proposed role of AFRC in disciplinary and redundancy processes as set out in this paper;
3. The further recommendations detailed in the paper under the following headings:
 - Outcomes of the sub-group discussion and consultation
 - Principles
 - Academic Freedom Review Committee (AFRC)
 - Role of AFRC in Disciplinary Cases
 - Role of AFRC in Redundancy Cases
 - Areas for further work

Recommendations:

The Senate is invited to:

1. Approve the formation of the Academic Freedom Review Committee (AFRC) as a standing sub-group of Senate;
2. Recommend to the Council that the processes for disciplinary and redundancy cases set out above be written into revised Ordinance;
3. Consider, as soon as practicable, a revised Statute 24, Ordinance and all-staff policies that reflect the contents of this paper;
4. Note that these revised documents be subject to formal consultation with relevant Trades Unions and the Assembly, prior to approval by the Senate.

Route Map for this Report			
Committee	Date	Reference	Action Requested / Taken
Senate	13 June 2018	S.54/17-18	To <u>consider</u> and <u>approve</u> .

UNIVERSITY OF WARWICK

For the meeting of the Senate to be held on 13 June 2018**Final Report from the Senate Sub-Group on Statute 24**Summary

The Senate is invited to consider the report of the Sub-Group on Statute 24. Approval of revisions to Statute 24, related Ordinance and all-staff policies reflecting the recommendations made here will be sought separately by the University. In particular, the Sub-Group invites comment on:

- The formation of an Academic Freedom Review Committee (AFRC) as a permanent sub-committee of Senate;
- The proposed role of AFRC in disciplinary and redundancy processes as set out below;
- The further recommendations detailed below.

1. Introduction and context

At its meeting of 14 June 2017, the Senate resolved to establish a sub-group to address the concerns raised by the Assembly about proposed reforms to statute 24. At the same meeting, Senate agreed the membership of the sub-group. At its meeting of 5 July 2017, the Senate approved the terms of reference of the sub-group, and noted the principles emerging from the work that the sub-group had undertaken to date (paper S.87/16-17 refers). The terms of reference and membership of the sub-group are appended to this paper for reference (appendix A).

The sub-group undertook to:

- Seek to address the concerns raised by the Assembly and the wider Academy on the proposed reforms;
- Take the opportunity to consider how process can be improved to ensure that outcomes are robust and timely;
- Develop proposals that reflect the aim of achieving a consistent policy framework for all staff, but with the inclusion of detailed process in Ordinance to provide appropriate consideration of cases where academic freedom may be at issue, as well as clear definitions of misconduct that are not within the scope of academic freedom policies, and hence to which all staff policy and procedure applies.

Interim reports were provided to Senate at meetings in October 2017, January 2018 and March 2018 indicating progress to date, emerging key principles informing the sub-group's work and indications of likely recommendations.

Following detailed discussions within the sub-group and between it and the Vice Chancellor, Provost, members of Council and other members of the university community, the sub-group is now in a position to make a final report to Senate. The sub-group wishes to thank all involved in these discussions for their time and input and put on record our particular gratitude to the assistance of Pippa Glover before her departure from the University.

The sub-group is, however, solely responsible for this paper. In particular, we wish to emphasize that the formation of the sub-group has not supplanted the need for further consultation with the Assembly and Trade Unions once revised statute, Ordinance and policies have been drafted.

2. Outcomes of the sub-group discussion and consultation

The sub-group has considered and consulted on the University's proposals in relation to the reforms of Statute 24 and related Ordinances, focussing particularly on the impact of these reforms on the principle of academic freedom. The group has considered examples of case studies relevant to academic freedom.

In so doing the sub-group have considered the nature and complexity of the interplay of academic freedom within the proposals for academic redundancy, disciplinary and grievance processes.

In light of these considerations, the sub-group has formulated a set of principles to inform revision of Statute 24 and related Ordinance and policies and set out

3. Principles

The sub-group unanimously agreed the following principles, which we recommend be used as the basis for further revision of Statute 24:

- The need for a specific article in revised statute to protect academic freedom;
- Reference in the revised statute to Ordinance in which the detail will be set out of the mechanism by which academic freedom will be protected by a Senate level review, to be known as the Academic Freedom Review Committee (AFRC);
- That the relevant Ordinance detailing the work of AFRC will set out its position within disciplinary and redundancy procedures in detail;
- That it should be the responsibility of AFRC, in its first annual report to Senate, to formulate explicit principles and definitions of misconduct and gross misconduct and which recognise the responsibilities of academics to third-parties as well as their employer (see Appendix B for suggested drafts of principles and definitions);
- The power of AFRC to decide that disciplinary or redundancy processes should cease in the event of it deciding that the academic freedom of an individual appears to be in question;
- That there should be no double jeopardy in a disciplinary or redundancy case. If AFRC decides the process should halt due to concerns about academic freedom, the case or parts thereof identified by AFRC as potentially contravening academic freedom cannot be rewritten and resubmitted;
- That the role of the Head of Department in redundancy and disciplinary processes be subject to scrutiny and oversight;
- That Senate approval be sought for our report, including these principles and the detail of the processes which follows below;

- That the proposed text for Statute 24 and related Ordinances be the subject of consultation between the University, Assembly and appropriate Trades Unions, and that Senate approval be sought for these texts;
- That any revised Statute 24 cover all members of the University covered by the current Statute. We are aware of the issues relating to fixed-term and indefinite contracts subject to funding, but feel that these are matters deserving of specific attention and are not within the terms of reference of the sub-group;
- That Senate approval be required for any future significant changes to the University's policies and procedures governing its employees, whether described in statute, Ordinance or policy, and that this requirement be formalized in statute.

4. Academic Freedom Review Committee (AFRC)

The establishment of the AFRC is a key recommendation of the sub-group. We recommend that AFRC be a standing sub-group of Senate and comprise all elected academic members of Senate, with a Chair elected on an annual basis by its members.

An AFRC panel will be convened as and when redundancy and disciplinary cases arise. When convened, the Chair of AFRC will choose 3 members according to a strict rotation schedule, initially drawn up alphabetically, to adjudicate the case. Members that are in the same department as the individual or individuals subject to disciplinary or redundancy procedures will be excused. Should all 3 members selected to adjudicate a case be drawn from the same faculty, the third member will be excused. Members that have served and newly elected members of Senate will be added to the bottom of the rotation list. Members that were excused under the circumstances set out above will remain at their original position on the list. In addition to the voting membership, AFRC will include a non-voting secretary appointed by the Registrar. AFRC will be able to call for independent external advice from other members or the University or beyond.

In addition to its casework, a full meeting of all AFRC members will be convened on an annual basis to discuss and approve an annual report to Senate, and elect a new Chair or re-elect the incumbent Chair for the following academic year. The annual report will offer oversight of the operation of procedures relating to academic freedom, and provide guidance on working definitions of the principles of academic freedom arising from specific cases (while respecting the privacy of all concerned).

AFRC needs to be properly supported and trained in order to fulfil our intention that it becomes the impartial guardian of academic freedom in relation to staffing matters. The Registrar's office should provide such support, including a non-voting member of AFRC to act as secretary when cases are being adjudicated.

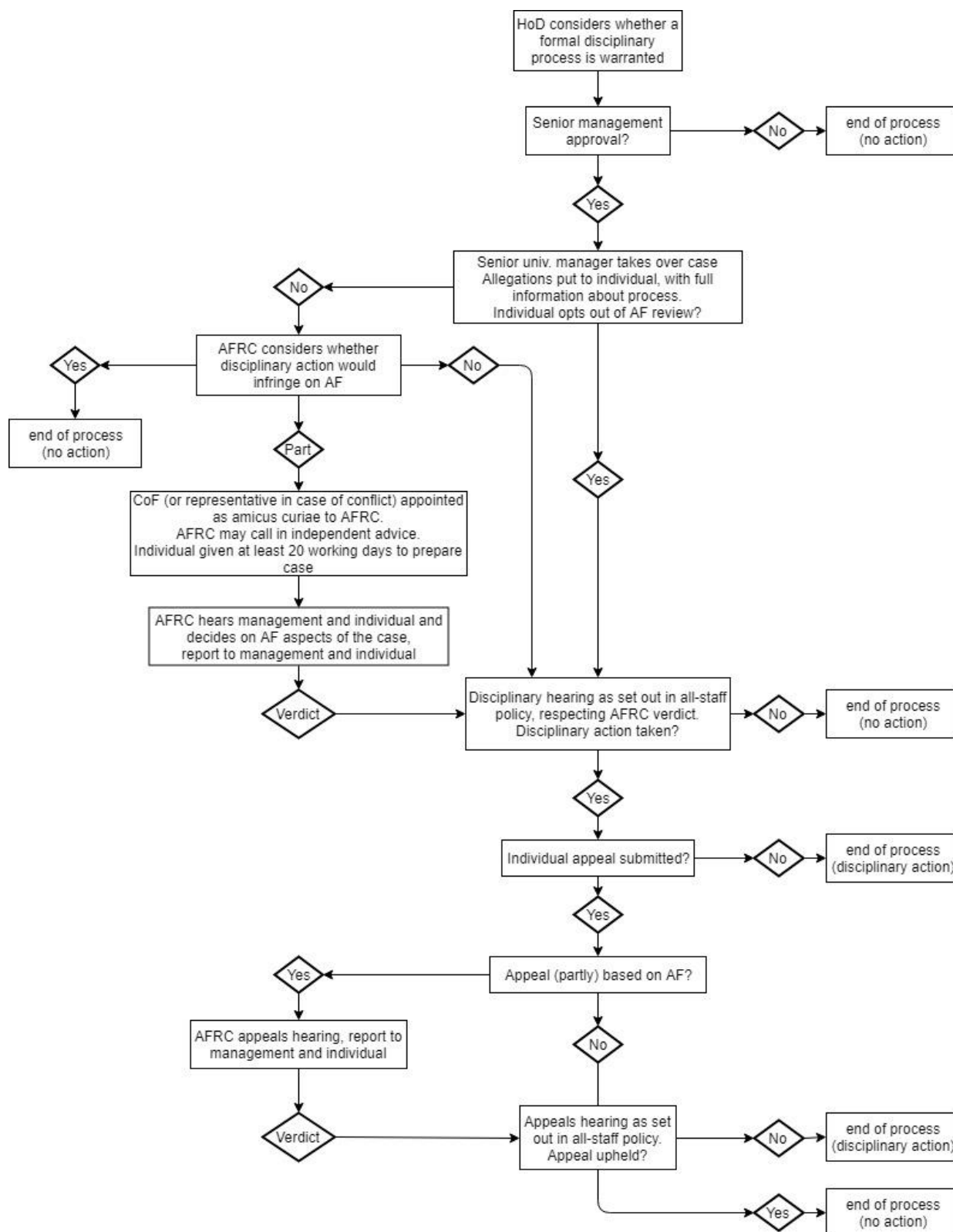
Due to the differing nature of disciplinary and redundancy cases, AFRC's role in each will be somewhat different. Detail of this follows in the next section.

We expect the workload of AFRC to reduce significantly over time as working definitions and precedents are established.

5. Role of AFRC in Disciplinary Cases

The flow chart below sets out the sub-group's recommendation for the place of AFRC within disciplinary cases.

Figure 1. AFRC's recommended role in disciplinary cases



We recommend that the process set out above be prescribed in Ordinance.

We further recommend that disciplinary cases only proceed to a formal stage with the approval of a member of senior management, which in this instance we expect to normally be the Provost but could instead be a Pro-Vice Chancellor or other senior professor in the University appointed to act in this capacity by the Vice Chancellor. The same individual will then take responsibility for taking the case forwards, a role that in our discussions we have likened to that of a prosecutor (in the same analogy, AFRC plays the role of a jury).

AFRC will operate on an opt-out basis at its first stage; an individual subject to disciplinary proceedings who does not wish AFRC to consider their case will notify AFRC in writing of their decision to opt-out. AFRC will otherwise be convened in accordance with the process set out above.

If AFRC is convened, the stipulated role of the Chair of Faculty as *amicus curiae* is intended to provide oversight of the process. The stipulated timings are intended to strike a balance between allowing individuals to properly prepare for meetings and for timeliness in the overall process. Where recourse to all-staff policy is noted, this policy is subject to Senate approval and should include:

- The right of individuals to bring individual support to any stage of the formal disciplinary process including AFRC (e.g. work colleague, union representation, or academic expert);
- The right of individuals to comparable legal representation if the University opts to retain legal representation;
- The right of appeal.

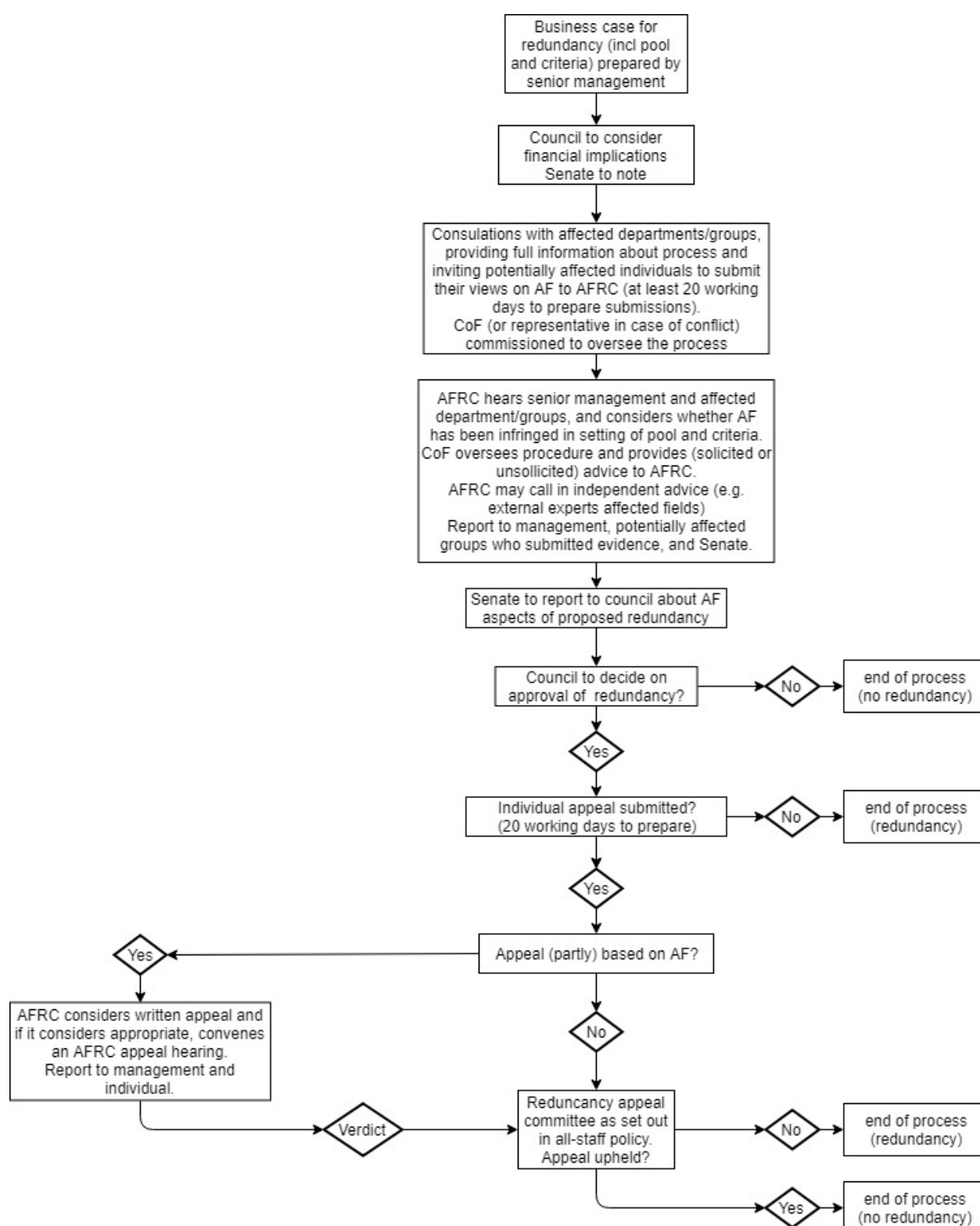
As further information regarding the reasons for the disciplinary case being brought could emerge as the process continues, an individual can opt for an appeal against disciplinary action on the grounds of academic freedom regardless of their earlier decision to opt-in or –out of the AFRC process at the initial stage. Should an appeal on the grounds of academic freedom be made, AFRC will be convened with new members from the rota, but these new members may ask for a briefing from those members that heard the case in the initial stage.

