

# Introduction

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### Introduction

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The College Charter sets out in general terms the way the College is governed and managed. The Ordinances describe its rules and regulations for governance in more detail. Part B of the Ordinances is devoted to the College's formal policies on the handling of **staffing matters** such as discipline, grievance, redundancy and other potential dismissals<sup>1</sup>.

However, in addition to its formal policies<sup>2</sup>, the College has developed a number of Codes of Practice which are published here. They are designed to:

- set out simply, clearly, in "user-friendly" and practical terms the processes required for the College to implement its Ordinances;
- offer fair and effective procedures which specify good practice and embody the requirements of employment law;
- unify, as far as possible, the procedures across the different staffing groups.

### Format and layout

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The Codes of Practice have a common format and each includes the following sections:

- the **aim** of code;
- the **key points**;
- an **outline** of the process;
- the **timescales** to be achieved;
- the **authority** to initiate action and make decisions.

Each stage of the outline procedure is then described **step-by-step** on a single page, setting out both what the manager is to achieve and the entitlements of the employee.

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1. "Dismissal" here is a technical term which means the ending of a contract of employment by any means other than agreement on both sides.
  2. In any dispute about interpretation, the Charter and Ordinances take priority over the Codes of Practice.

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A number of these steps are required in more than one Code of Practice. For example, most of them require managers to:

- notify the employee in writing of what the issues are;
- call them to a formal hearing;
- consider the issues at a fair hearing at which the employee can be represented;
- enable the employee to lodge an appeal;
- hold an appeal hearing.



Where one of these “common elements” is an integral step in the process being described, it is included in the relevant Code of Practice at the appropriate point.

However, some other matters which underpin the Codes of Practice, for example:

- the constitution of panels to hear and decide matters;
- the College’s standards on access to notes of hearings;
- the role of employee representatives;

are set out once in the Introduction. This is done to avoid undue repetition. The introduction also includes a glossary of terms.

### Academic freedom and the Codes of Practice

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**Academic freedom** is defined in the glossary. It applies to **academic staff**, also defined in the glossary.

The College undertakes not to infringe the academic freedom of its academic staff.

If an academic employee claims that action taken against them under one of the Codes of Practice results from their exercising academic freedom, the issue will be considered by a panel constituted as set out on page 9.

If the employee's claim to academic freedom is upheld, any action taken against them will be cancelled and treated as invalid.



### Clinical staff and the Codes of Practice

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Clinical staff are defined in the glossary. Clinical academics have two contracts of employment: - one with the College and an honorary contract with the NHS Trust.

For such staff, performance of clinical duties under the honorary NHS contract is normally critical for the full and proper performance of the duties under the academic contract.

In law, each of the two contracts of employment (and therefore the relationship with the employer) is separate.

However, the College and Trust have agreed a protocol that commits them to co-operating with each other on issues such as appraisal, review, discipline and dismissal for clinical academic staff.

Where action is taken by one employer under its own procedures, the other employer will consider whether it also needs to act. The College may on some occasions have grounds for taking action, while the Trust does not (and vice versa). But there will also be times when both employers will need to act.

If a clinical academic is unable to practise because, either:

- 1 the Trust has **dismissed** them from their honorary contract; or
  - 2 their status or registration with the General Medical or Dental Council has been **withdrawn or revoked**,
- the College may, after following the provisions of a relevant Code of Practice, decide to dismiss the employee.

And if the clinical academic is **suspended** from their honorary contract, or their status or registration with the General Medical or Dental Council is **suspended**, the College may, after following the provisions of a relevant Code of Practice, decide to suspend the employee for the same period. The College's suspension will be without pay if the original action to suspend or remove the status of the employee was taken, in practice, as a disciplinary measure.

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### Authority to take action and make decisions

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Throughout the Codes of Practice, the expression “the manager will ...” is used. This convention is used simply because in practice, HR decisions will be taken or initiated by front-line managers.

Using this convention means that the Codes of Practice include some tasks that do not apply to every manager. However, all managers need to know what is required and, if they are not empowered to do it themselves, to make sure that somebody else is doing it.

Each Code of Practice has a section setting out the authority to make decisions. Where the Code permits authority to be delegated, the College expects its Heads of School and Directors of Institute/Department to ensure that managers understand the scope of the decisions that they can make.

In any case, managers are not on their own in handling HR issues. The College has senior managers and specialist HR staff whom they can consult for competent advice.

The College recognises its responsibility to equip and develop its managers to handle their responsibilities. Comprehensive training on the Codes of Practice and how to achieve the standards in them is available to managers at all levels.

