

Fitness to Practice Policy

Higher Education Taught Courses

This policy applies to the College's Higher Education provision not covered by an awarding HEI's regulations.

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DEFINITIONS

For the purposes of this policy:

<i>Fitness to Practice</i>	Is defined as a student's ability to demonstrate the requirements and responsibilities of the profession related to their course of study. These regulations cover Fitness to Practice in relation to student conduct.
<i>Complaint/Allegation</i>	Is defined as an issue/concern raised by anyone against a student. All students will be considered innocent until proven otherwise, but patient/client safety will always come first.
<i>Student</i>	Is anyone on a programme of study who is registered for a Higher Education award or is being assessed for credit. This can be for students registered on degrees awards by a partner University or for students registered on an HNC/D programme where Pearson is the awarding body.
<i>Academic judgement</i>	Is a judgement that is made about a matter where only the opinion of an academic expert will suffice, for example a judgement about assessment, an award classification, fitness to practice or course content/outcomes will normally be academic judgement. But, the fairness of procedures, the facts of the case, misrepresentation, the manner of communication, bias, an opinion expressed outside the area of competence, the way evidence is considered and maladministration in relation to these matters are all issues where academic judgement is not involved.

Scope and purpose

This policy relates to students registered on programmes including but not limited to the following professions:

Osteopathy

Teaching

Pre- and post-registration counselling

Pre- and post-registration nursing

Pre- and post-registration midwifery

These students may have responsibilities over and above those of other students at the College in relation to professional codes of conduct and standards of behaviour. When considering issues relating to Fitness to Practice, public safety must always be the overriding consideration, however, staff should also consider Equality, Diversity and Inclusion (EDI) in relation to the Equality Act 2010 when applying this policy. The Safeguarding and Wellbeing Team should be contacted for advice where students who have a disability and/or long-term health condition require reasonable adjustments to enable them to access this procedure.

For certain courses, it may be a requirement that students are already employed in the profession to which their course relates. In these instances, where NEScot is made aware of a Fitness to Practice issue, it will follow this Fitness to Practice policy. While NEScot has no authority to remove a student from employment during or after a Fitness to Practice investigation, NEScot may notify the employer that a student is undergoing a Fitness to Practice investigation, and of the outcome of the investigation. Where an employer becomes aware of a potential Fitness to Practice concern in relation to a NEScot student, the employer should notify the College.

Confidentiality

Written records must be kept of stage 1 and stage 2 hearings. In normal circumstances, Fitness to Practice hearings must not be digitally recorded. While the College allows audio recordings of lectures for study purposes, hearings may not be digitally recorded, and the written notes taken by the College will constitute the official record of the hearing and the notes will be circulated to the student following the meeting for comments on matters of accuracy. The Chair of the hearing will make this clear to the student at the beginning of the meeting. If the student records the hearing notwithstanding this advice, they may be subject to action under the Student Disciplinary Procedure. This rule may be waived in cases where reasonable adjustments are required.

The College is committed to complying fully with the Data Protection Act 2018 and the General Data Protection Regulations in its handling of personal data. Disclosure of information will be restricted to those parties involved in the consideration and administration of Fitness to Practice cases. There are, however, circumstances where the College's commitment to confidentiality is overridden by other considerations. These are:

- i) When a student's health and safety, or that of others, is considered to be at risk.
- ii) When a student is considered to be at serious risk of abuse or exploitation.
- iii) When disclosure is required by law.
- iv) When a student's current behaviour or health requirements compromise the College's responsibilities to outside agencies, including practice placements and partner institutions.

v) When a student's current behaviour or health requirements compromise the College's responsibilities to other students to the extent that those other students are being adversely affected to the serious detriment of their academic progress.

Procedures

Student expenses associated with these Regulations will not be reimbursed by the College regardless of the subsequent outcome.

Students are expected to engage with the Fitness to Practice process and attend meetings when requested to do so. Should a student not be able to attend a meeting at the specified date and time, s/he is required to contact the member of staff responsible for organising the meeting as soon as possible to provide a valid reason for his/her inability to attend. A valid reason would be the attendance at a class or examination, prior personal commitments, particularly for part-time students and those with caring responsibilities, or non-attendance due to illness with the student required to provide supporting evidence (e.g., timetable, medical certificate). If a valid reason is provided, the meeting will normally be rescheduled.

