

HIGHER EDUCATION FITNESS TO PRACTISE PROCEDURE

Version 2019

Policy Level:	SLT; Corporation
Last Review Date:	07/01/2020
Last Amendment Date:	07/01/2020
Next Review Date:	01/06/2022
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Related Documents: Governance Principle Academic Freedom, HE Academic Offences Procedure

Introduction

This procedure reflects our commitment to prepare our students to become effective, safe qualified practitioners. We aim to help students understand the requirements for entry to their chosen profession and help them to develop good practice and behaviour from the very beginning of their studies. Students must meet the requirements relating to behaviour and fitness to practise through academic and vocational studies, and, if there are any issues relating to meeting the requirements, we will deal with these as quickly as possible in an appropriate way.

This policy applies to all enrolled students of the College on a course which could lead to or allow registration with a professional, statutory and regulatory body (PSRB).

This procedure meets the 'General principles applying to Birmingham City College student procedures'.

What is fitness to practise?

Being 'fit to practise' means being competent, responsible and having the characteristics needed to work in a particular profession. We have a duty to make sure you are fit to practise in your chosen profession. In assessing your fitness to practise, we give careful and ongoing consideration to your skills and ability, character, behaviour and physical and mental health. Although we recognise that you are still learning, you must make sure you are actively trying to meet the required standards and are not doing anything which might damage the public's impression of the profession you are studying to enter.

Professional, Statutory and Regulatory Bodies (PSRBs) have their own definitions of fitness to practise and you must familiarise yourself with the relevant definition for your chosen profession.

What is covered by this procedure?

We will tell you what standards we expect of you as a student and we will tell you at the earliest opportunity if our assessments show you are failing to meet these standards. In most cases there will be no need to refer you to a formal investigation – we expect that informal discussions with you and clear target-setting will be appropriate to make sure you are fit to practise. However, a formal investigation will sometimes be necessary if we have concerns about your fitness to practise. This could be because of ongoing concerns being raised about your fitness to practise, a safeguarding matter or because of a single incident which threatens the safety of a service user or which could harm the public's view of the profession. A safeguarding matter is one which affects the human rights, health, or wellbeing of another person, particularly a child, young person or vulnerable adult.

The following will apply if we have concerns about your fitness to practise.

- For concerns that do not involve safeguarding matters or the safety of a service user, or concerns that only arise occasionally, you can expect to receive feedback on the things that have caused concern. This will usually involve setting targets for you to meet, and may be through a formal action plan.
- For concerns that involve safeguarding matters or the safety of a service user, or which may damage the public's view of the profession, or concerns which suggest a pattern of repeated behaviour that does not change after we set targets for you, we will refer the matter for investigation.

We will not normally refer the following for investigation in relation to your fitness to practise.

- Your performance in an assessment.
- Concerns that cannot be directly linked to the relevant code of practice.

We will normally consider academic misconduct allegations under the Fitness to Practise Procedure. However, if the allegation against you relates to either altering information, buying or trying to buy someone else's work, or repeated academic misconduct, we may refer the matter for a fitness to practise investigation. This is because PSRBs expect certain types of behaviour and characteristics which include the need for you to be honest and act with integrity at all times.

Example 1

You are training to be nursery nurse on the Advanced Practitioner in Early Years in Education programme. You post a video on Facebook where you mock the physical disability of a child in one of your placement classes. This is **likely to be a fitness to practise concerns** as you may have breached the Health and Care Professions Council standards. *1.1 You must treat service users and carers as individuals respecting their privacy and dignity.*

Example 2

You are training to be a teacher on the Diploma in Education and Training programme. On the last day of your placement you witness one of the teachers hit a student. You have worked closely with the teacher during placement and consider them a friend. You don't want to get the teacher into trouble so don't report what you have seen. Later the placement college sees CCTV footage of the incident and realise that you witnessed it. This is **likely to be a fitness to practise concern** as you may have breached Professional Standards by not reporting an incident of violence against a student within the placement College.

Who can raise a concern regarding your fitness to practise?

Anyone who receives or is affected by your services ('service user') can raise a concern about your fitness to practise, including:

- College staff;
- practitioners or placement staff;
- other students; and
- members of the public.

Only in exceptional circumstances will we consider concerns that we receive anonymously, when there is a strong case – supported by evidence – that means that the matter should be investigated.

If College staff, practitioners or placement staff have concerns, they must send them to the Student Governance team using a reporting form ('**Raising concerns about a student's fitness to practise**'). We will make the final decision as to whether the matter will be referred for investigation. We may need to reach agreement with you about conditions you must keep to before you are able to continue your studies.