6. Role of AFRC in Redundancy Cases

We again recommend that the process set out in the flow chart below be prescribed in Ordinance. Under the redundancy process, AFRC has three roles. As well as considering the arguments of potentially affected individuals at an initial stage and the appeal stage in line with that stipulated for disciplinary cases, AFRC will also consider whether academic freedom has been contravened in the setting of the criteria used to determine whether or not redundancy is necessary and the establishment of a pool of posts at risk of redundancy as a result. Senate will provide a report to Council based on the findings of AFRC prior to Council taking a decision to proceed to redundancy.

As with the disciplinary procedure, the all-staff policy on redundancy is subject to Senate approval and to include the same allowances for individual support, legal representation and right of appeal as set out for the disciplinary cases above.

Figure 2. AFRC's recommended role in redundancy cases



7. Areas for further work

In addition to the provision of revised, statute and Ordinances in line with the processes set out above, we note that the following work needs to be tackled and that all are beyond the purview of our sub-group:

- Consideration of the terms of employment and statutory protection for academic colleagues on fixed-term contracts and permanent contracts linked to funding;
- Training for AFRC members, including its non-academic secretaries;
- Training for HoDs and senior managers to be involved in disciplinary and redundancy cases;
- Wording of definitions of misconduct and gross misconduct. Appendix B provides suggested drafts, but this is a task for AFRC in its first annual report.
- Wording of revised statute and Ordinance to reflect the recommendations made in this report.

8. Recommendations

We recommend that the Senate:

- Approve the formation of the Academic Freedom Review Committee (AFRC) as a standing sub-group of Senate;
- Recommend to the Council that the processes for disciplinary and redundancy cases set out above be written into revised Ordinance;
- Consider, as soon as practicable, a revised Statute 24, Ordinance and all-staff policies that reflect the contents of this paper;
- Note that these revised documents be subject to formal consultation with relevant Trades Unions and the Assembly, prior to approval by the Senate.

Professor Dan Branch
Chair, on behalf of the Senate Sub-group on Statute 24

5 June 2018

Appendix A: Membership and Terms of Reference of the Senate Sub-Group on Statute 24

Membership

Professor Dan Branch
Professor Aileen Clarke
Professor Maureen Freely
Philippa Glover
Professor Saul Jacka
Dr Thijs van Rens

Terms of Reference

- 1) To consult with and inform Council about academic freedom and its applicability;
- 2) To make recommendations to Senate for revisions to Statute 24 and associated Ordinances and Council-approved procedures (Disciplinary, Grievance and Redundancy procedures);
- 3) To recommend those matters relating to the potential dismissal of an academic member of staff that will be defined as not being at risk of potential conflict with academic freedom;
- 4) To review and make recommendations on proposed disciplinary and redundancy procedures in the light of the above.

Appendix B: Suggested Definitions of Principles and Definitions of Academic Freedom, Misconduct and Gross Misconduct.

As noted above, in the course of the Statute 24 working group's deliberations it became clear that clarification of certain principles and definitions will be necessary for AFRC to operate. The working group agreed that providing such definitions was outside its scope and that it was for AFRC to provide working definitions of these terms and establish precedents for use in specific cases. These principles and definitions are offered to provide a foundation from which AFRC can work.

Draft Principles for Academic Freedom

1. The university must provide rigorous and powerful protection from any effort to interfere with academic freedom, within or outside the university. This includes:
 - (a) The protection of the right of academics to exercise their academic judgment and to pursue, possibly unsuccessfully, novel or difficult lines of inquiry.
 - (b) The protection of the right of academics to challenge perceived wisdom.
 - (c) The protection and defence of the highest standards of academic freedom when conducting academic activities outside the university, including those in other institutions and jurisdictions.
 - (d) Reference to standards of academic freedom upheld by professional accrediting bodies.
2. Academics are expected to uphold the seven principles of public life
 - Selflessness;
 - Integrity;
 - Objectivity;
 - Accountability;
 - Openness;
 - Honesty;
 - Leadership;

These principles apply to an individual's conduct in their post as an academic. Assessment as to whether they are satisfied in an individual case is a matter of judgement, rather than merely the application of a rule.

3. Academic judgment involves responsibilities to respect and implement traditions of evidence and argument. This will be reflected in what is protected under academic freedom.
 - (a) Academic freedom protections will apply to scholarship, including creative work that is part of research or teaching, the search for and accumulation of evidence, and to evidence-based arguments.

- (b) Asserting the principle of academic freedom is not about protecting misconduct: it should give protection to investigation, thoughts, opinions, argument and their expression but not, in general, to other actions.
- (c) Not everything an academic says is said in an academic capacity: consequently, protection for academic freedom is not the same as protecting free speech, although the two principles are often intertwined.

A draft definition of Academic Freedom

Academic Freedom is the freedom of academics, while maintaining a strict regard for the truth,

- to pursue knowledge via scholarship and research without fear or favour, including the freedom to subject both the work of others and public beliefs to scrutiny;
- to question authority;
- to question and test received wisdom;
- to put forward new, controversial or unpopular ideas and opinions;
- to pursue difficult or risky lines of investigation;

and

- to invent or innovate in ways that may not necessarily be successful; without placing themselves in jeopardy of losing their jobs and privileges.

There is a widespread expectation that academics will discharge their duties to their subject, to fellow academics, to their employer and to the wider public while strictly upholding the seven principles of public life.

Draft definitions and principles related to the disciplinary code

Misconduct

Misconduct shall mean actions which constitute wilful or negligent non-performance of duties. This includes: failure to follow reasonable instructions; consistent tardiness or non-attendance at relevant activities; and persistent failure to follow *well-documented* University procedures.

Gross Misconduct

For academic staff, gross misconduct shall mean actions which substantially and egregiously breach one or more of the seven principles of public life.

This includes: serious criminal conduct; abuse of power (whether that power is informal or is derived from authority, position or membership); failure to treat other members of the University community fairly and with dignity and respect; the prevention of the legitimate expression of views by members of the University or others.

Principles

These should have respect for the principles of equity, representation, consistency and auditability. So

- there should be established rules of procedure;
- a suitably anonymised annual report should be made to Senate;
- legal representation should be permitted and other support, including union representation, should be permitted and facilitated;
- there is a right to appeal any decision negatively affecting a member of staff;
- an accurate record of proceedings and their constituent investigations should be kept;
- staff should be excluded from campus in only the most extreme circumstances and not just because someone else deems their presence “unacceptable”.

For the meeting of the Assembly 10 October 2018

Note: Sections highlighted in yellow are changes made to Statute 11 as a result of consultation with the Trade Unions since the meeting of the Assembly on 29 June 2018.

Statute 11_‡

PART I STATEMENT OF PRINCIPLE

- (1) The University will have in place policies and procedures governing its employees. Such policies and procedures where appropriate will apply to all employees to ensure objectiveness, fairness and equity amongst all staff groups.
- (2) The University will ensure that where there is demonstrable need for procedural differences between staff groups, these are appropriately reflected in the policies and procedures.
- (3) The University will ensure that individuals are appointed on the most appropriate contract recognising the nature of funding for the role to which they have been appointed. The University will seek to minimise the use of fixed term contracts, noting that there are exceptions to this provision, such as, for example postgraduates who teach and those appointed to provide cover for a limited time, for example maternity leave cover.
- (4) Excepting where changes arise as a result of amendments to legislation or terminology, the policies governing disciplinary, grievance, redundancy and removal for incapacity on medical grounds will be:
 - a. subject to negotiation with Trade Unions with a view to reaching agreement
 - b. subject to final approval by Council after consultation with Senate
- (5) Any reference in this Statute and Ordinance to legislation or terminology, shall be taken to be a reference to that legislation or terminology as it may have been amended or superseded from time to time.
- (6) Excepting any changes made in this Statute as a result of legislation or terminology, any subsequent amendments to this Statute 11/ or Ordinance 11 shall be subject to the governance processes in place at the time of amendment.

PART II CONSTRUCTION AND APPLICATION

(1) Construction

The University's policies and procedures will adhere to the following guiding principles:

- (a) to ensure that Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs and privileges;
- (b) to enable the University to provide education, promote learning and engage research efficiently and economically;
- (c) to apply the principles of justice and fairness as prescribed in relevant legislation, regulation and good employment practices; and
- (d) to avoid unlawful discrimination and promote equality of opportunity, dignity at work and good relations.

(2) Interpretation

This Statute will apply:

- (a) to Academic Staff, employed on Academic (including Clinical Academic) terms of employment.
- (b) to the Vice-Chancellor to the extent and in the manner set out in the Annex to this Statute.

PART III REDUNDANCY

Council will be the Appropriate Body which decides whether a reduction in the Academic Staff (as defined in Statute Part II (2)(a)) is desirable in all or part of the University, where such a reduction would arise from restructures, reorganisations or closures. In such circumstances, Council will have oversight of any resulting dismissals by reason of redundancy. Council does not require oversight of dismissals which arise under the contract of employment (e.g. the expiry of fixed term appointments or contracts of an indefinite nature linked to identified named funding sources).

In all other respects, the University's policies and procedures (and where applicable Ordinance 11§) will apply.

PART IV ACADEMIC FREEDOM REVIEW

The University will have in place a procedure for the review of whether Academic Freedom (as defined in Statute Part II (1)(a)) has been infringed in cases involving the potential dismissal of Academic Staff (as defined in Statute Part II (2)(a)) on grounds of:

- a) gross misconduct
- b) cumulative misconduct potentially leading to dismissal
- c) redundancy through the Redundancy policy and procedure

The detailed procedure for the review of the potential infringement of Academic Freedom (as defined in Statute Part II (1)(a)) will be laid out in Ordinance 11 .

‡ Proposed new Statute number to replace Statute 24 pending Privy Council approval.

§ New Ordinance number to be confirmed.

ANNEX

PROVISIONS AS TO THE VICE-CHANCELLOR

- (1) The Council may request its Chair to remove the Vice-Chancellor from office on legitimate grounds in accordance with the procedure described in this Annex.
- (2) A complaint seeking the removal from office of the Vice-Chancellor on legitimate grounds must be made by at least three members of the Council to the Chair of the Council and/or from a resolution of Senate.
- (3) If it appears to the Chair of the Council, on the material before them, that the complaint, if proven, would constitute sufficient grounds for dismissal or removal from office they will request that the Council appoints a Tribunal to hear and determine the matter.
- (4) If it appears to the Chair of the Council that a complaint made to them under subparagraph (1) is trivial or invalid, they may recommend to the Council that no further action be taken.
- (5) When the Council has appointed a Tribunal under sub-paragraph (2) it will instruct a solicitor or other suitable person to formulate the charge or charges and to present, or arrange for the presentation of, the charges before the Tribunal.
- (6) A Tribunal appointed by the Council will comprise:
 - an independent Chair; and
 - one member of the Council, not being a person employed by the University; and
 - one member of the Academic Staff.
- (7) Subject to the principles of justice and fairness and good employment practice the Tribunal can determine its own procedure to hear and determine the matter.
- (8) The Tribunal will send its decision on any charge referred, together with its findings of fact and the appropriate penalty to the Chair of the Council and to the Vice-Chancellor, drawing attention to the period of time within which any appeal should be made.
- (9) Individuals appointed to hear such an appeal will be independent of the University and will comprise:
 - A Vice-Chancellor or Chair of Council from another University who shall act as Chair; and
 - two people being nationally renowned Senior Academics external to the University
- (10) The individuals appointed will, subject to the principles of justice and fairness and good employment practice, determine the procedure to be adopted in hearing the appeal.
- (11) The individuals appointed to hear an appeal will send their reasoned decision, together with any findings of fact different from those already determined by the Tribunal to the Vice-Chancellor and to the Chair of the Council.
- (12) Where a complaint is to be referred to a Tribunal under this Statute, the Chair of the Council may suspend the Vice-Chancellor from their duties and may exclude the Vice-Chancellor from the University or any part thereof without loss of salary.

Ordinance 11 §

Preamble

In recognition of the fact that there may be concerns about Academic Freedom in relation to Statute 11[‡], the academic community will formalise through its elected members of Senate its commitment to the safeguarding of Academic Freedom. This ordinance outlines the principles and procedures by which this body (the Academic Freedom Review Committee) will implement this responsibility, building on its work to review on an annual basis its processes and underlying principles, and if necessary to make recommendations regarding the Ordinance itself.

Matters relating to Academic Freedom – Gross Misconduct and Redundancy

- (1) The University will have policies and procedures governing its Academic Staff (as defined in Statute Part II (2)(a)). These policies and procedures will include but will not be limited to redundancy and disciplinary. The University will ensure that these policies and procedures apply the principles of justice and fairness as prescribed in relevant legislation, regulation and good employment practices.

- (2) Academic Freedom Review

As detailed in paragraph 3, the University will have in place a procedure for the review of whether Academic Freedom (as defined in Statute Part II (1)(a)) has been infringed in cases involving the potential dismissal of Academic Staff (as defined in Statute Part II (2)(a)) on the grounds of:

- a) gross misconduct;
- b) cumulative misconduct (i.e. potentially resulting in dismissal);
- c) redundancy through the Redundancy policy and procedure

- (3) Academic Freedom Review Committee (AFRC)

AFRC will be a standing committee of Senate. The Committee will comprise all elected academic members of Senate. The University will ensure that all AFRC members will be trained in the AFRC process and related principles. AFRC's members will elect their own chair who will also serve in one of Senate's positions on Council.

The Chair of AFRC will provide an anonymised report to Senate and Council at the conclusion of the academic year.