In the event that a student does not attend a meeting without valid reason, the panel (or Lead Investigator, if this is a Stage 1 Initial Investigation) should review the information to satisfy themselves that the student has been sent the appropriate notification. If a panel /Lead Investigator decides that the student has been duly notified and determines that they have sufficient evidence to enable them to make a decision, the matter may be considered in the student's absence. If the panel / Lead Investigator determine that it is not possible to make a decision without hearing the student's account, the following action can be taken: Initial investigation – reschedule interview. If the student does not attend a second interview, the original issue and the non-attendance should be referred to a Fitness to Practice panel for consideration; Fitness to Practice Hearing- reschedule hearing and suspend student pending attendance at a rescheduled hearing until the student re-engages with the Fitness to Practice process. The decision of the panel members / Lead Investigator on whether to adjourn or proceed in the student's absence is final.

Notification of Allegation

Allegations may be made by members of staff, students, employers, placement providers or others. Any allegations which call into question a student's Fitness to Practice should usually be made in writing to the Head of Academic Standards (or nominee), accompanied by relevant evidence (e.g.: results of DBS checks, incident reports etc). The person making the allegation is encouraged to identify themselves to the Head of Academic Standards (or nominee), as anonymous allegations will only be considered in exceptional circumstances.

Where the Head of Academic Standards (or nominee) considers that an allegation, which is made by a NESOT student or member of staff, is vexatious or malicious, the matter will be referred for consideration at the appropriate level under Student Disciplinary Policy or the Staff Disciplinary Policy, respectively. Employers, PSRBs and/or placement providers may be notified of the allegation if appropriate.

In cases where the Head of Academic Standards (or nominee) considers that an allegation gives rise to serious concerns about the health and/or safety of the student, fellow students or staff members or members of the public, a risk assessment will be undertaken using all available information in order to determine whether a suspension or partial suspension is necessary on health and safety grounds. Any precautionary action taken by the College must be reasonable and proportionate.

Where appropriate, the placement provider and /or the relevant PSRB may be notified, and the student may also be immediately suspended from their placement. Where students are on employment-based courses, the College may notify the student's employer.

Accompaniment and Representation

Students required to attend a hearing may be accompanied or represented by a friend, family member, officer or staff member from the Wellbeing and Safeguarding Team, or a Trade Union or a professional association staff member, or legal representative. The student is required to inform the clerk of the hearing at least 5 working days before the hearing whether s/he will be accompanied and if so, the name of the person and the capacity in which they are attending, noting specifically whether the person will be accompanying or representing the student. Where such notification is not received, the hearing may need to be postponed. If the student does indicate that they will be bringing legal, or other representation, the College's reserves the right to also instruct a legal, or other representative to attend. This may mean that the hearing date will have to be delayed.

If a student has a disability, they will be contacted to ascertain whether they require reasonable adjustments to enable them to engage in the process. The Head of Academic Standards (or nominee) should contact the Disability and Mental Health Advisors for advice on reasonable adjustments.

Stage 1: Initial Investigation

Conduct of Investigation: The Faculty will collate evidence from staff, students and any other individuals involved (e.g., witness statements, incident reports, copies of correspondence) and determine whether, prima facie, there is a case to answer. If so, the College must notify the student in writing of the allegation within 10 working days of the date that the Head of Academic Standards (or his/her nominee) was formally notified in writing of the allegation, attaching a copy of these regulations. The Initial Investigation will normally be completed within 10 working days of this notification.

The Initial Investigation will normally include a meeting with the student and if appropriate, other relevant staff member(s). The Initial Investigation will be attended by a Lead Investigator and a clerk. The Lead Investigator must have had no prior involvement in the case.

The role of the Lead Investigator is to chair the meeting, to explore the allegations with the student and to come appropriate conclusions. The Lead Investigator will report the outcome of the Initial Investigation to the Head of Academic Standards and update the student's record accordingly.

The individual(s) who have made the allegation will be permitted to meet with the members of staff investigating the case but will not normally attend the interview with the student who is the subject of the allegations.

Outcome of Initial Investigation:

Following the interview with the student, the Initial Investigation will conclude with one of the following outcomes:

- The allegation is found to have no substance and the matter is regarded as closed. A note to this effect will be added to the student's file so that all parties are clear as to

the agreed outcome The Lead Investigator will inform the Head of Academic Standards of the outcome.