### The right to be accompanied

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Under most of the Codes of Practice the employee has the right to be accompanied or represented by "another person" of their choice.

"Another person" is defined in the glossary. Anyone may act as "another person", for example:

- a fellow employee
- a trade union representative or official
- a partner or spouse
- a legal representative
- anyone else.



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The rights of employee representatives are set out in law. In practical terms, at formal meetings described in the Codes of Practice, the "other person" must be able to act in behalf of the employee as follows:

- 1 to put the employee's case;
- 2 to ask relevant questions;
- 3 to respond on the employee's behalf to any view expressed at the hearing;
- 4 to raise points of procedure;
- 5 to confer privately with the employee in hearings;
- 6 to represent an employee in their absence, if this is agreed by the employee;
- 7 to sum up the employee's case.

The College is not required to permit the "other person" to:

- 1 answer questions on the employee's behalf;
- 2 address the hearing if the employee indicates that they do not wish them to do so; or
- 3 use the powers in a way that prevents:
  - the employer from explaining their case; or
  - any other person making their contribution.

**Any member of staff facing action under one of the Codes of Practice (or contemplating taking action under the Code of Practice on Grievance) should take advice or consult their trade union representative as soon as possible.**

### Updating the Codes of Practice

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In developing the Codes of Practice, the aim throughout has been to:

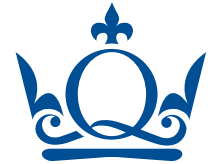
- produce a series of procedures which can be read without reference to the Ordinances and which incorporate all the practical requirements of that document;
- keep things simple;
- minimise bureaucracy;
- incorporate the principles of natural justice.

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The Queen Mary Senior Executive (QMSE) has authority to change the Codes of Practice, following negotiation with the trades unions. The Director of HR will issue updates as necessary. The most up-to-date version of any of the Codes of Practice is available on the HR Department's intranet web-site.



If you have any suggestions about ways to improve the Codes of Practice, or if you need clarification on how to apply them, your School, Institute or Department has an assigned HR Consultant. For more information about who they are, see the HR web-site.

### Constitution of panels and appeal panels

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The Codes of Practice often require panels of at least three<sup>1</sup> people to consider:

- 1 potential dismissals; and/or
- 2 appeals.

A panel is also required if an academic member of staff claims that action taken against them under one of the Codes of Practice results from their exercising academic freedom. The membership of a panel to consider such a claim is set out in box 4 on page 9.

The membership of all other panels depends on:

- 1 whether or not the employee whose case is being heard is a member of either:
  - the Academic and Academic-related Staff; or
  - the Support Staff, and
- 2 the Code of Practice which is being followed (see the chart on the next page).

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1. Uniquely, a 5-person "Redundancy Committee" is required to consider potential dismissals on the grounds of redundancy. However, the redundancy appeal panel, in common with the other panels, will normally comprise 3 persons.



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<i>Code</i>	<i>Panel Composition</i>
Redundancy Committee	See box 1 on page 8
Redundancy Appeal	See box 2 on page 8
Discipline	See box 2 on page 8
Poor Performance	See box 2 on page 8
Managing Sickness	See box 2 on page 8
Fixed-term contracts	See box 3 on page 9
Probation	Described in the Code itself
Other dismissals	See box 2 on page 8
Grievance	See box 2 on page 8

### ***The Principal:***

(or another person named by the Principal<sup>1</sup>) will:

- seek nominations from the Chair of Council for any external members of Council required for the panel;
- select the remainder of the required number of people to hear the matter;
- nominate the chairperson;
- ensure that all those chosen have had no prior involvement in the case
- nominate a secretary to the panel.

### ***The employee whose case is being heard:***

has the right to lodge an objection with the Director of HR about any member of a proposed panel. The employee would have to show that they have reasonable grounds for believing that the proposed panel member:

- has had a prior involvement in the case; or
- may be disposed to show bias or a lack of independence.

### ***The Academic Board will:***

agree, each year, a list of people to act as members on panels and appeal panels to deal with matters concerning staff covered by the Academic and Academic-related Staff under the relevant Code of Practice.

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1. Normally the Director of HR.

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**The Director of HR will:**

agree, each year, a similar list of people to act as members on panels to deal with matters concerning the Support Staff.



**The Director of HR will:**

arrange relevant training for those on both lists.