- (4) AFRC panel

The University will ensure academic members of staff have an opportunity to request a review of whether Academic Freedom has been infringed in accordance with the provisions as laid out in this Ordinance in relation to cases of redundancy or gross misconduct, (or cumulative misconduct, i.e. that could potentially result in dismissal).

Where the member of Academic Staff considers there are matters of Academic Freedom, in relation to such cases, they should send, to the Chair of Senate, their explicit consent for the details of their case to be referred to AFRC.

When such a request is made, an AFRC panel will be established to examine potential matters of infringement of Academic Freedom. The detailed procedure for the AFRC panel will be as follows.

The Chair of Senate will delegate the responsibility to establish an AFRC panel to the AFRC Chair.

A Vice Chair may be appointed by the Chair of Senate on the advice of the Chair of AFRC where the Chair may have a conflict of interest, or where the Chair is unable to fulfill their obligations due to significant workload issues. The Vice Chair will have full delegated powers to operate an AFRC panel.

The remaining two members of the AFRC panel will normally be appointed by an alphabetic rotation of trained AFRC members, subject to the need for balance, and ensuring there is no conflict of interest.

Each AFRC panel will be supported by a member of Professional Services, who will advise on procedure. The AFRC panel will benefit from administrative support, as determined by the Chair of Senate. The Chair of AFRC may also invite in appropriate expertise as required.

Each AFRC will be under a duty to consider matters fully but also in a timely manner; AFRC members will be expected to give priority to the work of the Committee and report their outcome as specified in Articles x and y below.

(5) The Role of AFRC in Disciplinary matters

The University will ensure academic members of staff have an opportunity to request a review of whether AF has been infringed in accordance with the provisions laid out in this Ordinance.

Where senior management (defined as direct reports to the Vice Chancellor) considers that a gross misconduct hearing should be convened, (or in the case of cumulative misconduct, where a final hearing is convened, which could result in dismissal), the member of Academic Staff will receive written notification of this and the allegations against them which will be addressed at the hearing. The member of Academic Staff will be advised of their right to submit a case to the AFRC if they consider that there has been an infringement of their Academic Freedom, as defined under Statute (Part II (1)).

The Chair of Faculty, or if there is a conflict of interest, a senior academic, will be available to act as an Adviser to the AFRC.

An AFRC panel will be established to consider if there is prima facie case of an infringement of Academic Freedom. If there is, the panel may convene a meeting and consider evidence from the relevant senior manager as well as the individual, and others as appropriate, normally including the Head of Department, and possibly academic subject experts as appropriate.

AFRC will normally complete its work within four working weeks of the allegations being restated to the individual, although this may take longer in complex cases. Where the AFRC panel believe that their review will exceed this time period, they shall inform the relevant parties.

AFRC will produce a report of its findings, judging whether or not (aspects of) the case infringes upon Academic Freedom. If at any stage AFRC decides that there are relevant matters of Academic Freedom, they will report their findings to the Senate and Council.

Where AFRC make a judgement that a case (in part or in its entirety) is not related to Academic Freedom, the case (or the relevant part of the case) will continue to a disciplinary hearing in line with the disciplinary policy and procedure.

The AFRC findings will be made available to the disciplinary panel for information. However, the disciplinary panel cannot overturn the decision of the AFRC in relation to matters of Academic Freedom.

In the event that the allegation of gross misconduct is founded and dismissal ensues, this will be reported to the Senate and Council.

A member of Academic Staff may appeal any decision to dismiss them in accordance with the University's Disciplinary policy and procedure. In the event that the appeal is wholly or in part based on either a breach of AFRC procedure or due to significant new evidence related to Academic Freedom, the appeal will be referred to AFRC before going to the appeals panel.

(6) The Role of AFRC in the Redundancy Procedure

A business case proposing the redundancy of members of Academic Staff (as defined in Statute – Part II (2)(a)) will be prepared by senior management and considered by the Council. If the business case is approved, senior management will develop the case for redundancy in terms of the proposed pool and criteria and will consult with relevant trade unions, as appropriate.

An AFRC panel will be established to consider whether Academic Freedom (as defined in Statute – Part II (1)(a)) has been infringed in the setting of the proposed pool and criteria for redundancy and may call upon members of the University (for example senior management or academic subject experts) to provide additional information or clarification if required. AFRC will report their findings to the Senate and Council. Senate will report to the Council about the Academic Freedom aspects of the proposed redundancy.

If Senate reports that there is no infringement of Academic Freedom and this is accepted by the Council, providing that as a minimum, the University's legal obligation for meaningful consultation with relevant trade unions has been met, the redundancy consultation process with individuals will commence in accordance with the all staff Redundancy Policy and Procedure.

Throughout the redundancy consultation period, those in the pool will be informed that, if they are made redundant, they will have the right to appeal against their redundancy.

Where redundancies are confirmed, Senate and Council will be notified.

Individuals will have the right to appeal against their redundancy, normally within four working weeks of receipt of notification of redundancy.

In circumstances where a member of Academic Staff appeals against their redundancy on the basis that it infringes their Academic Freedom, then such matters would fall to AFRC to be considered as part of the appeal process.

AFRC will consider an appeal (normally in writing), however, if it considers it necessary will convene an AFRC appeal panel. In such circumstances, the Chair of Faculty, or if there is a conflict of interest, a senior academic, will be available to act as an Adviser to the AFRC.

The AFRC panel will report to both management and the individual. The work of the AFRC panel must be completed as soon as possible and normally within four working weeks of receipt of appeal.

AFRC's report will also be considered by a Redundancy Appeal body as set out in the all staff policy. The individual will have the right to present to the Redundancy Appeal body in person if they wish to do so. The decision of the Redundancy Appeal body will be final and shall be reported to the Council.



WARWICK

Policy and procedure

Grievance



WARWICK

In Summary

The Grievance policy and procedure provides a framework for the consideration of grievances in a fair, consistent, timely and effective manner. Grievances are concerns, problems or complaints that employees raise with their employer. Employees are encouraged to carefully consider the nature of their grievance and wherever possible to explore resolution informally prior to commencing the formal procedure.

The grievance policy and procedure applies to all University employees.

This policy and procedure is underpinned by the principles outlined in Statute 11 that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.

The University of Warwick recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic which include: age, disability, sex, trans and gender reassignment, maternity, paternity and adoption, marriage and civil partnership, race, religion or belief, or sexual orientation.

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1. Purpose

- 1.1. The Grievance policy and procedure provides a framework for the consideration of grievances in a fair, consistent, timely and effective manner. Grievances are concerns, problems or complaints that employees raise with their employer. Employees are encouraged to carefully consider the nature of their grievance and wherever possible to explore resolution informally prior to commencing the formal procedure.
- 1.2. The Grievance policy and procedure would be normally be invoked in relation to employment issues, for example:
 - terms and conditions of employment;
 - organisational changes;
 - Equality and Diversity;
 - new working practices;
 - working environment;
 - work relations;
 - Health and Safety;
 - complaints under the Dignity at Warwick policy.

This list is illustrative and not exhaustive.

2. Scope

- 2.1. The Grievance policy and procedure applies to all University employees. Any changes to this policy will be subject to negotiation with the Trade Unions as outlined in Statute 11.

3. Principles

- 3.1. This policy and procedure is underpinned by the principles outlined in Statute 11 that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.
- 3.2. The Grievance policy and procedure have been developed in accordance with the ACAS Code of Practice and relevant legislation.
- 3.3. Where a grievance has been lodged in line with the grievance procedure, all those concerned shall seek to maintain a situation that does not unnecessarily aggravate the grievance and ensure the confidentiality of the matters raised.

- 3.4 The resolution of some issues will require an element of compromise. Where possible, the University shall seek to resolve the matter to all parties' satisfaction, however, in certain situations this may not always be possible.
- 3.5 In circumstances where a grievance may apply to more than one person and where a Trade Union is involved then it may be appropriate for the problem to be resolved within existing collective agreements between the Trade Union(s) and the University.
- 3.6 Where there are a number of individuals with the same grievance then the employees concerned should still submit individual grievances, but it may be deemed appropriate to have a single investigation, with one Investigating Officer and one grievance hearing.
- 3.7 The Grievance policy and procedure does not normally relate directly to the following:
- grievances relating to job evaluation should be addressed through the job evaluation appeals procedure
 - grievances in relation to the disciplinary procedure should be addressed via the Disciplinary policy and procedure's appeal process
 - grievances about the management of underperformance procedure should be dealt with under the management of underperformance appeals procedure.
 - grievances about requests for flexible working should be addressed through the appeals process within the flexible working guidance
 - grievances relating to service provision where a service user feels that their expectations have not been met should be dealt with under the University complaints and feedback procedure
 - grievances about the non-renewal of fixed term contracts should be dealt with under the appeal mechanism outlined in the Fixed Term Contracts policy
 - redundancy appeals should be dealt with under the appeal mechanism outlined in the Redundancy policy and procedure
 - issues which are outside the responsibility or control of the University in its role as employer, for example statutory limits on night work or breaks
- 3.8. Where the grievance concerns an alteration in working arrangements affecting the aggrieved employee, apart from emergency situations, the status quo shall prevail until the grievance procedure has been followed to its logical conclusion, except where it is mutually agreed that this is impractical.
- 3.9. A former employee does not have a right to submit a grievance using the University's Grievance policy and procedure; however the University will consider on a case by case basis how to deal with grievances from employees who have raised issues within three months of leaving the University's employment. Where a grievance is received after an employee has left the University's employment, the department should notify their HR Adviser who will be able to provide appropriate advice.

4. Responsibilities

4.1. Managers/Head of Department¹

4.1.1. Managers/Head of Departments are responsible for:

- i. providing employees with regular opportunities to raise any issues of concern relating to their work;
- ii. resolving employee grievances at the earliest opportunity and in a constructive and reasonable way;
- iii. ensuring that they receive appropriate advice and training relating to the operation of the grievance policy and procedure;
- iv. consulting their link HR Adviser before taking any action under the grievance policy and procedure;
- v. ensuring that their actions are lawful and do not expose the University to legal liability, either by ill-advised action or negligence;
- vi. conducting themselves with dignity, and integrity to promote an atmosphere of mutual respect, in accordance with the University's Single Equality Scheme and Dignity at Warwick policy.

4.1.2. Managers have a right to:

- i. request more detailed information about a grievance in order to seek to resolve it;
- ii. attempt to resolve grievances informally as part of day to day management.

4.2. Human Resources

4.2.1 HR are responsible for:

- i. training and advising Managers/Heads of Department on all aspects of the Grievance policy and procedure;
- ii. providing guidance to individuals and departments as required;
- iii. monitoring the use of the grievance policy and procedure across the University with any feedback or areas of concern to be notified to the Joint Consultative Committee (JCC);
- iv. ensuring that the Grievance policy and procedure is applied as far as possible consistently throughout the University.

4.3. Employees

4.3.1. Employees are responsible for:

- i. attempting to resolve any concerns about aspects of their employment at the earliest opportunity, in a constructive and informal way, through regular discussion with their immediate manager;
- ii. discussing a grievance relating to another employee with the other employee where possible, with the aim of resolving the issue informally and without the need for the grievance procedure;

¹ Manager/Head of Department (or nominated representative) refers to the relevant person responsible for managing the grievance raised.

- iii. providing managers with as much detail as possible about the issue of concern, and giving them a reasonable opportunity to consider it;
- iv. making suggestions as to how they might wish their grievance to be resolved;
- v. attending any meetings associated with the grievance including mediation where appropriate;
- vi. conducting themselves with dignity, and integrity to promote an atmosphere of mutual respect, in accordance with the University's Single Equality Scheme and Dignity at Warwick policy.

4.3.2. Employees have a right:

- i. to seek guidance and advice from a Trade Union representative or an HR Adviser prior to attending a grievance hearing;
- ii. to explain their grievance and have it addressed in a fair and constructive manner;
- iii. not to be treated less favourably than other employees as a result of raising a grievance;
- iv. not to be treated less favourably than other employees as a result of having a grievance raised against them;
- v. to be accompanied by a work colleague or Trade Union representative at any meeting relating to their grievance.

5. Informal Procedure

- 5.1. It is the expectation of the University that as many grievances as possible will be resolved informally at an early stage.
- 5.2. An employee who has a complaint or problem relating to their employment should first approach their manager/Head of Department to discuss the matter.
- 5.3. The intention of this informal stage is to try to resolve matters before they become more serious, and to facilitate communication and resolution within the team/ work area. The manager/Head of Department should meet with the employee to understand the issues, informally investigate the issues raised and try to resolve matters as expediently as possible. The manager/Head of Department should then communicate the outcomes to the employee.
- 5.4. Whilst it is not necessary for a member of Human Resources to attend meetings connected with the informal stage, it is expected that the Head of Department/manager will seek advice from Human Resources.
- 5.5. If unable to approach their manager for any reason, employees should approach their Head of Department unless the grievance relates to the Head of Department in which case the employee should contact the Director, People Group (or nominated representative)/Chair of Faculty/Director/a relevant senior officer of the University.

6. Mediation

- 6.1. The University uses mediation as an effective mechanism to resolve issues expediently and effectively. The informal stage of the grievance process includes a mediation stage, subject to the agreement of all parties.
- 6.2. Advisory, Conciliation and Arbitration Service (ACAS) promotes the value and benefit of mediation and notes in particular that:
- “mediation is especially effective when used at the initial phase of any disagreement, before conflict escalates in the workplace. An early intervention can prevent both sides from becoming entrenched and the difference turning into a full-blown dispute. If the disagreement is resolved early on, there is less chance of the working relationship breaking down irrevocably. This improves the likelihood of maintaining good and productive employment relations in the longer term”.*
- 6.3. Mediation is a process of alternative dispute resolution which allows employees to help to clarify the issues involved and explore options for resolution. Mediation will be conducted with someone not involved in the grievance process and individuals within the process will decide the terms of resolution. Employees are expected to attend all meetings in connection with the mediation process. This does not preclude an employee from pursuing a formal grievance but the grievance would be placed on hold during the mediation process and only resumed if mediation is not successful.

7. Representation

- 7.1. At each stage of the formal grievance procedure the employee and other relevant parties have the right to be accompanied by a work colleague, a Trade Union representative or an official employed by the Trade Union. When arrangements for meetings are confirmed it will be the employee’s responsibility to notify their chosen representative of the arrangements, and to notify the Chair of the hearing of the name of the person accompanying them. The employee is responsible for providing their companion with a copy of all relevant paperwork.
- 7.2. There is no requirement for a work colleague to accept a request to accompany an employee. Trade Union representatives are also subject to Trade Union rules on potential representation.
- 7.3. Availability of a work colleague or trade union representative should not prohibit the expedience of the process or cause unreasonable delay, and the employee may be asked to identify alternative representation in the event of delay of more than 5 working days or two calendar weeks, whichever is the greater.

8. Formal procedure

- 8.1. If the issue is not resolved informally or via mediation and if they have not already done so the employee should put their grievance in writing to the Head of Department, stating that they wish to raise a formal

grievance, noting the nature of the grievance and the resolution they would wish to see. The Head of Department must ensure that the grievance is copied to the HR Adviser.