- The allegation does have substance but the student's Fitness to Practice does not require referral to a Stage 2 Fitness to Practice Hearing. The Lead Investigator will inform the student of the outcome and a record will be kept on the student's file. In these cases, it may also be appropriate: - to issue a formal written warning to the student. A written warning will normally remain on the student's record for the duration of the student's registration on the course; and/or - to ask the student to complete a reflective piece of work indicating that they have understood and reflected upon their actions in relation to the relevant professional code of conduct. Advice must be sought from the Student Wellbeing and Safeguarding Team before issuing this to a student with a Summary of Support Needs; and/or - in certain cases, to require the student to pay replacement costs to the value of any damage done for loss/damage to College and/or other students' property, where the student is responsible for this. The Head of Academic Standards (or nominee) can advise on how to proceed in such instances; and/or - to ask the student to provide a written apology to the aggrieved party. This list is not exhaustive.
- The allegation does have substance and the Lead Investigator recommends to the Head of Academic Standards (or nominee) that further investigation should be carried out into the student's Fitness to Practice. Subject to the Head of Academic Standards' approval of this recommendation, the matter will be referred to a Stage 2 Fitness to Practice hearing for consideration (or, in the case of post-qualifying/post-registration students who are in employment, to the student's employer). If the matter is to be referred to a Fitness to Practice hearing/employer, the student will be notified of this within five working days of the interview. The student may be suspended from the College and/or from the placement pending the decision of the panel (see Provision of Precautionary Measures above).

The student will be informed in writing of the outcome of the Initial Investigation. It may also be appropriate to inform the placement provider, employer and/or relevant Professional Statutory or Regulatory Body (PSRB) as necessary for the purposes of the proceedings. Any aggrieved party(ies) will be notified by the Head of Academic Standards (or nominee) that the investigation is being dealt with in line with the College's Fitness to Practice Policy.

The student has the right to appeal against the outcome of the Stage 1 Initial Investigation on one or more of the following grounds: - the College's procedures have not been followed and this has affected the outcome; - based on the evidence available at the time, the outcome is unreasonable; - new evidence has come to light which the student was unable, for valid reasons, to provide earlier in the process and this evidence would have affected the outcome - there is evidence of bias or a reasonable perception of bias during the procedure.

The student must submit an appeal in addition to any supporting documentation to the Head of Academic Standards (or nominee) within five working days of the date of the letter advising him/her of the outcome of the initial investigation. Appeals which do not meet the above grounds or which are submitted late (and do not provide a valid reason) will not be considered. The student will be notified accordingly and issued with a Completion of Procedures letter. The College's decision in this regard is final.

Stage 2: Fitness to Practice Hearing

If the Initial Investigation indicates that the matter is sufficiently serious to call into question a student's Fitness to Practice, the matter will be referred to a Fitness to Practice hearing. The Stage 2 Fitness to Practice hearing should be convened as soon as possible and normally within 20 working days of the outcome of the Stage 1 Initial investigation. The constitution of the panel may vary depending on PSRBs' requirements, but should always include - a Chair

(from a different department) - a member of the department who must be familiar with the relevant regulatory standards - a representative from Student Safeguarding and Welfare Team - an external member, who need not be external to the College but must have professional experience relevant to Fitness to Practice and an ability to make an assessment of the student's Fitness to Practice in the relevant discipline, and a clerk (in attendance). Panel members should have had no previous involvement in the case.

Not less than 15 working days before the hearing, the Clerk to the panel will send the names of the proposed panel members to the student for information. If the student has any objections to any of the proposed panel members, they must notify the Clerk in writing within 2 working days, explaining the grounds on which they object to the appointment. If any such objections are received, the hearing may need to be reconvened to allow time to assemble a revised panel. If no objections are received, not less than 10 working days before the hearing, the Clerk to the will send to the student copies of the papers the panel intends to rely on during its deliberations. The student shall then have until five working days before the hearing to respond in writing and submit any further papers which s/he feels are relevant. If evidence comes to light later than the deadlines stipulated above, but before the hearing, the Chair will make a decision on the admissibility or otherwise of the evidence. If necessary, the hearing may be postponed to allow both sides time to consider the new evidence.

The student and the Department have the right to call witnesses to support their respective cases. The names of witnesses must be notified to the Clerk no later than 5 working days before the meeting of the panel so that the panel can be notified.

The role of the Fitness to Practice panel is to deliberate formally and decide whether, in its opinion, the student is fit to practice and what, if any action should be taken. The panel will determine on civil standard of proof if, on the balance of probabilities, misconduct has occurred i.e., whether it is more likely than not the allegation has been proven. The conduct of the hearing shall be at the discretion of the Chair but is likely to include provision for the following: - initial private meeting of panel members - explanation of the purpose and powers of the panel to the student - opportunity for the Department and the student to present their arguments and call witnesses. The Lead Investigator from the Stage 1 hearing will normally present the Department's case at the Stage 2 hearing - opportunity for witnesses to be questioned by the panel - final private meeting of panel members to agree outcomes and any action required, including (for conduct-related matters) any penalties.