**Box 1: Composition of a Redundancy Committee**

<i>Academic and Academic-related Staff</i>	<i>Support Staff</i>
<p>The panel will comprise 5 people:</p> <ul style="list-style-type: none"> <li>- 3 drawn from the list agreed for this purpose each year by the Academic Board;</li> <li>- 2 external members of Council.</li> </ul>	<p>The panel will comprise 3 people drawn from the list agreed for this purpose each year by the Director of HR</p>

**Box 2: Composition of Panels and Appeal Panels<sup>1</sup>**

for the following Codes of Practice:

- **Redundancy** (Appeal Panel only);
- **Discipline** (Panel and Appeal)
- **Poor Performance** (Panel and Appeal);
- **Managing Attendance** (Panel and Appeal);
- **Other Potential Dismissals** (Panel and Appeal);
- **Grievance** (Appeal Panel only).

<i>Academic and Academic-related Staff</i>	<i>Support Staff</i>
<p>The panel will comprise 3 people:</p> <ul style="list-style-type: none"> <li>- 2 drawn from the list agreed for this purpose each year by the Academic Board;</li> <li>- 1 external member of Council.</li> </ul>	<p>The panel will comprise 3 people drawn from the list agreed for this purpose each year by the Director of HR.</p>

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1. In some cases it may be appropriate for the National Health Service or another relevant body to be represented. The panel may be enlarged to allow this. Any panel considering dismissal related to the employee's health will have at least one person on it with an appropriate medical qualification.



**Box 3: Composition of a panel to hear an appeal against dismissal under the Code of Practice “**Reviewing Fixed-term Contracts**”.**

<i>Academic and Academic-related Staff</i>	<i>Support Staff</i>
<p>The panel will comprise 3 people:</p> <ul style="list-style-type: none"> <li>- 1 drawn from the list agreed for this purpose each year by the Academic Board;</li> <li>- 1 Head of Department not previously involved in the case</li> <li>- 1 external member of Council.</li> </ul>	<p>The panel will comprise 3 people:</p> <ul style="list-style-type: none"> <li>- 2 drawn from the list agreed for this purpose each year by the Director of HR;</li> <li>- 1 Head of Department not previously involved in the case</li> </ul>

**Box 4: Composition of “**Academic Freedom**” Panels<sup>1</sup> to consider claims that action taken under one of the Codes of Practice results from the employee exercising their academic freedom.**

<i>Academic and Academic-related Staff</i>	<i>Support Staff</i>
<p>The panel will comprise 3 people:</p> <ul style="list-style-type: none"> <li>- 2 drawn from the list agreed for this purpose each year by the Academic Board;</li> <li>- 1 external member of Council.</li> </ul>	<p>Such staff will not be engaged in academic or research work and therefore, academic freedom will not apply.</p>

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1. In some cases it may be appropriate for the National Health Service or another relevant body to be represented. The panel may be enlarged to allow this. Any panel considering dismissal related to the employee’s health will have at least one person on it with an appropriate medical qualification.

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### Keeping records



<i>Managers will:</i>	<i>The employee is entitled to:</i>
<ol style="list-style-type: none"> <li>1 ensure that the following records are kept:               <ol style="list-style-type: none"> <li>1 the issue or the complaint against the employee;</li> <li>2 the employee's defence;</li> <li>3 the findings made and actions taken;</li> <li>4 the reason for actions taken;</li> <li>5 whether an appeal was lodged;</li> <li>6 the outcome of the appeal;</li> <li>7 subsequent developments;</li> </ol> </li> <li>2 treat such records as confidential and keep them in accordance with the Data Protection Act<sup>1</sup> 1998;</li> <li>3 give copies of meeting records to the employee, although in certain circumstances (for example to protect a witness) the College might withhold some information;</li> <li>4 ensure that current warnings are kept for the stated period on the employee's personal file in the HR department<sup>2</sup>.</li> </ol>	<ol style="list-style-type: none"> <li>1 be given, in writing:               <ol style="list-style-type: none"> <li>1 the issues to be considered at hearing under one of the Codes of Practice</li> <li>2 any decision taken at such a hearing;</li> <li>3 the reasons for the decision;</li> <li>4 any right of appeal;</li> </ol> </li> <li>2 copies of notes of any meetings they attend under the Codes of Practice;</li> <li>3 access to any personal information about themselves, that the College holds, including supervised access to their personal file, records of investigations, hearings or appeals, etc., in accordance with the provisions and exemptions set out in the Data Protection Act 1998.</li> </ol>

1. *This Act gives individuals the right to request and have access to certain data.*
2. *HR staff will remove spent warnings from the personal file. However, any information relevant to:*
  - (a) *legal action or a police investigation; or*
  - (b) *a College investigation into a serious matter such as fraud, harassment, sexual misconduct, dishonesty or the safety and protection of staff, students or the public;**will be removed from the personal file but retained separately. Such information will be examined only with the authority of the Director of HR.*



### Glossary

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#### **Academic Freedom**

The College guarantees its academic staff:

"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".