- 8.2. If it is not appropriate to submit the grievance to the Head of Department (e.g. because they are the subject of the grievance), the grievance should be submitted to the Director, People Group (or nominated representative)/Chair of Faculty/Director or a relevant senior officer of the University confirming why the Head of Department has not been approached.
- 8.3. The employee should ensure they incorporate all the areas they wish to raise as part of their grievance within the written grievance letter, as they will not be able to raise any new issues at a later stage unless by agreement with the University.
- 8.4. Where the Head of Department (or nominated representative) with advice from HR considers the grievance so trivial as to not warrant consideration under the grievance procedure this will be confirmed in writing to the employee by the Director of Specialist HR.
- 8.5. Where a grievance is raised against any other individual(s), the Head of Department (or nominated representative) must consult with the HR Adviser in the first instance to agree how and when to notify any individual(s) named in the grievance as soon as is practicable. In such circumstances, due regard must be taken of the rights of information, hearing and representation for all people involved at all stages of the grievance.

9. Investigation

- 9.1. An investigation prior to a grievance hearing will depend on the seriousness and complexity of the case. In some cases this will require the holding of an investigatory meeting, however, in others the investigatory stage will be the collation of evidence for use at the grievance hearing.
- 9.2. Where the matter is more complex or in potentially more serious cases, it will be appropriate for an Investigating Officer to be appointed by the Provost, Registrar, Senior Officer or to those to whom they have delegated authority (known as the Commissioning Officer) in liaison with the relevant HR Adviser.
- 9.3. Where appointed, the role of the Investigating Officer will be:
 - to investigate all areas specified by the Head of Department (or nominated representative) and determine the level and extent of the investigation required based on the grievance raised;
 - to interview any witnesses identified by the Head of Department (or nominated representative) , and any other person they reasonably consider to be appropriate;
 - to notify any witnesses of the access to information details provided in Section 15.3 of this procedure;
 - to provide a written report outlining the findings from the investigation to the Head of Department (or nominated representative).

- 9.4. Investigations should normally be concluded within six weeks, with any delays appropriately communicated.
- 9.5. Where mediation has been used in an earlier stage of the process, no information arising from the mediation process will be considered as part of the formal investigation as mediation is entirely confidential. The only information included in the investigation would be whether mediation had taken place or if an employee had not participated in mediation as this may be relevant to the ultimate outcome and recommendations.
- 9.6. At the conclusion of the investigation, the Investigating Officer's report will be sent to the Head of Department or in potentially more serious cases the Commissioning Officer of the investigation as specified in 9.2.
- 9.7. Once the Head of Department/Commissioning Officer (or nominated representative) has received the Investigating Officer's report and has established that the investigation has covered all the areas required to continue, they will convene the grievance hearing to consider the investigation report, hear any additional information from all parties involved, consider possible resolutions, and following the hearing the Panel will reach a decision which will be conveyed to the relevant parties by the Chair. A member of HR will attend the hearing to advise on procedure.
- 9.8. Access to information should be considered on a case-by-case basis, following consultation with the HR Adviser. Generally, if the grievance relates to another individual, the employee should be provided with sufficient information in order to be able to provide any relevant information in relation to the grievance raised.
- 9.9. The employee raising the grievance will receive a copy of the investigation report in advance of the grievance hearing. Any requests for access to information would be dealt with in accordance with the requirements of the Data Protection Act 2018 and should not delay the grievance procedure. In exceptional circumstances, for example, where it is deemed that the release of the report may be damaging to other parties, the report may be withheld or redacted with the agreement of the HoD/Commissioning Officer, and with advice from HR.
- 9.10. If the outcome of the grievance results in initiation of the disciplinary procedure then the subject of the disciplinary procedure would be able to see all the relevant information in order that they may present information in relation to the matters raised.

10. Grievance Hearing

- 10.1 The hearing will normally be chaired by the Head of Department (or nominated representative) for non-academic employees. For grievances submitted by members of Academic Staff the hearing will normally be chaired by the Head of Department (or nominated representative) or the Chair of Faculty or a Pro-Vice-Chancellor. Should the grievance be in relation to the Head of Department, an alternative Head of

Department will be appointed to Chair the hearing. All employees have the option to request an alternative Head of Department from another department as the Chair of the hearing, where the employee reasonably feels their own Head of Department as Chair may be prejudicial to the hearing. The Chair of the hearing will be accompanied by a minimum of one other appropriate manager. Where it is deemed appropriate by the Chair of the grievance hearing the Investigating Officer may be invited to attend the hearing. All parties will be informed of the date of the hearing at least **two working weeks**² in advance and will be provided with a copy of the investigation report and any other papers to be considered at the hearing. The employee will be required to submit any further evidence for the hearing at least **one working week** in advance of the hearing.

- 10.2. In all grievance hearings a HR representative will be present to advise on process.
- 10.3. If during the grievance hearing it becomes clear that additional information is required, then it may be necessary to conduct further investigation and to adjourn the grievance hearing until such time as this has been completed. The Head of Department (or nominated representative) in conjunction with the HR Adviser, may then appoint or ask the existing Investigating Officer to conduct any relevant investigation and submit a written report of their findings to the Head of Department/Chair of the grievance hearing.
- 10.4. The employee can be accompanied to the grievance hearing by a work colleague, Trade Union representative or an official employed by the Trade Union. The companion may address the hearing and sum up the employee's case and confer with the employee. The companion does not have the right to answer questions on the employee's behalf, nor to address the hearing if the employee does not wish them to do so. Where requested, the University will provide a written summary of the meeting which will be shared with parties present. The employee may take their own record of the meeting, but recording devices will not be permitted except in exceptional circumstances and following agreement in advance by all parties.
- 10.5. The grievance hearing should normally be held within **three working weeks** of receipt of the written grievance or submission of the investigation report unless a longer period is required for practical reasons.
- 10.6. The employee may propose an alternative time and date if the chosen companion is not available for the hearing at the time proposed. The Chair of the hearing must accommodate the request provided that it is reasonable and there isn't a delay of more than 5 working days or two calendar weeks, whichever is the greater.

² A working week shall be defined as a 7 calendar day period, regardless of how many days an individual is contracted to work

- 10.7. Where an employee fails to attend a grievance hearing without reasonable cause, the meeting will be postponed at least once. If an employee fails to attend a reconvened grievance hearing, the hearing may either be reconvened or the hearing may proceed in the employee's absence and a decision taken based on the information available to the Panel.
- 10.8. The Chair of the hearing will confirm the outcome of the hearing in writing to the employee who raised the grievance, normally within one working week of the conclusion of the hearing, giving full details of the right to appeal and to whom to address any such appeal.
- 10.9. Where a named individual is the subject of a grievance, the Chair of the hearing will confirm the outcome of the hearing to the subject of the grievance immediately after the employee who raised the grievance has been informed of the outcome.
- 10.10. The Head of Department will be notified of the outcome of any grievances involving members of their Department.

11. Appeal

- 11.1. If the employee does not feel that there has been a satisfactory resolution to their grievance, they should put their appeal in writing to the relevant HR Manager (for non-academic employees) or to the Director of Specialist HR (for Academic staff). The letter of appeal must include:
- details of the original grievance;
 - grounds for the appeal (see below); and
 - an indication of the resolution being sought.
- 11.2. Grounds for the appeal will normally come under one or more of the following headings:
- 11.2.1. Further evidence not previously considered at an earlier stage
The employee can demonstrate that relevant evidence was not considered in the original investigation or was not available to the grievance hearing when reaching the decision.
- 11.2.2. Process or Procedural aspects
The employee can identify areas of the procedure which were not implemented correctly or appropriately, and as a consequence could have influenced the final outcome or decision.
- 11.2.3. Final Decision not appropriate
The employee considers that the decision cannot be sustained on the basis of the findings of the grievance hearing.
- 11.3. Any appeal must be lodged within **two working weeks** of receipt of written notification of the original decision from the Head of Department/Chair of the grievance hearing.

- 11.4. The appeal will be heard as soon as practicable and normally no later than **four working weeks** after the appeal has been received, unless this time line needs to be extended.
- 11.5. The individual to whom the appeal is addressed will establish a grievance appeals committee to hear the appeal, in liaison with the department's HR Adviser. The Chair of the appeal hearing will write to the employee with notice of the membership of the grievance appeal committee and a date for the grievance appeal hearing.

12. Grievance Appeals Committee

- 12.1. The grievance appeals committee will normally consist of the Head of Department, or where the Head of Department has been involved previously, another appropriate senior employee who will normally chair the committee, and at least one other senior employee who has had no involvement previously in the grievance submitted. Where the grievance has been submitted by a member of Academic Staff the second independent committee member will be a senior academic employee. A member of HR will attend the committee to advise on procedure.
- 12.2. The grievance appeals committee will be asked to consider if the original decision was inappropriate on the grounds of appeal specified by the employee who submitted the grievance. The grounds for the appeal will be considered when deciding the necessity for, or extent of, any new investigation or re-hearing.
- 12.3. All parties to the grievance will be notified of the decision of the grievance appeals committee in writing as soon as practicable following the meeting, but normally within **two working weeks**. The decision will be final and will conclude the University's Grievance policy and procedure.

13. Withdrawal of a grievance

- 13.1. If an employee raises a grievance and then wishes to withdraw the grievance, they will need to write to the individual managing the grievance, confirming that they are withdrawing the grievance.
- 13.2. The University reserves the right to continue to investigate any matter which has been brought to the attention of the University if there is a requirement to address this as a duty of care to others or under legislation.

14. Malicious/vexatious grievances or grievances repeating allegations

- 14.1. Where there are reasonable grounds to believe that an employee has invoked the Grievance policy and procedure without good reason or with malicious intent or otherwise vexatiously, the grievance will be considered as potential misconduct and the employee may be subject to action under the Disciplinary policy and procedure.

- 14.2. Where the University reasonably believes that the subject matter of a grievance has already been considered under a University procedure, it reserves the right not to investigate or otherwise proceed with the grievance.

15. Record keeping and access to information

- 15.1. Written records will be kept by HR at each stage of the formal procedure. In all formal cases a HR representative will be present at grievance hearings and any appeal hearing, and where required will advise on process. **Where requested, the University will provide a written summary of the grievance hearing, which will be shared with parties present.** The employee may take their own record of the meeting, but recording devices will not be permitted except in exceptional circumstances **for example as a reasonable adjustment for a disabled employee** and following agreement in advance by all parties.
- 15.2. Employees should note that in order to maintain a fair, transparent and equitable process, the written notification of the complaint and any relevant supporting documents will be made available to the person against whom the grievance is raised so that they can adequately respond.
- 15.3. Witnesses will be advised that their witness statement may be seen by either party to the grievance, unless the University believes that witnesses' identity should remain confidential.
- 15.4. Where a grievance relates to a protected characteristic the matter will be brought to the attention of the University's Equality, Diversity and Inclusion Manager.

16. Confidentiality

- 16.1. All information relating to a grievance will be treated confidentially and maintained in compliance with the Data Protection Act 2018. Information relating to the grievance will be shared with only those who have a legitimate requirement to see the documentation as part of the resolution of the grievance or any consequent procedure.
- 16.2. It is expected that all parties will be sensitive to the nature of such proceedings, including matters discussed and any evidence provided. Breach of confidence, by any person, may compromise the integrity of the procedure and may lead to disciplinary action. This does not preclude individuals from seeking appropriate advice and support in relation to the grievance.
- 16.3. Where the University continues to investigate any matter as a duty of care or a legislative requirement then it may be necessary to share the information with appropriate external authorities. Any such requirement will be communicated to the employee.

17. Timescales

- 17.1. The timescales set out in the formal procedure are indicative of what is required for a grievance to receive an appropriately prompt response. However, it is recognised that in some cases additional time may be required and as such the timescales may be extended subject to the mutual agreement of all parties.

18. Breaches of the policy/procedure

- 18.1. All employees are responsible for ensuring that University policies and procedures are adhered to and implemented in a consistent and fair way. Where queries or issues arise, the HR Adviser should be contacted for guidance.
- 18.2 The University of Warwick recognises that no-one should be discriminated against or disadvantaged by virtue of being a member of a Trade Union.

19. Diversity and Inclusion

- 19.1. All individuals have the right to raise a grievance without any distinction on the grounds of age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation.

20. Equality Impact Assessment

- 20.1. The University of Warwick recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic. For further information, please refer to the University's Equality, Diversity and Inclusion website.
- 20.2. The Grievance policy and procedure has been assessed as being of high relevance to our duties under equality legislation, and the University will review its impact on equality and diversity, identify any inequalities by regular monitoring, and take action where necessary.



WARWICK

Policy and Procedure Redundancy

DRAFT

In Summary

This policy provides for a fair and transparent process where circumstances arise which may result in job losses or restructure involving the deletion of particular posts.

The policy and procedure complies with, and in some aspects exceeds, the minimum requirements of employment law at the time of its implementation.

There may be occasions when reductions in staffing are considered necessary. This is likely to be when the demand or necessity for work of a certain kind or in a particular area diminishes or ceases, or where financial pressures necessitate a reduction in headcount. On these occasions, every effort will be made to avoid compulsory redundancies but where such dismissals become unavoidable, the University undertakes to handle the redundancies in a fair, consistent and sympathetic manner.

This policy and procedure applies to all employees.

This policy and procedure is underpinned by the principles laid out in Statute 11 that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.

The University of Warwick recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic which include: age, disability, sex, trans and gender reassignment, maternity, paternity and adoption, marriage and civil partnership, race, religion or belief, or sexual orientation.



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DRAFT

1. Purpose

- 1.1. This Redundancy policy provides for a fair and transparent process where circumstances arise which may result in job losses or restructure involving the deletion of particular posts.
- 1.2. This policy and procedure complies with, and in some aspects exceeds, the minimum requirements of employment law at the time of its implementation.

2. Scope

- 2.1. This redundancy policy and procedure applies to all employees. Any changes to this policy will be subject to negotiation with the Trade Unions as outlined in Statute 11.

3. Principles

- 3.1. This policy and procedure is underpinned by the principles laid out in Statute 11 that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.
- 3.2. There may be occasions when reductions in staffing are considered necessary. This is likely to be when the demand or necessity for work of a certain kind or in a particular area diminishes or ceases, or where financial pressures necessitate a reduction in headcount. On these occasions, every effort will be made to avoid compulsory redundancies but where such dismissals become unavoidable, the University undertakes to handle the redundancies in a fair, consistent and sympathetic manner.
- 3.3. The following paragraphs set out the steps which are to be taken as soon as a situation arises which leads to redundancies being considered.
- 3.4. As part of the University's Redundancy policy and procedure for members of Academic Staff (as defined in Statute 11 Part II (2) (a)) and Part III, there may be a role for an Academic Freedom Review Committee (AFRC) which is outlined in Statute 11 and Ordinance 11.
- 3.5. It is recognised that, in most cases, the end of a fixed term contract is a dismissal on grounds of redundancy. Such cases will be managed in accordance with the Fixed Term Contracts guidelines and not the Redundancy policy and procedure. The Fixed Term Contract guidelines can be accessed on the HR webpages and will not normally be included as part of any collective consultation with the recognised trade unions.