Outcomes

In deciding on an appropriate outcome, the panel will be guided by relevant codes of professional conduct or equivalent for the student's intended profession. Panel members should ensure that the outcome is proportionate and will deal effectively with the Fitness to Practice concern. The relevant PSRB may also be notified as appropriate. If the panel members are unable to come to a consensus view as to the outcome, the matter shall be decided by a simple majority vote. In the event of a tie, the outcome will be decided in the student's favour.

The panel will agree one of the following outcomes:

- No concerns are present; therefore, no action is required. Any information relating to the Stage 1 initial Investigation will be removed from the student's record.
- Concerns are present but it is not necessary to impose conditions, suspension, or discontinuation on the student. In these cases, it may be appropriate:
 - to issue a formal written warning to the student. A written warning will normally remain on the student's record for the duration of the student's

- registration on the course; and/or
 - to ask the student to complete a reflective piece of work indicating that they have understood and reflected upon their actions in relation to the relevant professional code of conduct. Advice must be sought from the Student Safeguarding and Wellbeing Team before issuing this to a student with a Summary of Support Needs; and/or in certain cases, to require the student to pay replacement costs to the value of any damage done for loss/damage to College and/or other students' property, where the student is responsible for this. The Head of Academic Standards (or nominee) may advise on how to proceed in such instances; and/or
 - to ask the student to provide a written apology to the aggrieved party.
- Concerns are present and one or more of the following measures should be taken:
- Condition: This is imposed where the panel has significant concerns about the student but consider that s/he may respond positively to additional tuition, or increased supervision. Conditions should be proportionate, workable, and measurable. It may be a condition that the student is interviewed by one or more members of the original Fitness to Practice panel again, at a time determined by the panel, to review the student's progress.
 - Suspension: Where appropriate, the panel can agree that a student is suspended, i.e.: prevented from continuing on their programme for a specified time. This measure is applied to behaviour which is serious but not sufficient to warrant discontinuation.
 - Discontinuation: The panel can agree that a student is discontinued from their programme of study at the College if they consider that this is in the interests of the public and/or if this is a requirement of the PSRB. The panel should consider whether the student should be permitted to transfer their registration onto an alternative academic qualification.

In relation to Conditions and Suspensions above, the panel should give consideration to any factors which may impact on the student's ability to complete the professional course they are registered on (for example, periods of suspension which may go beyond the permitted maximum years of study, or the acceptability of criminal convictions to placement providers and/or PSRBs).

In any of the above instances, the panel may notify the placement provider and/or the relevant PSRB of the outcome and may additionally recommend that the student is suspended from his/her placement, if appropriate. For employment-based courses the panel may recommend that the employer is notified of the decision.

The Chair of the panel will provide a report summarising the case and the reasons for the panel's conclusions and confirm the outcome to the student within 5 working days of the Hearing

Right to Appeal

Once a student receives the final outcome of either a Stage 1 Investigation or a Stage 2 Hearing, they may submit an appeal on one or more of the following grounds:

- The College's Procedures have not been followed and this has affected the outcome;
- Based on the evidence available at the time, the outcome is unreasonable;
- The student has new evidence which they were unable to provide earlier in the process, for valid and evidenced reasons, and this has affected the outcome;

- There is evidence of bias or a reasonable perception of bias in the proceedings.

The student must put their appeal in writing and submit this, along with any supporting information, within five working days of the date of their outcome letter to The Quality Office. Appeals which do not meet the grounds for appeal, or which are submitted late and do not provide compelling exceptional reasons, will not be considered. Academic Registry will let the student know if this is the case and will provide a Completion of Procedures Letter

A member of staff, with no prior involvement in the case, will consider the appeal and provide an outcome in writing within 10 working days of its receipt. If the appeal is upheld, the Investigator may recommend that a fresh and independent Investigation into, or a Hearing of, the original allegations is undertaken or they may overturn the original decision and replace this with their own decision. The outcome of the appeal is final and as such the student will be issued with Completion of Procedures information.

Whilst an appeal is being considered, the outcome of the Investigation or Hearing will be suspended. This will not include any precautionary measures that have been agreed on health and safety grounds which will stay in place.

Fitness to Practice Policy (HE Taught Courses)

VERSION	1
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