

GUIDELINES ON PROCEDURAL FAIRNESS AND GOOD DECISION-MAKING

1 Introduction

- 1.1 The University, through its staff and committees, makes a number of decisions in relation to student academic appeals and student misconduct matters.
- 1.2 These guidelines are designed to promote good decision-making and to ensure that procedural fairness is incorporated into all decisions.
- 1.3 These guidelines should be read in conjunction with any rules or policies related to student academic appeals and student misconduct matters.

2 The principle of procedural fairness

- 2.1 Procedural fairness (sometimes referred to as natural justice) is concerned with the process and procedures used in decision-making, rather than the outcome of a decision. The purpose of procedural fairness is to ensure that decisions are fair and correct.
- 2.2 There are three core elements to procedural fairness, which can be summarised as follows:
 - (a) the right to be heard by an unbiased decision-maker who is open to the merits of the case. This includes the requirement that decision-makers consider only what is relevant and do not take into account irrelevant matters;
 - (b) the right to know the allegation(s) or case made; and
 - (c) the right to be heard in answer to the allegation(s) or case.

3 The basis of good decisions

What is expected of decision-makers

- 3.1 Decision-makers should understand the decision they are required to make, and the source of power for making that decision (eg, a rule or a policy). They should also understand the extent of their power to make investigate matters and to make decisions and not go beyond the scope of that power.
- 3.2 Decision-makers must conduct themselves in a fair and transparent manner and promptly disclose any actual or potential conflicts of interest or bias. Conflicts of interest are a standing item of the agenda of decision-making committees at the University.
- 3.3 Decision-makers cannot delegate their power to decide unless they are permitted to do so by the source of their power. However, they can access assistance, for example, engaging another person to investigate and make recommendations, take statements from witnesses and so on.
- 3.4 Decision-makers do not follow the usual legal rules that apply in a court room when dealing with the evidence presented to it (ie “rules of evidence”). For example, students do not have an automatic right to question any witnesses except as permitted under the relevant procedure. Questions related to evidence must be

directed to the decision-maker.

- 3.5 Decision-makers must take into account all relevant matters and be careful to avoid taking into account any irrelevant matters.
- 3.6 Decision-makers should base their decision on the facts and evidence put before them. Evidence can be oral or documented but must be logically capable of supporting any findings on the balance of probabilities. In the University context, it is not necessary to make findings “beyond reasonable doubt”. Facts should be proved on the “balance of probabilities”, meaning that the decision-maker is satisfied that it is more likely than not that the fact is true.
- 3.7 Decision-makers should provide a short statement of reasons for their decision that sets out:
 - (a) what the decision is;
 - (b) the findings made on material facts;
 - (c) the evidence on which those findings are based;
 - (d) the reasons for the decision.
- 3.8 Something about if procedural irregularity is picked up, make sure student isn't disadvantaged. Students should be aware that a procedural irregularity does not necessarily mean that the decision will be overturned.

What students can expect

- 3.9 Students will be given details of the allegation(s) or the case against them so that they can respond to it. Students will always be given an opportunity to respond in writing and sometimes, in a hearing, depending on the process being followed by the University. This is their opportunity to present their version of events and to correct any information or evidence presented by the University.
- 3.10 If a hearing is held, students will be given advance notice of the hearing date so that they have the opportunity to prepare their response and any evidence (including witnesses). The deadlines are usually specified in the relevant rule or policy and, if not, will be no less than 10 days prior to notification of the hearing. Hearings may be held by videoconference, if required.
- 3.11 If the matter relates to an appeal, the student must base his or her appeal on any one or more of the grounds of appeal set out in the policy or rule. The student must set out the basis on which the original decision falls within the ground of appeal and provide all of the evidence that they rely on at the time they file their appeal.
- 3.12 When a student appeals a matter on the ground that a procedural irregularity has occurred, they must demonstrate that the irregularity caused a disadvantage to them. Students should be aware that while a procedural irregularity may have occurred, it may not change the outcome or sanction that has been imposed on them.
- 3.13 In matters involving allegations of misconduct, the student is entitled to receive copies of the evidence that the University has received in its investigation and to know the name of any person who has provided information that has formed the basis of an allegation against them. However, there may be situations where witnesses can request to remain anonymous, for example, in cases involving an allegation of sexual assault, such decision which will usually rest with the Chair of the

decision-making committee.

- 3.14 All appeals processes are conducted in confidence, and all persons participating in that process are required to maintain confidentiality.
- 3.15 If the rule or policy allows for it, a student may also bring along a support person or advocate to a hearing. Students do not have an automatic right to legal representation unless this is explicitly stated in the rule or policy.
- 3.16 A student does not have a right to question any witnesses directly, but may ask questions through the decision-maker.
- 3.17 While any past finding of misconduct cannot be used as evidence to support a later allegation of misconduct, that past finding may be taken into account in deciding an appropriate sanction or penalty.
- 3.18 A student will be given information about the procedures that will be followed for hearing a misconduct matter or appeal, including time and date of the hearing, the way in which they may provide their response, the availability of advice and support services of the University and relevant student associations, and any potential penalties or sanctions that may apply.
- 3.19 The student will be notified of the decision in writing. Although it is not a requirement of procedural fairness, it is good administrative practice (and may also be required in a rule or policy) to provide short statements of reasons for a decision. It ensures accountability and also assists the student to understand the decision made and how it was reached.
- 3.20 Students should be told of any further internal or external rights of review or appeal against the decision. This should be done when they are notified of the decision.