4. Collective consultation

- 4.1. Heads of Departments (or where appropriate relevant members of the Senior Management team), will discuss their staffing plans with HR. Where these may result in a redundancy situation of members of Academic Staff (as defined in Statute 11 Part II (2)(a) as a result of a restructure, reorganisation or closure, Statute 11, Part III will also apply.

- 4.2. The Director, People Group (or nominated representative) will communicate with the relevant recognised trade union(s) to inform them that a possible redundancy situation has arisen.
- 4.3. Where it is envisaged that 20 or more employees in the same establishment¹ may be made redundant within 90 days, the University will collectively consult with the relevant recognised trade union(s).
- 4.4. Legally there is no obligation for the University to collectively consult with trade unions where it is envisaged that 19 or fewer employees may be made redundant. However, regardless of number, the University will notify trade unions where it envisages making any redundancies in line with this policy and procedure.
- 4.5. For the purposes of collective consultation, the Director, People Group (or nominated representative) will communicate with the relevant recognised trade union(s) to discuss the possible redundancy situation. Consideration will be given to the proposals to reduce staffing and ways of avoiding or reducing compulsory redundancies. Such measures may include:
 - Flexible working including job sharing or a reduction in hours/part time working
 - Voluntary redundancies
 - Career breaks
 - Recruitment freeze
- 4.6. Where it is envisaged that large scale redundancies may occur, further consultation with the relevant recognised trade unions will ensue, noting any requirements as outlined in Statute 11 which may apply.
- 4.7. Following a meeting under 4.5 or 4.6 above, HR will write to the appropriate recognised trade union(s) to record the outcome, and to respond to any suggestions or alternative proposals made. Additional meetings will be arranged as appropriate during the consultative period.
- 4.8. During collective consultation, the recognised trade union(s) will be notified of the following:
 - The department or departments affected
 - The number and type of posts affected
 - The reason(s) why a reduction in staffing may be needed
 - The proposed methods of selection of employees for redundancy
 - The proposed timescale
 - The method of calculating redundancy payments.
- 4.9. In addition there will be an opportunity to discuss the proposed pool and criteria and methods of selection for redundancy, the timescale, and the method to be used for the calculation of redundancy payments. Selection criteria may vary depending on the circumstances of each redundancy exercise but will be consistently applied to all employees in the affected department. Consideration will also be given to the way in which any redundancies, which eventually may prove to be unavoidable, are to be notified. The intention of the meeting

¹ An "establishment" in these terms will be at the appropriate organisational level below University level, typically a School or Department.

will be to reach an agreement if possible and each side will consider fully any proposals put forward by the other to ensure meaningful consultation.

- 4.10. For the purposes of collective consultation each department² will be treated as a separate establishment. Collective consultation will normally be for a minimum of 30 days (or for a longer period as required by legislation and/or dependent on circumstances) before any redundancy notices are issued. Where possible, the University will commence collective consultation at the earliest possible opportunity.
- 4.11. Written communication will be sent to each employee who may be affected by the selection criteria for redundancy.

5. Individual consultation

- 5.1. Following collective consultation (where required), the relevant Head of Department (or appropriate representative), together with an HR representative, will meet with each employee provisionally at risk of redundancy to inform them of the proposal, and to consider any initial response. A second meeting between employees at risk of redundancy, the Head of Department (or nominated representative) and an HR representative will be arranged to allow further consultation, with a third meeting scheduled where the case for the redundancy is confirmed. At any stage of this process the employee may request that a meeting is chaired by a senior member of staff from an unrelated area.
- 5.2. Throughout the individual consultation process, employees have a right to be accompanied to meetings by a recognised trade union representative or work colleague. Attendance by individuals external to the University, such as unrecognised trade union representatives, family members or legal representatives is not permitted.
- 5.3. The individual consultation period will normally be for a minimum of 30 days or such longer period as may be deemed necessary under the circumstances, or as required by legislation. Where possible, the University will commence consultation with affected individuals at the earliest opportunity.
- 5.4. The University recognises that consultation regarding a potential redundancy situation will be a difficult period of time for employees and therefore will ensure that employees are notified of appropriate support mechanisms during individual consultation meetings.
- 5.5. Where an employee's post is confirmed as redundant employees who have two years' service by the end of their notice period will be entitled to reasonable paid time off to look for alternative work and attend interviews etc. Employees should make appropriate arrangements with the relevant line manager.

² A "department" in these terms will be at the appropriate organisational level below University level. For example, potential redundancies in a Unit/Department within the Finance office will be managed at the level of Group Finance Director's office, and for a Unit/Department within the Medical School any potential redundancies will be managed at the level of the Medical School.

- 5.6. A template individual consultation process guidance document is available on the HR webpages, highlighting the normal matters to be covered during an individual consultation meeting.

6. Notice of redundancy and appeal

- 6.1. Formal notice of redundancies may be given once the consultative procedures outlined above have been exhausted, and there is no further mitigation of the redundancy possible. If redundancy is confirmed the employee's notice period will then commence in line with their conditions of employment.
- 6.2. Employees who receive formal notices of redundancy have the right to appeal against their dismissal. Employees who wish to appeal must lodge their appeal by writing to the Director, People Group as soon as possible and no later than **four working weeks³** after receipt of formal notice of dismissal on grounds of redundancy, setting out the grounds of appeal. The appeal will be considered by the Registrar (or nominated representative) and a senior manager not associated with the department(s) involved. For an appeal relating to members of Academic Staff the senior manager will be a senior Professor not associated with the department(s) involved. A successful appeal may not result in a reduction in the total number of redundancies.
- 6.3. **The detailed procedure for an appeal against redundancy by a member of Academic Staff on the basis of Academic Freedom (as defined in Statute 11 Part II (1) (a)) will be laid out in Ordinance 11.**
- 6.4. A member of HR will be present at all appeal hearings and will advise on procedure.
- 6.5. Employees under notice of dismissal on grounds of redundancy are eligible to be supported by the provisions of the Redeployment Policy and Procedure, details of which are available on the HR webpages.

7. Redundancy payments

- 7.1. The University will comply with statutory requirements on redundancy pay.
- 7.2. **In redundancy cases arising from restructures, reorganisations or closures, the University will offer enhanced redundancy pay equivalent to 30 weeks' basic pay, subject to the appropriate deductions for tax and national insurance. There will be a qualifying period of 2 years' service for entitlement to enhanced redundancy pay.**
- 7.3. Employees are expected to take any outstanding annual leave during the notice period, if this is not possible, a payment may be made in lieu of any remaining annual leave on the termination date in line with the applicable contractual terms and conditions of employment.

8. Notice periods

- 8.1. Employees will normally be expected to work their contractual notice period unless otherwise mutually agreed.

³ A working week shall be defined as a 7 calendar day period, regardless of how many days an individual is contracted to work

9. Impact Assessment

- 9.1. The University recognises its responsibility to ensure that no-one is discriminated against or disadvantaged, through membership of any particular group, or on the grounds of age, disability, sex, trans & gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, or sexual orientation. For further information please refer to the University's Equality, Diversity and Inclusion website.
- 9.2. The Redundancy policy and procedure has been assessed as being of high relevance to our duties under anti-discrimination legislation and the University will review its impact on equality and diversity, identify any inequalities by annual monitoring, and it will take action where necessary.



WARWICK

Policy and procedure

Sickness absence



WARWICK

In Summary

The University is committed to supporting the wellbeing of its employees, providing appropriate support and, where applicable, reasonable adjustments to **minimise absence from work**.

This policy and procedure aims to promote a positive attitude to **minimise absence from work** and raise awareness of the effects of sickness absence on colleagues and service delivery.

This policy applies to all employees and covers both short term absence (a period or regular periods of absence of less than four weeks), long-term absence (any continuous period of four weeks or longer), and periods when the employee is fit for work but there is additional health advice to be considered.

This policy and procedure is underpinned by the principles outlined in Statute 11 that academic employees have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.

The University of Warwick recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic which include: age, disability, sex, trans and gender reassignment, maternity, paternity and adoption, marriage and civil partnership, race, religion or belief, or sexual orientation.

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1. Purpose

- 1.1. The University is committed to supporting the wellbeing of its employees, providing appropriate support and, where applicable, reasonable adjustments to **minimise absence from work.**
- 1.2. This policy and procedure aims to promote a positive attitude to **minimise absence from work** and raise awareness of the effects of sickness absence on colleagues and service delivery.
- 1.3. The aims of this policy are to:
 - provide employees and managers with standard procedures and a consistent approach for managing, reporting and recording sickness absence;
 - minimise sickness absence levels and help facilitate a return to work;
 - offer support and assistance to employees experiencing ill health;
 - ensure the University acts in a fair, reasonable and consistent manner when dealing with sickness absence issues; and
 - establish the roles and responsibilities of all parties involved, including employees, Heads of Departments/Managers, Human Resources and Occupational Health in relation to sickness absence.
- 1.4. The University will adopt a case-by-case approach when working with employees who are absent from work due to ill health, and where appropriate will modify the approach to the specific health circumstances of each individual employee.
- 1.5. Guidance and advice should be sought from the relevant HR Adviser where there are specific concerns regarding the application of the policy. Further advice on managing sickness absence is provided in the Sickness Absence Guidance document.

2. Scope

- 2.1. This policy applies to all employees and covers both short term absence (a period or regular periods of absence of less than four weeks), long-term absence (any continuous period of four weeks or longer), and periods when the employee is fit for work but there is additional health advice to be considered.
- 2.2. This policy and procedure is underpinned by the principles outlined in Statute 11 that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.
- 2.3. **Any changes to this policy will be subject to negotiation with the Trade Unions as outlined in Statute 11.**

3. Responsibilities

3.1. The University is committed to promoting the health and wellbeing of all employees. The University also has a responsibility to ensure its sick pay scheme is used appropriately and to provide a safe and healthy working environment. A summary of the responsibilities are provided below:

3.2. Employees have a responsibility to:

- look after their own health and, as far as possible, to minimise absence from work
- attend for work at the times required
- report any absence before the start of their normal working day
- maintain regular contact with their manager when absent
- advise their manager if they consider there are factors in the workplace which they consider have contributed to any illness or injury.
- attend an OH appointment to enable the University to assess and support the employee

3.3. Heads of Department/Managers¹ have a responsibility to:

- ensure that all employees know their responsibilities if they are absent due to illness
- ensure that the appropriate recording and reporting procedures are followed
- monitor the absence levels of their employees
- maintain contact with employees absent from work
- carry out return-to-work discussions
- consider information provided by the employee about their health including where relevant comments by the employee's GP in a medical certificate (Statement of Fitness for Work) and any recommendations from Occupational Health.

3.4. Human Resources (HR) - HR Advisers have a responsibility to:

- support and provide guidance to Heads of Departments/Managers on the management of cases of sickness absence
- provide advice to employees where necessary
- arrange referrals to Occupational Health
- provide guidance on managing sickness absence.

3.5. Occupational Health (OH) – The University's Occupational Health team includes a range of health and medical professionals who, liaising where necessary with other qualified medical practitioners have a responsibility to:

- provide advice and recommendations to the employee and to their manager and the HR Adviser.
- recommend changes in working practices and environments that could impact on the employee's ability to carry out his/her job duties.

¹ Head of Department/Manager refers to the person with managerial or supervisory responsibilities in relation to the employee who has been absent

4. Sickness absence reporting procedure

- 4.1. If an employee cannot **undertake normal duties** due to ill health they should notify their manager (or a nominated person within the department) of their absence by telephone as soon as possible on the first day of absence and, normally, before the start of their normal working day. In exceptional circumstances, if an employee is unable to contact their manager personally, they should make alternative arrangements e.g. ask a family member to call on their behalf.
- 4.2. The following details should be provided by the employee:
 - the nature of the illness or injury;
 - the **estimated** length of absence from work;
 - contact details; and
 - any outstanding or urgent work that requires attention.
- 4.3. It is recognised that there are a variety of different working patterns across the University, including various levels of flexibility regarding working location and hours. Should an employee not make themselves available for work (having been expected to do so) with no prior notification to their manager to detail their absence, the manager (or nominated representative) will attempt to contact the employee.
- 4.4. If an employee fails to notify their manager (or a nominated person within the department) of their absence and does not have a valid reason for not doing so, this may be considered under the disciplinary policy and procedure.
- 4.5. The manager and the employee should maintain reasonable contact whilst the employee is absent from work, taking into account the nature of the absence. Contact between the manager and the employee will usually be by telephone, in the first instance, with the ongoing method of communication, which may include meeting with the employee, then mutually agreed.

5. Types of Sickness absence

- 5.1. Types of sickness absence are listed below:
 - Repeated short term sickness absence, where an employee has been absent from work through sickness or injury on a number of occasions over a rolling 12 month period, or where a pattern of absence has been identified over the same period.
 - Long term sickness absence, for a continuous period of absence of four weeks or longer.
 - Capability related sickness absence, where it is determined following medical assessment that it is unlikely that the employee will be fit to return to work/their current post.
- 5.2. Not all patterns of absence fall neatly into one of the above groups and/or the pattern may change over a period of time, so some flexibility of approach may be needed.

6. Submission of self-certification form/statement of fitness for work

6.1. Details of sickness absence documentation dependent on duration of sickness absence is detailed below:

Duration of sickness absence in calendar days	Documentation required from employee
Up to 7 days	Self-certification must be completed
8 days or more	A Statement of Fitness for Work (or 'Fit Note') must be obtained from a doctor.

6.2. Employees who have a fit note from their GP stating that they "may be fit for work" should inform their manager as soon as possible. When presented with a fit note that contains specific medical advice or recommendations, the manager should discuss this with the employee and the HR Adviser and may seek advice from Occupational Health. If the suggested adjustments cannot be implemented, the employee will remain on sick leave and a further review date will be agreed with Occupational Health.

7. Time off for medical appointments

- 7.1. Reasonable time off with pay will be allowed for hospital, doctor and dentist appointments or for emergency medical or dental treatment and such appointments will not be counted as sickness absence. The relevant manager may ask to see evidence of the appointment(s).
- 7.2. Employees are expected to make every effort to ensure that routine appointments are made before or after the working day. Where this is not possible, it is expected that appointments will be arranged to minimise disruption to their work. Therefore, appointments should be made at the beginning or end of the normal working day, i.e. within the first or last working hour. Employees who work part time or shifts are expected to schedule routine appointments for when they are not working, where possible.
- 7.3. The University acknowledges that some health condition(s) may require on-going treatment and time off from work to attend medical appointments, which will be accommodated wherever possible. Employees should discuss their need to attend medical appointments with the relevant manager as early as possible. If the manager has a concern about the frequency of time off requested by an employee to attend medical appointments, evidence of appointments, or equivalent, may be required.
- 7.4. It is accepted that employees may not have any control over some appointment times, for example for hospital/consultant appointments.
- 7.5. Employees will not normally be required to make up the time taken for routine medical appointments/treatment.

8. Sick pay

8.1. Employees will be paid in accordance with the sick pay schemes detailed in their terms and conditions of employment.