If a student has a concern about another student's fitness to practise, then they should raise this in the first instance with a member of College staff.

Disability and fitness to practise

We will review our standards if a disabled student may be at a significant disadvantage during an assessment. Although we will normally consider making reasonable adjustments during an assessment if you have disclosed a disability to the College, we do not have to make reasonable adjustments if we are assessing whether you are meeting a competency standard or if the adjustment would have a negative effect on the standard you are achieving. A competency standard is defined as an academic, medical or other standard which we apply to assess whether you have met the required standard in terms of competence or ability. We will make sure that the competency standards are objectively justifiable and an appropriate way of making sure you have the skills and ability needed for your chosen profession.

If your disability develops or is identified during your programme of study, or if you knew about the disability before starting your programme but it becomes worse and needs new or revised adjustments, we will consider the following.

- What could we reasonably do to make it easier for you to continue on the programme with your disability?
- Could you be putting yourself or others at risk of harm by continuing on the programme?

- Will placement providers or relevant professional bodies be prepared or able to make the required alterations to their part of the teaching and learning or assessment process?
- Did we tell you during the admissions process that the circumstances of your disability could lead to you needing to withdraw from the programme?
- Is it possible for you to transfer to another programme of study?

If it is not possible to make a reasonable adjustment, or to find you a suitable placement opportunity, it may be necessary for you to withdraw from a programme of study.

Criminal behaviour and fitness to practise

You must tell us if you receive a criminal conviction or caution during your programme of study. Your student handbook or your course leader will tell you how to do this. Receiving a criminal conviction or caution will not automatically mean you will be withdrawn from your programme. After you tell us about a criminal conviction or caution, we will consider:

- the nature of the offence;
- any history of offending or similar behaviour;
- any circumstances that might explain your behaviour; and
- any unreasonable delay in telling us about the conviction or caution.

We will consider all factors, including the above, before deciding whether you are fit to practise.

Time limits

If anyone has any concerns that may relate to your fitness to practise, they should raise these as soon as possible so that we can take action as necessary. If the concerns being raised are serious or need a formal investigation, you may be suspended from your placement with little or no notice. We aim to complete the formal stage, including any panel meeting, within 50 working days. To help us achieve this you must meet any deadlines we set for providing further information or documents and attending meetings. There will occasionally be circumstances when we need to extend the timeframe for different stages. (We will only do this if there is a good reason, for example if we need to wait for a key witness to be available to speak to us.) If this is the case, we will tell you and will explain the reasons for the delay and tell you the new timescales. We will provide regular updates on progress where appropriate.

Proving the allegation

It is our responsibility to prove the allegation against you. The person or panel responsible for deciding on your fitness to practise will accept the explanation that is most likely to be true. This is known as the balance of probability.

Student representation

You have the right to take someone with you to meetings. This person is not there to act in a legal capacity. They are there to provide advice and support to you, not to act on your behalf. The Students' Union can help with this.

Confidentiality

We will not share any information about you or any case against you unless we need to as part of our procedures or if there is good reason and urgent cause to do so. This could include passing information about your case to external agencies such as social services. If we learn that you are or have been involved in criminal activity, then we may need to inform the police.

Our 'Guidance on the production of references for students', which is available from your faculty, explains what information we will share if we are asked for a reference.

List of professional, statutory and regulatory bodies

Some of our programmes of study align with, or lead to registration or eligibility for registration with the following PSRBs:

Health and Care Professions Council (HCPC)

Nursing and Midwifery Council (NMC)

Solicitors' Regulation Authority (SRA)

Teachers' Standards

Professional Standards for FE Teachers

Disclosure and Barring Scheme (DBS)

For some courses it will be a requirement for students to obtain DBS clearance. Your Programme Handbook will identify this. If clearance is refused or withdrawn we will need to make an assessment under this policy as to whether you are Fit to Practise. You may be prevented from participating in particular aspects of your course during this assessment including access to the College or placement activities.

Stages of the procedure

This procedure aims to provide a quick process that is proportionate to the concerns being raised. There is a strong focus on staff having the power to deal with concerns as soon as possible. The Student Fitness to Practise Procedure has

an informal stage, a three-step formal stage, and a review stage (see the flowchart).