#### **Academic staff**

For the purpose of ensuring Academic Freedom "Academic members of staff" includes all staff whose contract of employment requires them to be personally responsible for the intellectual content of elements of teaching and/or research at the College.

For all other employment purposes, "Academic Staff" includes members of staff whose contract of employment shows that they are employed on "Academic" or "Research and Analogous" terms and conditions.

#### **Academic-related members of staff**

This includes all staff whose contract of employment shows that they are employed on "Professional" terms and conditions. [For the avoidance of doubt, staff employed in Professional Grades 1 to 4 on Support Staff terms and conditions are not counted as academic-related staff; but staff employed at Professional Grade 4 on academic-related terms and conditions before 1st January 2008 will be employed on "Professional" terms and conditions and will be counted as academic-related staff.]

#### **Another Person**

Each of the Codes of Practice includes a right for an employee to be represented by "another person". This may be any other person, including a legal representative, but is limited to a single individual.

#### **Balance of Probabilities**

The standard of proof required in the College's internal procedures. The matter does not have to be proved "beyond reasonable doubt". It is sufficient for a panel or manager to believe, on the basis of the evidence heard, that one version of events is more likely to be true than another.

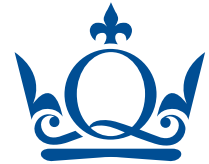
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### **Clinical staff**

A member of the clinical academic staff who is required to engage in clinical work or activities and for that purpose to be registered with the General Medical or Dental Council or similar body and/or to have an honorary or substantive contract or status with a National Health Service trust or similar body.



### **"Department" & "Heads of Department"**

The College's academic organisation is defined in Part A of the Ordinances.

The expression "head of department" in the Codes of Practice refers to any:

- 1 Head of School in the Faculty of Humanities and Social Sciences;
- 2 Head of School in the Faculty of Science and Engineering;
- 3 Head of Institute in the Barts and the London School of Medicine and Dentistry;
- 4 Director in the following professional services departments: Central Administration; Computing Services; Corporate Affairs; Council Secretariat; Estates; Finance; Human Resources; the Learning Institute; Library Services; SMD Administration; Student and Campus Services.

### **Fixed-term contract**

A "fixed-term contract" is one which would normally be expected to end on:

- the expiry of a specific term; or
- the completion of a particular task; or
- the occurrence of any other specific event other than normal retiring age in the College.

### **Gross misconduct**

Gross misconduct is a legal term. It is used to describe misconduct which would justify summary dismissal. For gross misconduct, dismissal would be justified even for a first offence: no prior warning would be required. See also "Misconduct".



### **Manager**

Anyone in the College who supervises and/or is responsible for the work of one or more staff.

"Manager" refers to a role, and not to a title. Thus, staff who supervise or monitor the work of other College employees will, in effect, be managers even if their job title is "Senior Lecturer" "Assistant Registrar" "Vice Principal", etc.

### **Misconduct**

Misconduct means breaking the rules of conduct that the College has set for its staff, set out in Part B of the Ordinances. See also "Gross Misconduct".

### **Natural Justice**

This refers to the right to due process and fairness in the College's internal procedures.

### **Probation Advisor**

The role of probation advisor is described on page 7:13 of the Code of Practice on Probation. The role may be taken by a senior colleague of the employee, or the line manager of the employee. The probation advisor is normally named in the new entrant's contract of employment.

### **Permanent Contract**

A contract which would normally be expected to end when the employee reaches the normal retiring age for College staff.

### **Retirement**

Retirement happens when an employee leaves their job or stops working because of their age. Normal retiring age in the College is age 65. Retirement on ill-health grounds is always referred to as such.

### **Support staff**

This term includes all staff whose contract of employment shows that they are employed on "Support Staff", "Nursery Staff" or "Security Staff" terms and conditions. [For the avoidance of doubt, Technical Staff on Technical Grade 5 and above are counted as Support Staff and not as academic-related staff.]

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### **“They”, “them” and “their”**

In these Codes of Practice, **they, them** and **their** are used as gender-indefinite pronouns instead of “**she or he**”.



### **TUPE transfer**

When staff are transferred from one employer to another under the provisions of the Transfer of Undertakings (Protection of Employment) Regulations.

### **Union**

The word “union” in this document always refers to trade unions.