8.2. Where an employee's length of service increases during a period of sickness absence they will receive the maximum sick pay benefits that applied on the first day of the current period of absence. Following a return to work of at least four consecutive weeks and where applicable any increase in years of service, any subsequent periods of sickness absence will result in the appropriate increased level of sick pay based on length of service.

8.3. Calculation of sick pay for Term time only and employees working for designated weeks of the year²

8.3.1. Contracted term-time only employees qualify for University sick pay on a pro rata basis in line with the number of weeks that they work throughout the year.

8.3.2. Sick pay in line with an employee's entitlement will be paid during a term time only employee's normal working weeks. Employees will be paid their normal pay during their non-working weeks. Entitlement to sick pay will cease on the last day of any given working period, and where appropriate, will recommence at the start of the next.

8.3.3. In calculating entitlement to sick pay, a term-time only employee's length of service is regarded as continuous from the employee's date of commencement, including any non-working periods.

9. Notification

9.1. Employees with term time only contracts are not required to notify the University if they are unfit to work during their non-working periods. However, if it becomes apparent to an employee during their non-working periods that they will not be fit to return to work on the date they are due to resume work, employees are asked to notify their relevant manager as soon as practicable, and ordinarily at least **four working weeks**³ to their return to work date. Where the period of sickness commences within **four working weeks** prior to an employee's return to work date, they will notify their relevant manager as soon as it becomes apparent that they will not be fit to return to work on the date they are due to resume work.

9.2. The University's standard procedures regarding self-certification and provision of medical certification for periods of sickness absence apply to term-time only employees.

² Where denoted, term time only employees refers also to employees who only work designated weeks of the year, i.e. work on a less than 52 week/year contract

³ A working week shall be defined as a 7 calendar day period, regardless of how many days an individual is contracted to work

10. Return to work discussions

10.1. Where an employee has been absent from work due to sickness, the relevant manager will hold a return to work discussion with the employee after each period of absence.

10.2. A return to work discussion provides the opportunity to:

- discuss the reason(s) for absence;
- identify any support that is required to ensure the employee's successful return to work, including discussing any measures that may have been recommended in a fit note or advice received from Occupational Health;
- update the employee on work progress and events that took place during the period of their absence;
- allow the employee to raise any concerns or questions and bring any relevant matters to the manager's attention; and
- review if work has been a contributory factor for the absence.

11. Occupational Health

11.1. The University is committed to supporting employees to remain at work or return to work. Where the manager needs to understand the implications of the employee's health / fitness to work or believes that the nature of the sickness absence merits guidance from Occupational Health they should contact their link HR Adviser in the first instance. Where appropriate, an appointment with Occupational Health will be arranged. The employee will meet with Occupational Health and should Occupational Health deem it necessary to seek a medical report from the individual's GP/Specialist then this will be discussed with the employee at the meeting in order to seek informed consent to the request.

11.2. Referrals to Occupational Health will normally be appropriate in the following circumstances:

- where there is a continued concern about short term absences or repeated absences for the same reason;
- during long term sickness absence including the management of the return to work;
- where there are concerns that factors in the workplace are contributing to the sickness absence;
- if the employee requests a referral;
- if the employee wishes to return to work before the expiry of a fit note/medical note.

11.3. The purpose of the referral is to establish some or all of the following, depending on the nature of the absence:

- a prognosis of the employee's illness in terms of when the employee is likely to be fit to return to work;
- whether adaptation of the job, working hours or environment might facilitate a return to work;
- whether or not there is a need for the University or Occupational Health to seek additional medical information from the employee's GP or Consultant;
- whether an onward referral to a specialist e.g. physiotherapist or counsellor may be required;
- whether a phased return to work may be appropriate;

- an indication of whether a return to their current role or any form of work may be likely.

12. Management of long term sickness absence

- 12.1. Long term sickness absence may be for a variety of reasons (e.g.; injury, operation, convalescence from illness/surgery, diagnosis of a disability/long term condition, terminal illness), and action taken will vary according to the employee's situation.
- 12.2. Employees absent on a long term basis should agree with their manager how contact should be maintained during their absence, for example by telephone, email or letter. The timing and nature of the contact will be appropriate to the employee's situation and health condition. However, it is generally expected that telephone or personal contact will be made at least every four weeks.
- 12.3. Typically, in cases of long term sickness absence, it is helpful to arrange face to face meetings. In such circumstances, the location of such a meeting can take place at a mutually agreeable venue, which may include the University, the employee's home or a neutral venue.
- 12.4. Where a manager agrees to meet with an employee at their home address or a neutral venue (i.e. off campus), the manager must liaise with their HR Adviser in advance of any visit and no visit should be made by an unaccompanied manager.
- 12.5. Advice may also be sought from Occupational Health, if required, regarding such a meeting.

13. Phased return to work

- 13.1. In some instances it may be appropriate for an employee to have a phased return to work to allow an opportunity to adjust to returning to work, usually after a period of long term sickness absence. The normal maximum period for a phased return is four weeks. The first four weeks of the phased return will be paid at normal base pay.
- 13.2. If an extension of the phased return to work is agreed, payment will normally be granted at pro-rata to the hours worked for any period beyond the initial four weeks and will be progressed as a temporary amendment to contract to allow for the appropriate salary payment calculations.
- 13.3. There may be exceptional circumstances at the end of a period of phased return, where individuals may request to use annual leave to extend their period of phased return. However, whilst the University would consider such a request for a limited duration, individuals and managers are reminded that annual leave should be used for rest and time away from the workplace throughout the year.
- 13.4. Managers should discuss any cases of phased return to work with the HR Adviser to ensure the most appropriate arrangements are put in place.

14. Disability and related absence

- 14.1. The University acknowledges that sickness absence may result from a disability. Disability is defined under the Equality Act (2010) as “a physical or mental impairment that has a substantial and long-term adverse effect on an individual's ability to carry out normal day-to-day activities”.
- 14.2. There is no obligation for employees to disclose a disability or health condition to the University, although employees should inform their manager if they consider their disability and/or health condition affects their ability to undertake their work and/or poses a health and safety risk.
- 14.3. Where an employee chooses to disclose a disability, as defined under the Act, managers should consider and discuss with the employee and where necessary Occupational Health any necessary support, adaptations and reasonable adjustments to the workplace or role.
- 14.5. Further advice on reasonable adjustments is provided in the Sickness Absence Guidance document. Reasonable adjustments may also need to be made to the application of this policy. Please also refer to the disability framework for staff <http://www2.warwick.ac.uk/services/equalops/disability/framework>

15. Sickness during annual leave

- 15.1. An employee who falls ill during a period of annual leave must notify their manager in accordance with the normal sickness absence reporting procedure, and submit a medical certificate from their GP (Statement of Fitness to Work) to support the absence, if they wish to reclaim any annual leave.
- 15.2. If an employee is outside of the UK and consults a doctor the medical note must be on headed paper or have an official stamp.
- 15.3. If any payment is required to obtain the Statement of Fitness to Work in relation to reclaiming annual leave, employees will be expected to meet this cost themselves.
- 15.4. An employee will be regarded as being sick from the date specified on the fit note/medical certificate and will be entitled to take the annual leave at a later date after returning to work in accordance with the annual leave policy, or in liaison with their link HR Adviser in cases of long-term sickness.
- 15.5. Statutory days cannot be reclaimed (e.g. during the Christmas period or on a Public Holiday), subject always to an employee receiving a minimum of 28 days leave (or pro rata equivalent) in a leave year, inclusive of statutory days.

16. Informal procedure

- 16.1. This procedure is intended to facilitate discussion between the manager and employee to understand the reasons for the absence, identify what if any support is required, and confirm attendance expectations.

- 16.2. In the first instance it may be appropriate for the manager to have an informal discussion with the employee. This may arise, for example, where an employee's absence record gives cause for concern, or where matters discussed at a return to work discussion require further investigation or consideration.
- 16.3. During the informal discussion, the manager should seek to:
- Discuss the employee's sickness absence record;
 - Raise any patterns or concerns;
 - Offer support and advice as required;
 - Give the employee the opportunity to discuss any health issues/concerns or any other factors which have contributed to their absence;
 - Consider any mitigating factors (for example, pregnancy or disability-related absences);
 - Confirm attendance expectations;
 - Establish if the absence is in anyway related to work factors e.g.; workload/commitments.
- 16.4. If appropriate, an attendance plan over a specific period of time may be set. If the employee's attendance improves and the desired improvement is made, no further action will be taken.
- 16.5. Employees should be made aware that if the desired improvement is not demonstrated, the matter may be referred for review under stage one of the formal procedure.

17. Formal procedure

- 17.1. Managers should seek to resolve sickness absence issues informally wherever possible. However, if informal action is not considered appropriate, or has not resulted **in reduced sickness absence** to an acceptable level, the employee will be invited to attend a formal meeting, which the employee must take all reasonable steps to attend. If an employee becomes ill ahead of a formal meeting, they may be referred to Occupational Health for an assessment of their fitness to attend meetings and continue with the process.
- 17.2. Employees may be accompanied at all formal meetings and the employee must inform their manager if they or their companion will be unable to attend a meeting, so the manager can seek to agree an alternative meeting time. A re-arranged meeting should be within **1 working week** of the original meeting date, or the employee will be asked to choose an alternative companion.
- 17.3. Meetings will normally be rescheduled once and if the employee remains unable to attend then they will have the option to submit written documents and the process will continue.
- 17.4. In considering whether to invoke the formal procedure, managers should ensure they have conducted regular return to work discussions, that the absence has been reviewed, and that guidance from Occupational Health has been considered where relevant, and that the employee has been made aware that unless their **sickness absence reduces to an acceptable level** that the case would progress to the formal procedure.

17.5. There is no requirement for an Occupational Health report to have been obtained prior to commencement of the formal procedure.

18. Formal stage one meeting

18.1. A formal stage one meeting may be held when an employee's absence due to sickness is of concern and informal action is no longer appropriate, or has not brought about improvement to an acceptable level.

18.2. The Head of Department (or nominated representative) will write to the employee with the details of the meeting to discuss the employee's absence. The details of the absence(s) will be confirmed in the letter to the employee. The employee should receive at least 1 working week's written notice of the formal meeting, unless otherwise mutually agreed. The employee will be advised that they have a right to be accompanied at the meeting by a Trade Union representative or a work colleague. In all formal meetings a HR representative will attend the meeting to provide guidance on procedure.

18.3. The Head of Department (or nominated representative) will be accompanied by at least one other appropriate manager. For academic cases this would be a senior Professor from another Department.

18.4. During the meeting the manager will:

- discuss the reasons for the absence, giving the employee the opportunity to provide reasons for their absence and any mitigating circumstances;
- confirm attendance expectations;
- gather any relevant information relating to the absence(s);
- discuss guidance from Occupational Health, where appropriate ;
- identify any support required, for example an appointment with a University Counsellor;
- discuss any aspects that may facilitate the individual's return to work, including if necessary any reasonable adjustments where the absence relates to a disability;
- confirm next steps, including periods of review.

18.5. Notes should be taken of the meeting and the employee should be given every opportunity to explain the circumstances relating to the absence(s).

18.6. The Head of Department (or nominated representative), may consider one or more of the following options (this list is illustrative and not exhaustive):

- Adjourn the meeting to obtain further medical evidence;
- A return to work programme, possibly with a phased return to work (where the employee has been absent for a long period);
- Issue a written warning and a formal absence monitoring period
- No further action at this stage.

- 18.7. If a written warning is issued it will remain in force for 12 months and the employee will be notified of the right to appeal (the formal absence monitoring period may be shorter than the length of the written warning).
- 18.8. A review will be undertaken at the end of the warning period or sooner if there are concerns regarding absence levels as a result of the formal absence monitoring period or otherwise.

19. Formal stage two meeting

- 19.1. If by the end or during the first written warning review period, the required level of improvement in attendance has not been attained, a further meeting should be arranged and communicated in writing to the employee.
- 19.2. During the meeting the Head of Department (or nominated representative) will cover the points outlined above in stage one.
- 19.3. The Head of Department (or nominated representative) will be accompanied by at least one other appropriate manager. For academic cases this would be a senior Professor from another Department.
- 19.4. Following the meeting, the Head of Department, may consider one or more of the following options (this list is illustrative and not exhaustive):
- Adjourn the meeting to obtain further medical evidence;
 - Issue a final written warning and a formal absence monitoring period;
 - No further action at this stage.
- 19.5. If a final written warning is issued it will remain in force for two years and the employee will be notified of the right of appeal (the formal absence monitoring period may be shorter than the length of the final written warning).
- 19.6. A review will be undertaken at the end of the warning period or sooner if there are concerns regarding absence levels as a result of the formal absence monitoring period or otherwise.
- 19.7. The employee will be advised that dismissal on the grounds of capability will be considered if there is no satisfactory improvement and will detail the right of appeal.

20. Formal stage three meeting

- 20.1. If by the end or during the final written warning review period (stage two) the required level of improvement in attendance has not been attained, a further meeting should be arranged.

- 20.2. An investigation should be carried out prior to any stage three meeting which in most cases will require the collation of evidence for use at the formal meeting. This investigation should be carried out by the manager who chaired the stage two meeting, where possible.
- 20.3. A stage three meeting will normally be chaired by a manager more senior than the manager who has held the stage one and two meetings. There will also be a second manager and a member of HR present in stage three meetings. The employee must be notified in writing in advance of the meeting that a possible outcome of the stage three meeting could be dismissal. A Head of Department (or nominated representative) can take the decision to dismiss a non-academic employee only. The decision to dismiss a member of Academic Staff can only be made by a Chair of Faculty/ Pro-Vice Chancellor with notification in advance of the decision to dismiss to the Provost.
- 20.4. During the meeting the Chair of the meeting will cover the points outlined in stages one and two. The manager who carried out the investigation will present the case and answer any questions from the Chair of the meeting.
- 20.5. Following the meeting, the Chair, may consider one or more of the following options (this list is illustrative and not exhaustive):
- To extend a final written warning and set a further review period (where a substantial improvement in attendance is likely within the review period);
 - To consider other options such as redeployment support, ill-health retirement or other appropriate action short of dismissal;
 - Dismissal on the grounds of lack of capability (health); or
 - No further action.
- 20.6. A review will be undertaken at the end of the warning period or sooner if there are concerns regarding absence levels.

21. Right of appeal

- 21.1. An employee has the right of appeal against a written warning, final written warning or dismissal notification under this procedure.
- 21.2. The appeal should be made in writing by the employee setting out the grounds for appeal, providing any evidence and should be sent to the relevant HR Manager for non-academic employees and to the Director of Specialist HR for members of Academic Staff.
- 21.3. The appeal must be lodged within **2 working weeks** of receipt of written notification of the decision. The employee will be advised of the proposed appeal hearing date by the Chair of the appeal panel.
- 21.4. The appeal will be heard as soon as practicable and normally no later than **4 working weeks** after the appeal has been lodged, except where it is mutually agreed that this time limit be extended.