Informal stage - guidance and advice

This stage is for minor misconduct concerns. These would include poor scholarly activity (for example, incorrect or confused referencing) due to lack of experience and, for general misconduct, situations where you were probably not aware of how your behaviour was affecting others and where you could quickly change your behaviour to avoid it happening again. During the informal stage, issues are dealt with quickly and locally, often by the relevant College teacher or tutor. In most cases, a conversation with you about your behaviour and how to improve will be enough to deal with the matter. To help with your ongoing development, we may put an action plan in place. If you do not make the necessary progress, repeat the behaviour or if the issue is serious, it may move on to the formal stage.

Formal stage – triage, investigation and recommendation, and College panel

The formal stage is to be completed within 50 working days of the Fitness to Practise concerns being raised using the *Student Fitness to Practise Concerns* form. It involves assessing the concerns being raised and, where appropriate, carrying out a formal investigation. We may hold a College panel to consider very serious or complicated cases. The formal stage will involve the following three stages.

(1) Triage

For concerns that are felt to be anything more than minor concerns that can be dealt with effectively through guidance and advice, the person raising the concerns must fill in the *Student Fitness to Practise Concerns* form and send it to the Vice Principal (Planning, Performance and Development) (VP (PPD)). The person completing the form must provide all supporting evidence within two weeks of submitting the *Student Fitness to Practise Concerns* form. If the VP (PPD) does not receive the evidence within two weeks, s/he will not investigate the concerns but may still discuss them with you to provide you with relevant guidance and advice.

For **academic misconduct**, see the Higher Education Academic Offences Policy

For **general misconduct**, the VP (PPD) will consider the completed *Student Fitness to Practise Concerns* form and the relevant evidence to decide whether there is a case to answer.

If s/he believes there is no case to answer, we will tell you about the concerns that were raised and, where relevant, put an action plan in place for you.

If s/he believes there is a case to answer, s/he will refer the matter to a suitably trained Case Officer who will carry out an investigation. We will tell you if we do this and will give you information about the Case Officer who will investigate your case.

(2) Investigation and recommendation:

The Case Officer will have no knowledge of you or of any previous Fitness to Practise or fitness to practise matters you have been involved in.

Example

The College learns that you have been convicted of theft by a Crown Court. We will open a Fitness to Practise case against you for general misconduct. Since a Court has already found you guilty of theft, the Case Officer will not consider whether or not you did commit theft and will not revisit the facts of the Court case. The Case Officer will instead consider whether the fact of your conviction means you have committed general misconduct.

The Case Officer will provide specific information about the concerns being raised, and provide you a copy of the evidence. You will be invited to a meeting with the Case Officer to discuss the concerns and evidence. You have the right to take a companion with you to the meeting. This may be a friend, relative or member of the Student Council Union. As the meeting will be held during normal working hours on any of the College campuses, we will expect you to attend. The meeting will only be rescheduled if the Case Officer decides there is a good or urgent reason for this.

The Case Officer will consider the Fitness to Practise concerns and may talk to relevant staff or students and refer to documents and other evidence. If you wish to present evidence, we expect you to give it to the Case Officer either before or at the meeting. This may include copies of emails or letters, or statements from witnesses if it is safe and helpful to provide these. In exceptional circumstances, the Case Officer may ask you or any other relevant person to provide evidence after the meeting. You will receive copies of all the evidence the Case Officer has considered during the investigation. The Case Officer will produce a report based on their investigation, which will outline the process they have followed, the information they have gathered, the evidence they have considered, their conclusions and their recommendations.

The Case Officer can make any of the following recommendations.

- There is no case to answer, so we will not hold a panel and will not take any further action.
- There is a case to answer, but it does not need to be considered by a panel. We may issue you with any of the following.
 - A guidance note about your future behaviour or requirements you must meet.
 - An academic penalty in line with the table of penalties for academic misconduct.

- A written warning about your future behaviour or requirements you must meet.
- A final written warning about your future behaviour or requirements you must meet.
- A conditional learning agreement. You must meet the conditions set out in the agreement to be allowed to continue on the programme of study.
- There is a case to answer that needs to be considered by a panel.

The VP (PPD) will consider the Case Officer's recommendation. At this stage, the VP (PPD) may take into account any previous Fitness to Practise or relevant fitness to practise matters against you when deciding whether to accept the Case Officer's recommendation. The VP (PPD):

- To accept the Case Officer's recommendation without change.
- To accept the Case Officer's recommendation with minor changes.
- Not to accept the Case Officer's recommendation, but take a different course of action instead.

In all cases, we will tell you the outcome of the investigation and what action, if any, we have decided to take.