- 21.5. Where possible appeals will be heard by an individual more senior than the person who determined the original sanction, although there may be circumstances where it is appropriate for an individual at the same grade to chair an appeal hearing. The individual hearing the appeal will be accompanied by a minimum of one other senior member of staff independent of the process undertaken to that point. A member of HR will be present to advise on procedure. The individuals on the appeal panel should not have been involved in any prior formal meetings.
- 21.6. For appeals by an academic employee in relation to a first or final written warning the appeal will normally be chaired by the Chair of Faculty or Pro-Vice- Chancellor. For appeals by a member of Academic Staff in relation to dismissal the appeal will be chaired by a Pro-Vice-Chancellor or the Provost.
- 21.7. The appeal Chair/Panel will be asked to consider if the original decision was inappropriate on the grounds specified by the employee. The Chair/Panel will also be asked to make a decision in relation to the following:
- Consider whether the formal action was reasonable in the circumstances and uphold the original decision
 - Reduction of the sanction originally imposed
 - Re-instate following dismissal
 - Overturn the sanction where it is considered just to do so, in particular in the light of any new information or where the formal decision was unreasonable in the light of the findings of fact
 - Refer the matter back for a re-hearing where the fairness of the process/procedure was the stated grounds for appeal and this is upheld
- 21.8. The decision of the appeal Chair/Panel will be confirmed in writing to the employee normally within **2 working weeks** of the date of the meeting.
- 21.9. The decision of the appeal Chair/Panel is final and there will be no further right of appeal against this decision.

22. Formal capability review

- 22.1. Heads of Departments should consult their HR Adviser for guidance prior to any discussions with the employee.
- 22.2 Where a medical condition has a substantial and long term or ongoing intermittent adverse effect on an employee's ability to undertake their job the University will act in accordance with the provisions of the Equality Act, and will review whether reasonable adjustments to the job role or workplace will overcome the practical effects of the medical condition.
- 22.3. If reasonable adjustments are not a viable option, Heads of Departments (or their nominated representative) will also consider with the employee and the HR Adviser the potential for redeployment to an alternative role within the University. The University's Redeployment policy and procedure provides further information in regard to this process. When all other options have been taken into account ill health

retirement will also be considered. The final option to be considered will be dismissal on the grounds of lack of capability.

23. Ill health retirement

- 23.1. Ill health retirement should be considered before any decision to dismiss is taken under this policy. Guidance and advice on ill health retirement should be sought from the HR Adviser.
- 23.2. The option for ill health retirement is subject to meeting the eligibility criteria set out by the relevant pension provider and advice should be sought from the Pensions department.
- 23.3. A decision relating to termination or possible ill health retirement will be made in the light of available medical evidence, and a meeting/discussion where viable with the employee concerned. In any event termination of employment on the grounds of capability or ill health early retirement, in relation to long-term sickness cases, will not normally be effected before an employee has exhausted their sick pay allowance under the relevant sick pay scheme.

24. Confidentiality

- 24.1. All information relating to a formal or informal sickness absence management procedure will be treated confidentially and maintained in compliance with the Data Protection Act 2018. Information will only be shared with those who have a legitimate requirement to see the documentation as part of resolution to the absence procedure or any consequent procedure.

25. Equality Impact Assessment

- 25.1. The University of Warwick recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic. For further information, please refer to the University's Equality, Diversity and Inclusion website.
- 25.2. The Sickness Absence policy and procedure has been assessed as being of high relevance to our duties under equality legislation and the University will review its impact on equality and diversity, identify any inequalities by regular monitoring, and take action where necessary.



WARWICK

Disciplinary Policy and procedure



WARWICK

In Summary

This disciplinary policy and procedure is designed to encourage improvements where required in the conduct or performance of employees; it aims also to ensure that the required standards of conduct at work are adhered to, and that any alleged failures to observe these standards are dealt with fairly and equitably.

The disciplinary policy and procedure applies to all employees.

This policy and procedure is underpinned by the principles laid out in Statute 11 that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges. No academic employee will be subject to a disciplinary sanction as a consequence of exercising their right to academic freedom as defined within Statute 11.

The University of Warwick recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic which include: age, disability, sex, trans and gender reassignment, maternity, paternity and adoption, marriage and civil partnership, race, religion or belief, or sexual orientation.

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1. Purpose

- 1.1. This disciplinary policy and procedure is designed to encourage improvements where required in the conduct or performance of employees; it aims also to ensure that the required standards of conduct at work are adhered to, and that any alleged failures to observe these standards are dealt with fairly and equitably. A separate procedure applies to management of underperformance and management of sickness absence.
- 1.2. The purpose of the policy and procedure is to provide a fair and consistent mechanism for disciplinary matters throughout the University; the procedure is not intended to replace or remove a Head of Department/manager's (or nominated representative)¹ **ability to take informal action**. Formal action under this procedure should be brought into effect only when there is a serious breach of discipline.

2. Scope

- 2.1. The disciplinary policy and procedure applies to all employees. **Any changes to this policy will be subject to negotiation with the Trade Unions as outlined in Statute 11.**

3. Principles

- 3.1. This policy and procedure is underpinned by the principles laid out in Statute 11 that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges. No member of Academic Staff will be subject to a disciplinary sanction as a consequence of exercising their right to Academic Freedom as defined within Statute 11 Part II (1)(a).
- 3.2. At every stage in the disciplinary policy and procedure, the employee will be advised of the nature of the alleged misconduct together with any evidence and will be given the opportunity to state their case before any decision is taken.
- 3.3. No disciplinary action will be taken without thorough consideration of the matter.
- 3.4. The University will make every effort to deal with disciplinary matters as quickly as possible **and will give employees reasonable notice of any meetings** in line with the ACAS code of practice.
- 3.5. The employee has the right to be accompanied by a work colleague or Trade Union representative at all formal stages of the disciplinary policy and procedure, i.e. a formal investigation meeting or formal disciplinary hearing.

¹ Where denoted, Head of Department (or nominated representative) also refers to line manager, manager etc. i.e. the relevant person immediately responsible for managing disciplinary matters

- 3.6. Where the Head of Department is the subject of formal disciplinary action, the role of the Head shall be taken by a Senior Professor or Senior Officer of the University who shall be appointed by the Registrar in the case of a non-academic member of staff and by the **Provost** in the case of a member of Academic Staff.
- 3.7. If an employee raises a grievance in the course of a disciplinary process and the University, acting reasonably, considers the matters are related it may be appropriate to deal with both matters concurrently, as part of one process. Consideration may also be given to suspending the disciplinary process pending the outcome of the grievance investigation. In such circumstances, the Head of Department (or representative) will seek advice from HR and inform the employee on the process to be followed.
- 3.8. Where a grievance is raised in the midst of a disciplinary process and the two matters are unrelated, it may be appropriate to deal with the two processes concurrently. In such circumstances, the Head of Department (or representative) will seek advice from HR and inform the employee on the process to be followed.
- 3.9. Where a complaint regarding bullying and/or harassment is formally investigated under the grievance policy it may in some cases, dependent on the outcome of the investigation be considered in line with the disciplinary policy and procedure. As far as is reasonably possible, the University will also be considerate of the wishes of the complainant in this regard. Should the matter be considered in line with the disciplinary policy and procedure, the employee potentially subject to any disciplinary proceedings will be fully informed about the process to be followed.
- 3.10. Employees may find recourse to the Dignity at Warwick policy helpful in attempting to resolve matters informally.
- 3.11. In cases of alleged gross misconduct (or cumulative misconduct, i.e. that could potentially result in dismissal), members of Academic Staff (as defined in Statute 11 Part II (2)(a)) will be advised of their right to have the details of their case considered by the Academic Freedom Review Committee (AFRC) if they consider that there has been an infringement of their Academic Freedom, as defined under Statute 11 (Part II (1)(a)). The AFRC process is outlined in full in Statute 11 and Ordinance 11.

4. Responsibilities

4.1. Head of Department/manager (or representative):

- addressing issues as they arise under the informal procedure where possible;
- maintaining discipline and setting fair standards of conduct and behaviour;
- consulting their HR Adviser before taking formal action under the disciplinary policy and procedure or a disciplinary investigation;
- ensuring that their actions are lawful and do not expose the University to legal liability, either by ill-advised action or by negligence;
- conducting themselves with dignity, honesty and integrity to promote an atmosphere of mutual respect, in accordance with the University's Dignity at Warwick, and other HR policies.

4.2. Human Resources (HR) is responsible for:

- training, guiding and advising managers on all aspects of the disciplinary policy and procedure to ensure that disciplinary matters are resolved appropriately and in a timely manner;
- advising members of staff on the disciplinary policy and procedure;
- monitoring the use of the disciplinary policy and procedure across the University;
- ensuring that the disciplinary policy and procedure is applied consistently throughout the University.

4.3. Employees are responsible for:

- ensuring that they maintain the standard of integrity and conduct expected by the University;
- ensuring that all reasonable steps are taken to attend any meetings associated with the **Disciplinary policy and procedure**;
- ensuring that they conduct themselves with dignity, honesty, and integrity to promote an atmosphere of mutual respect, in accordance with the University's Dignity at Warwick, and other HR policies;

4.4. Employees may seek guidance and advice from a Trade Union representative or a work colleague prior to attending a disciplinary hearing. **Details regarding representation is available at section 11.**

5. Definitions of conduct

5.1. It is expected that every employee should

- be honest;
- maintain at all times a high standard of integrity and conduct;
- not use their position to further private interests or those of relatives and friends;
- fulfil responsibilities of their role in good faith;
- abide by their terms and conditions of employment.

5.2. Misconduct

5.2.1. Disciplinary action would normally be considered in cases of misconduct. There are two levels of misconduct: ordinary and gross.

5.3. **Ordinary Misconduct**

5.3.1 Ordinary misconduct is conduct of such a kind as to warrant disciplinary action rather than instant dismissal for a first offence. However, repeated instances of ordinary misconduct can lead to dismissal **(referenced elsewhere in this policy and in Statute as cumulative misconduct potentially resulting in dismissal)**. Please refer to Appendix 1 for examples of ordinary misconduct.

5.4. Gross Misconduct

5.4.1 **Gross misconduct is conduct of such a kind that it is likely to lead to dismissal for a first offence.** If, on

completion of a disciplinary hearing, the University is satisfied that gross misconduct has occurred, the result will normally be summary dismissal, which is the termination of employment without notice or pay in lieu of notice. Please refer to Appendix 1 for examples of gross misconduct.

6. Informal procedure

- 6.1. Minor faults will be dealt with informally by way of advice, coaching, caution or training as appropriate.
- 6.2. The Head of Department (or representative) has responsibility for bringing the matter(s) in question to the attention of the employee and discussing it with them. The Head of Department (or representative) should meet with the employee to inform them of the behaviour causing concern and to outline the expected improvements. The employee should be advised clearly of the standard of behaviour expected of them, and should be informed that if they do not improve within the required timeframe then they may be subject to formal disciplinary action as set out below.
- 6.3. The employee and the Head of Department (or representative) should make a note of the meeting, outlining the agreed objectives, expectations and timescales and ensuring both parties have a copy of the signed record. **A template for this is available on the HR webpage.** Where there is any disagreement the **template** provides an option for the employee's views to be recorded.

7. Formal procedure

- 7.1. In matters that are more serious or in cases of repeated minor breaches the alleged misconduct will be dealt with under the formal disciplinary policy and procedure. The relevant HR Adviser should be consulted by the Head of Department (or representative) at all stages under the formal procedure for advice on managing disciplinary matters.
- 7.2. The employee must be informed in writing about the details of the alleged misconduct against them and the process that will be followed to resolve the matter(s).

8. Investigation

- 8.1. The extent of an investigation prior to a disciplinary hearing, will depend on the seriousness and complexity of the case. In some cases this will require the holding of an investigatory meeting, however, in others, the investigatory stage will be the collation of evidence for use at a disciplinary hearing.
- 8.2. Generally, in complex or potentially serious cases, it will be appropriate for an Investigating Officer to be appointed by the Provost, Registrar, Senior Officer or those to whom they have delegated authority (known as the Commissioning Officer) in liaison with the relevant HR Adviser. However, **in more straightforward cases** it may be appropriate for the Head of Department (or nominated representative) to complete the investigation.
- 8.3. Where appointed, the role of the Investigating Officer will be:

- to ensure that, where practicable, all relevant facts and witness statements are obtained in relation to the alleged misconduct;
- to decide which witnesses are necessary to interview and, accordingly, to invite them to participate in an investigatory interview. Such witnesses will have the right to be accompanied by a work colleague or Trade Union representative should they so wish;
- to conduct the investigation in a confidential manner, and complete the investigation without undue delay wherever possible;
- to provide a written report outlining the findings of the investigation to the Head of Department (or nominated representative) or Commissioning Officer.

8.4. Following receipt of the Investigating Officer's report, the Head of Department (or nominated representative) or Commissioning Officer will determine whether there is sufficient evidence for the matter to be considered at a Disciplinary Hearing. The Head of Department (or nominated representative) or Commissioning Officer will be responsible for informing the employee of the outcome and advising on any next steps, i.e. whether the matter will be progressing to a Disciplinary Hearing.²

8.5. Should the matter proceed to a disciplinary hearing, the Head of Department (or nominated representative) or Commissioning Officer will provide the individual with a copy of the Investigating Officer's report for information. In exceptional circumstances, for example where it is deemed that the release of the report may be damaging to other parties, the report may be redacted.

8.6. Where it is deemed appropriate by the Disciplinary Hearing Chair/Panel, the Investigating Officer will be asked to make themselves available to attend the Disciplinary Hearing, should either the management representative, employee or Chair/Panel wish to clarify any aspects of the investigation report.

9. Criminal/external investigations

9.1. Internal investigations will not be bound by the outcome of any external criminal investigation, unless the University deems it appropriate to do so. Where the alleged conduct requires prompt attention, the University is not restricted by awaiting the outcome of any prosecution before taking action.

10. Suspension

10.1. The University will only suspend employees when the University considers it absolutely necessary to do so. The University considers that suspension with pay is not a disciplinary sanction and is a neutral act.

10.2. A Head of Department (or nominated representative) may, after consultation with HR, suspend a non-academic employee for the minimum period possible, while an alleged offence is investigated or pending the

² In consideration of a case of alleged gross misconduct (or cumulative misconduct that could potentially result in dismissal) against a member of Academic Staff, the decision to proceed to a disciplinary hearing will be the responsibility of a member of the University's senior management.

outcome of an investigation or hearing. In cases of possible suspension of members of Academic Staff, the suspension must be authorised by the Vice Chancellor or Provost, in consultation with HR.

- 10.3. Suspension shall be on base salary (i.e., that which the employee would have normally received, excluding overtime). The individual will be given formal written notification of the reasons for the suspension and, where possible, an indication of the likely length of the suspension.
- 10.4. Suspension may be appropriate in the following circumstances:
 - to allow an investigation which might be inhibited by the presence of the employee;
 - when there are strong reasons for doubting the ability or willingness of the employee to work normally during the course of a disciplinary investigation;
 - if the employee is the subject of potential criminal investigation and/or proceedings which may affect their job;
 - where the presence of the employee on site is unacceptable to others and/or may increase the likelihood of further misconduct during the course of a disciplinary investigation;
 - where it is deemed to be in the employee's or the University's best interest to be removed from the workplace.