This stage must be completed within 15 working days of the concerns being referred for investigation.

If the concerns are very serious and it is possible that we may decide to exclude you from the College, your case will be considered by a College panel.

While an investigation is ongoing you must continue to work towards any resubmission deadline. If an allegation of misconduct against you is found not justified, then your work for that submission will stand regardless of whether you have made any further assessment attempt.

(3) HE College Panel

A Fitness to Practise HE College panel can make the following decisions as appropriate:

- You will receive no formal warning or penalty. We may give you a guidance note about your future behaviour.
- For academic misconduct, we may give you an academic penalty in line with the Higher Education Academic Offences Policy.
- We may give you an action plan or a learning agreement (or both) which you will need to keep to and show how you are making progress. If you do not meet the conditions, we may give you a written warning or a final written warning.
- We may give you a written warning which we will keep on your student file for a set time. If you commit another offence, we will take this written warning into account when deciding on any further penalty.

- We may give you a final written warning which means that if you commit another offence you are likely to be excluded from the College.

A College panel is authorised to make any of the above decisions, and also to exclude you from the College for up to five years.

When the panel decides on the penalty it will not normally take account of penalties you have already been given for a different type of misconduct. For example, if you had received a written warning for academic misconduct and then went on to commit general misconduct, the panel would not normally take the previous warning into account when deciding on the new penalty.

HE Panel meetings

- a) The Director of Professional Performance (Chair)
- b) A subject representative
- c) The person making the complaint 'College representative'
- d) The student* who may be accompanied by a friend/colleague (who is not a member of the legal profession)
- e) A minute taker

*Where a student has additional needs the HE Keyworker should attend if appropriate.

The process of the HE Panel will be:

- A. Private meeting of the Panel
- B. Introduction of those present
- C. Presentation of evidence by the person 'College representative' making the allegation
- D. HE College panel question the 'College representative'
- E. Opportunity for the student to question, through the Chair, the 'College representative'
- F. Student and/or representative presentation
- G. Opportunity for the panel to question the student
- H. Opportunity for the College representative to question, through the Chair, the student
- I. Panel Chair summing up
- J. Private meeting of the panel to make a decision which will be notified in 24 working hours

Either party may call witnesses. Should witnesses be called they will attend only to present their evidence and to answer any questions that the Panel or

the other party may put to them. Once their evidence has been heard and there are no more questions, witnesses will be required to withdraw.

Extending the time limit

If there are clear and justifiable reasons for extending the time limit, we will set new time limits. We will tell you the new time limits and the reasons for the extension.

Closing the Fitness to Practise action at the formal stage

We will give you a clear explanation of the outcome of the formal stage of the Fitness to Practise action in writing, setting out the reasons for each decision in simple, straightforward language. We will record the outcome on our Fitness to Practise record system.

We will tell you about:

- your right to take the case to the review stage;
- the grounds on which you can do this (see below);
- the time limit for moving to the review stage (within 10 working days of us sending you the outcome of the formal stage);
- the appropriate procedure to follow; and
- where and how to access advice and support

If you do not take the case to the review stage within the time limit for doing so, we will close the matter.

Review stage – to be completed within 15 working days of receiving your request for a review

If you are not satisfied with the outcome of the formal stage, you have **10 working days** to ask for a review. There are limited grounds for asking for a review, which are as follows.

1. There is new evidence which you were unable, for valid reasons, to provide earlier in the process, and which would have had a significant effect on the outcome of the formal stage.
2. The correct procedure was not followed during the formal stage and this has had a significant effect on the outcome.
3. The outcome was unreasonable given all the circumstances and the evidence considered.

The purpose of a review is to consider whether the outcome was reasonable. At the review stage, we will not usually consider the issues again or investigate the matter further. Your case must have been considered at the formal stage before

it can move to the review stage. If your expectations appear to be beyond what can be achieved at the review stage, we will tell you this as soon as possible in writing to manage your expectations about possible outcomes.

You must submit a request for a review electronically, by email, to the AP (L&S). We will only accept a request submitted by someone else on your behalf if you have given the other person written permission to act as your representative for the review stage and have supplied a copy of that written permission to us in with the 10 working days noted above. You must set out your concerns clearly and briefly and provide evidence, where possible, of the issues raised. Only evidence that is clearly referenced will be considered. We will acknowledge the request for a review within **five working days**.

The VP (PPD) will assess your request for a review, or someone they nominate to act on their behalf, and will use this assessment to decide between the following two possible outcomes.