11. Representation

- 11.1. At each stage of the formal disciplinary policy and procedure (including any investigatory stage), the employee has the right to be accompanied by a work colleague, a Trade Union representative or an official employed by the Trade Union. When arrangements for meetings are confirmed, it will be the employee's responsibility to notify their chosen representative of the arrangements and to provide their representative with any relevant paperwork. The representative may address the meeting/hearing at which they are present, sum up the employee's case and confer with the employee. The representative may not answer questions on the employee's behalf, nor address the meeting/hearing if the employee does not wish them to do so.
- 11.2. The employee will be responsible for notifying the Disciplinary Hearing Chair/Panel or the relevant HR Adviser in advance of the meeting, the name of the person who will be accompanying them.
- 11.3. Availability of a work colleague or Trade Union representative should not prohibit the expedience of the process and the employee may be asked to identify alternative representation in the event of delay, of more than 1 working week³.
- 11.4. There is no requirement on a work colleague to accept a request to accompany an employee.

³ A working week shall be defined as a 7 calendar day period, regardless of how many days an individual is contracted to work

12. Disciplinary Hearing

- 12.1. If it is deemed appropriate and that potential disciplinary action might ensue, a Disciplinary Hearing should be convened, following consultation with HR. The individual should be notified of the date of the hearing, with a minimum of **2 working weeks'** notice of the hearing date, unless an earlier date is otherwise mutually agreed.
- 12.2. The employee will be notified of the allegations against them and the potential consequences if the allegations are well founded.⁴ Where it has not already been released, the employee will be provided with a copy of the Investigating Officer's report (where an investigation has taken place) **or other evidence (where an investigation has not taken place)** at the same time that **the employee** is invited to attend the hearing.
- 12.3. The employee will be given a deadline of **1 working week** (unless otherwise mutually agreed) prior to the disciplinary hearing to make any submission to the panel, including notification of the intention to call **relevant** witnesses.
- 12.4. The hearing will normally be chaired by the Head of Department (or nominated representative) for non-academic employees.
- 12.5. For cases of misconduct of members of Academic Staff, the hearing will normally be chaired by the Head of Department (or nominated representative) and for cases of gross misconduct the hearing will normally be chaired by **a member of senior management**. **Where the Head of Department/member of senior management is conflicted in chairing the hearing, alternative arrangements should be made.**
- 12.6. Where the Head of Department is the subject of the disciplinary action or is involved in a personal capacity, their role in the process will be undertaken by a senior Professor or Senior Officer nominated by the Registrar, **Provost** or the Vice Chancellor.
- 12.7. The Chair will be accompanied by a minimum of one other appropriate manager. For academic disciplinary cases, this would be a senior Professor from another Department.
- 12.8. The detailed procedure for the hearing will be determined by the Chair and the disciplinary panel and notified to those present at the commencement of the hearing.
- 12.9. **If a gross misconduct (or cumulative misconduct i.e. that could potentially result in dismissal) hearing is established for a member of Academic Staff and the individual had submitted a case to AFRC, where AFRC**

⁴ In cases of alleged gross misconduct (or cumulative misconduct, i.e. that could potentially result in dismissal) of members of Academic Staff, where senior management considers that a gross misconduct hearing should be convened, the individual will be made aware of their right to submit a case to AFRC if they consider that there has been an infringement of their Academic Freedom (as defined under Statute XX (Part II (1)(a))).

determines that there is no infringement of Academic Freedom in whole or in part, the AFRC findings will be considered at the Disciplinary Hearing.

- 12.10. The Chair of the Disciplinary Hearing, in consultation with the other panel members will consider any requests for witnesses to be called by either party and will determine whether the panel wishes to hear from any witnesses, or the Investigating Officer. The Disciplinary Hearing Chair/Panel will reasonably consider any requests and may determine to hear from witnesses in writing, in person, or not at all. The decision of the Chair/Panel shall be final.
- 12.11. In all Disciplinary Hearings, a member of HR will be present and will advise on procedure. Where requested, the University will provide a written summary of the meeting which will be shared with parties present. The employee may take their own record of the meeting, but recording devices will not be permitted except in exceptional circumstances, for example as a reasonable adjustment for a disabled employee and following agreement in advance by all parties.
- 12.12. Where an employee fails to attend a Disciplinary hearing without reasonable cause, the hearing will be postponed at least once. If an employee fails to attend a reconvened Disciplinary hearing, the hearing may either be reconvened or the hearing may proceed in the employee's absence and a decision taken based on the information available to the Panel.
- 12.13. The Chair may adjourn the Disciplinary Hearing at any time, such as to allow for further investigations or re-interviews of witnesses in light of any matters raised at the disciplinary hearing. The employee will be given 1 working week to consider any new information obtained before the hearing is recommenced.
- 12.14. The outcome of the Disciplinary Hearing will normally be confirmed by the Chair of the Hearing in writing to the employee within 1 working week.
- 12.15. The Disciplinary Hearing may result in a number of possible outcomes or sanctions:

12.15.1. No Further Action

If there is insufficient evidence to support the allegations of misconduct, the case will be dismissed. Additionally, if the offence is of a minor nature it may be decided that no sanction is required.

12.15.2. First Written Warning

If the offence is of a serious nature, or if a further offence occurs following an informal caution, a written warning may be issued to the employee. The written warning will give details of the misconduct, the findings of the Disciplinary Hearing, the action(s) required and any relevant timescales. The letter will also warn that further disciplinary action will be considered if there is no satisfactory improvement, and it will advise of the right of appeal. A copy of the warning and associated documents will be kept on file by Human Resources and will normally remain in force for a maximum period of 12 months. It will normally be disregarded for the

purposes of any further disciplinary action thereafter, provided there has been no further misconduct of any description during the period of the warning.

12.15.3. Final Written Warning

If there is a failure to improve and conduct remains unsatisfactory, or if the misconduct is sufficiently serious, then a final written warning may be issued to the employee. The final written warning will give details of the misconduct, the findings of the Disciplinary Hearing, the action(s) required and any relevant timescales. The letter will also warn that dismissal will be considered if there is no satisfactory improvement or further misconduct, and it will advise of the right of appeal. A copy of the warning and associated documents will be kept on file **by Human Resources** and will normally remain in force for a maximum period of 24 months. It will normally be disregarded for the purposes of any further disciplinary action thereafter provided there has been no further misconduct of any description during the period of the warning.

12.15.4. Possible sanctions, other than dismissal, under the formal disciplinary procedure may include one or more of the following:

- redeployment from the department **of the individual subject to the allegation(s)** for example in harassment and bullying cases, where it has been determined that misconduct, harassment or bullying has occurred;
- modification of duties;
- requirement to participate in training;
- withholding increments.

12.15.5. Dismissal

If conduct remains unsatisfactory and the employee fails to meet the prescribed standards, or in cases of gross misconduct, dismissal may result. Only a Head of Department (or nominated representative) can take the decision to dismiss a non-academic employee. Only a **member of senior management**, as Chair of a Disciplinary Hearing, **can take the decision to dismiss a member of Academic Staff, having notified the Provost prior to the dismissal being communicated to the employee.**

The employee will be given written details of the (gross) misconduct, the findings of the Disciplinary Hearing, the reason for dismissal, the date on which employment terminates (taking into account notice periods, where appropriate, as per terms and conditions of employment) and the right of appeal.

- 12.16. Movement through the stages of the Disciplinary policy and procedure will not necessarily be in relation to the same offence. **Cumulative progression through the Disciplinary policy and procedure** will be determined by the nature and seriousness of the offence(s).

13. Appeal

- 13.1. Individuals have the right to appeal against any formal disciplinary decision. The appeal should be made in

writing by the employee, setting out the grounds for appeal, with any appropriate supporting evidence addressed to the relevant HR Manager (for non-academic employees) and to the Director of Specialist HR (for Academic staff). Any appeal must be lodged within 2 working weeks of receipt of written notification of the decision. The appeal will be heard as soon as practicable and normally no later than 4 working weeks after the appeal has been lodged, except where it is mutually agreed that this time limit be altered.

- 13.2. Where possible, the appeal will be heard by an individual more senior than the person who determined the original disciplinary sanction, although there may be circumstances where it may be appropriate for an individual at the same grade as the Chair of the Disciplinary Hearing to chair an appeal. The individual hearing the appeal will be accompanied by a minimum of one other senior member of staff independent of the allegation. The individuals on the appeal panel should not have been involved in any of the prior stages of the disciplinary policy and procedure.
- 13.3. For appeals by members of Academic Staff in relation to misconduct, the appeal will normally be chaired by a Chair of Faculty or a Pro-Vice-Chancellor. For appeals by members of Academic Staff in relation to dismissal under this policy the appeal will normally be chaired by a Pro-Vice-Chancellor or the Provost.
- 13.4. The Chair will be accompanied by a minimum of one other appropriate manager. For academic disciplinary cases, this would be a senior Professor from another Department.
- 13.5. The procedure for a member of Academic Staff to appeal against their dismissal on the basis of Academic Freedom (as defined in Statute Part II (1)(a)) shall be detailed in Ordinance 11.
- 13.6. A member of HR will be present at all appeal hearings and will advise on procedure.
- 13.7. The appeal Chair will write to the employee with notice of the membership of the appeal panel and a date for the appeal hearing.
- 13.8. Grounds of Appeal:
Grounds of appeal against a decision of the disciplinary panel will normally come under one or more of the following headings:
 - i. Further evidence not previously considered at an earlier stage
The employee can demonstrate that relevant evidence was not included in the original investigation or was not available to the disciplinary hearing when reaching the decision.
 - ii. Process or Procedural aspects
The employee can identify areas of the procedure which were not operated correctly or appropriately and as a result could have influenced the final outcome or decision.
 - iii. Final Decision not appropriate

The employee considers that the decision cannot be sustained on the basis of the findings of the disciplinary investigation and/or the penalty imposed is too severe taking into account the seriousness of the offence and any mitigating factors

iv. Potential infringement of Academic Freedom

A member of Academic Staff who requested an AFRC Review may appeal on the grounds that there has been a breach of AFRC procedure and/or significant new evidence related to Academic Freedom. In such cases, the appeal will be referred to AFRC for advice before going to the appeals panel.

- 13.9 The appeal Panel will be asked to consider if the original decision was inappropriate on the grounds of appeal specified by the employee. The appeal hearing is not normally a re-hearing of the case put before the disciplinary panel, but the grounds for the appeal will be considered when deciding the necessity for, or extent of, any new investigation or re-hearing.
- 13.10 The appeal Chair may adjourn the appeal hearing at any time to allow for further investigations in light of any matters raised at the appeal hearing. The employee will be given **1 working week** to consider any new information obtained before the hearing is re-commenced.
- 13.11 The appeal Chair/Panel have a number of powers in relation to the action they can take including:
- confirm the decision of the original disciplinary panel;
 - reduce the sanction originally imposed;
 - re-instate following dismissal;
 - overturn the disciplinary action taken where it is considered just to do so, in particular in light of new evidence or where the disciplinary decision was unreasonable in light of the findings of fact;
 - refer the matter back for a re-hearing where the fairness of the process/procedure was the stated grounds for appeal and this is upheld.
- 13.12 The decision of the Chair/Panel will be confirmed in writing to the employee normally within **2 working weeks**.
- 13.13 The decision of the appeal Chair/Panel is final and there will be no further right of appeal against this decision.

14. Confidentiality

- 14.1. All information relating to a disciplinary case will be treated confidentially and maintained in compliance with the Data Protection Act 2018. Information relating to the alleged misconduct will be shared with only those who have a legitimate requirement to see the documentation as part of resolution to the disciplinary or any consequent procedure **and therefore the processing of data for contractual necessity**.
- 14.2. Employees will normally be informed of the names of any witnesses whose evidence is relevant to disciplinary proceedings, unless the University believes that the identity of witnesses should remain **confidential, for example in cases where there is a genuine fear of reprisals or violence**.

- 14.3. It is expected that all parties will be sensitive to the nature of such proceedings, including matters discussed and any evidence provided. Breach of confidence, on either side, may compromise the integrity of the procedure and may itself be subject to disciplinary action. This does not preclude individuals from seeking appropriate advice, support and information in relation to the case.
- 14.4. Where the University continues to investigate any matter as a duty of care or a legislative requirement then it may be necessary to share the information with appropriate external authorities.

15. Recording and Monitoring

- 15.1. The Head of Department (or nominated representative) and employee should keep written records during the disciplinary process. These records are confidential and will be kept no longer than necessary in accordance with the Data Protection Act 2018. It is the appropriate line manager's responsibility to monitor the employee's conduct during the life of warnings and to ensure that the employee is achieving the required objectives. HR will monitor all formal complaints and sanctions imposed and informal cautions will be monitored by departments.
- 15.2. Where issues related to protected characteristics are identified, they will be brought to the attention of the Equality, Diversity and Inclusion team by the relevant HR Adviser.

16. Equality Impact Assessment

- 16.1. The University of Warwick recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic. For further information, please refer to the University's Diversity and Inclusion website.
- 16.2. The Disciplinary policy and procedure has been assessed as being of high relevance to our duties under equality legislation and the University will review its impact on equality and diversity, identify any inequalities by regular monitoring, and take action where necessary.

17. Trade Union Officials

- 17.1. Normal disciplinary standards will apply to their conduct as employees. However, no disciplinary action will be taken until the circumstances of the case have been notified to a full time official of the relevant Trade Union.

Appendix 1

No member of Academic Staff will be subject to a disciplinary sanction as a consequence of exercising their right to academic freedom as defined within Statute 11

A. Examples of ordinary misconduct.

The following are **examples** of ordinary misconduct, neither exhaustive nor pre-empting more serious disciplinary action;

- poor timekeeping in line with the requirements of the role;
- refusal to obey a reasonable instruction;
- wilful neglect of duties;
- knowingly failing to follow procedure.

This list is illustrative and not exhaustive and together with other University policies and procedures provide guidance on the required standards of conduct and performance.

B. Examples of gross misconduct.

- theft, fraud, deliberate falsification of records;
- physical violence, assault, threatening or intimidating behaviour;
- deliberate damage to University property or misuse of University property and services including IT facilities or serious disregard of health and safety requirements;
- being under the influence of alcohol, illegal drugs or other deliberately misused substances (please refer to the University's Alcohol and Drugs Policy);
- a deliberate act or omission at work which results in injury or significant damage;
- repeated wilful disobedience and/or continued refusal to obey the reasonable and lawful instructions of the manager;
- acts constituting harassment, discrimination or victimisation or offensive language or behaviour of a serious nature (including on the grounds of sex, race, disability, sexual orientation, religion and belief, gender reassignment, pregnancy and maternity, marriage and civil partnership, or age);⁵
- conduct constituting failure or persistent refusal or neglect or inability to perform the duties of, or comply with, the conditions of office;
- serious breach of confidentiality;

- deliberate contravention of the University's Financial regulations or improper use of the employee's position
- criminal activities outside work, where such conduct is judged to be incompatible with the individual's employment;
- conduct of an immoral or dishonourable nature incompatible with employment at the University

This list is illustrative and not exhaustive and together with other University policies and procedures provides guidance on the required standards of conduct and performance.