- There are no grounds for taking the matter further. If this is the case, the VP (PPD) will tell you in writing and also let you know about any right you may have to ask the Office of the Independent Adjudicator (OIA) to review your case.
- There are grounds for reconsidering the case.

If there are grounds for reconsidering the case, the VP (PPD) or someone they nominate to act on their behalf, will consider the following.

- Was the outcome reasonable in all the circumstances?
- Was there a mistake in how we used this procedure to assess your case and the outcome has been less favourable to you as a result?
- Have you received clear reasons for the outcome at the formal stage?
- If you have provided new evidence, have you provided valid reasons for not providing it earlier?
- Would any new evidence you have provided have affected the outcome (if there were valid reasons for not providing this earlier)?

The VP (PPD) or someone they nominate to act on their behalf, will decide between the following two options:

- The case will be referred back to the formal stage with a recommendation.
- The issues are complicated and so it would be better to deal with them through a review panel.

Extending the time limit

If there are clear and justifiable reasons for extending the time limits, we will set new time limits. The maximum extension will be **10 working days** (that is, not more than **25 working days** in total from the date we receive your request for a review).

Closing the case at the review stage

We will give you a clear explanation of the outcome of the review in writing. This explanation will set out the reasons for each decision in simple, straightforward language and clearly state any action to be taken (if appropriate). We will record the outcome on our Fitness to Practise record system. We will also let you know about any right you may have to ask the OIA to review your case.

Raising concerns about a student's fitness to practise

A registered professional or member of staff should fill in this section to raise concerns about a student's fitness to practise.

Name	Miss/Ms/Mrs/Mr/Dr
Job title	
Employer	
Location of employment	For example, Ward 6 Russell's Hall, or Old Tree Primary School
Member of professional body	List all that apply
Governing code	Must not be left blank
Section or criteria of code felt to have been broken	List all that apply. Must not be left blank

Student name	Miss/Ms/Mrs/Mr/Dr
Student ID number	
Course of study	

My knowledge of the events relevant to this matter is as follows:

[List events in date order. Please refer to any relevant documents which support the account, and attach the documents to this statement with reference numbers. Please make sure that your statement could be read and understood by someone with no knowledge of the case so that they would be left understanding what the allegation was and how the evidence you have provided is relevant to the allegation.]

I am attaching (or will provide within two weeks) the following evidence to support this statement.

Document reference	Brief description of document	Attached or to follow
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Example

1	Hospital incident report form dated 1 June 2018	Attached

I am giving this statement in connection with my concerns that the student named above may have broken the relevant code governing the profession (which applies to their programme of study). I understand that:

- within two weeks of sending this statement to the University I must provide all evidence referred to in this statement;
- you may provide this statement to the student named above in the course of any University investigation into the concerns being raised; and
- due to confidentiality restrictions, you may not keep me informed of the progress of your investigation.

Your signature:

Date:

Send your filled-in form and any queries to VP (PPD)

Notes to consider

1. Try to make sure the statement covers all relevant issues and only those that you have direct knowledge of.
2. Make sure that the statement does not include details that are not relevant or could be unfair, such as earlier offences or evidence about other similar offences.
3. Wherever possible, try to avoid any second-hand (hearsay) evidence, although we will accept hearsay evidence if there is no better evidence available.
4. Consider whether your witness statement is an important part of the case or whether it adds little to it or simply duplicates other evidence. Although it can be helpful to include more than one account supporting the same events, there will be a point at which duplicating evidence will just unnecessarily extend the time needed to deal with the case.

To be filled in by College staff:		
Date student started the current programme	Level of study	Has the student interrupted their study?
	4 5	Yes <input type="checkbox"/> No <input type="checkbox"/>

Referral for investigation

The Director of Professional Performance should fill in this section. Recommendations made by the case officer will be returned to the person named below.

Name	
	Miss/Ms/Mrs/Mr/Dr
Job title	
Directorate	
Student name	
Student ID number	
Course of study	

Governing code	
	Must not be left blank
Section or criteria of code alleged to have been broken	
	List all that apply. Must not be left blank

Reason for referral (tick all that apply):

- A complicated concern has been raised
- Harm or threat of harm to a service user or client
- Damage or threat of damage to the reputation of the profession
- A serious concern has been raised

A sustained or repetitive pattern of behaviour

The student is diagnosed with a disability after starting the programme

The student receives a criminal charge or conviction after starting the programme

Signature:

Date: